

# Governance Rules 2020

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## 1. Purpose

These are the Governance Rules of Wyndham Council, made in accordance with section 60 of the Local Government Act 2020 (Act).

## 2. Context

These Rules should be read in the context to and in conjunction with:

- The overarching governance principals specified in section 9(2) of the Act
- The Election Period Policy
- The Conflict of Interest Policy
- Audio-Visual Recording of Council Meetings Policy 2017
- Wyndham 2040 Vision
- Wyndham City Plan 2013-2017
- Community Engagement Framework and Model 2013-17
- Corporate Recording of Council Meetings Policy 2014
- Public Records Act 1973
- Freedom of Information Act 1982
- Privacy and Data Protection Act 2014

## 3. Definitions

In this manual:

**“Act”** means the Local Government Act 2020.

**“Agenda”** means a document containing the date time and place of a meeting and a list of business to be transacted at the meeting.

**“Business Day”** means a day that is not a Saturday or Sunday or a public holiday.

**“Chairperson”** means the person who chairs a meeting.

**“Chief Executive Officer”** or **“CEO”** means the person who is the Chief Executive Officer (CEO) of the Council or any person acting in that position.

**“Council”** means the Wyndham City Council.

**“Mayor”** means the Mayor of the Council and any other Councillor acting as Mayor in the absence of the Mayor.

**“Meeting”** means a meeting of the Council or a Delegated committee of the Council.

**“Notice of Motion”** means a notice setting out the text of a motion which a Councillor proposes to move at a meeting.

**“Officer”** means an employee of the Council.

**“Rules”** means this document titled the Governance Rules 2020.

**“Delegated Committee”** means a delegated committee of the Council appointed under section 63 of the Act.

**“Wyndham”** means Council.

#### 4. Decision Making

- 1) In any matter in which a decision must be made by a Council (including a Delegated Committee or persons acting with delegated authority of Council), Council must consider the matter and make a decision:
  - i. fairly, by giving consideration and making a decision which is balanced, ethical and impartial; and,
  - ii. on the merits, free from favouritism or self-interest and without regard to irrelevant or unauthorised considerations.
- 2) Council must, when making any decision to which the principles of natural justice apply, adhere to the principles of natural justice (including, without limitation, ensuring that any person whose rights will be directly affected by a decision of Council is entitled to communicate their views and have their interests considered).
- 3) Without limiting anything in sub-rule 4(2):
  - (a) before making a decision that will directly affect the rights of a person, Council (including a Delegated Committee or any person acting with the delegated authority of Council) must identify the person or persons whose rights will be directly affected, give notice of the decision which Council must make and ensure that such person or persons have an opportunity to communicate their views and have their interests considered before the decision is made;
    - i. If a report to be considered at a Council meeting concerns subject-matter which will directly affect the rights of a person or persons, the report must record whether the person has, or persons have, been provided with an opportunity to communicate their views and have their interests considered;
    - ii. If a report to be considered at a Delegated Committee meeting concerns subject-matter which will directly affect the rights of a person or persons, the Report must record whether the person has, or persons have, been provided with an opportunity to communicate their views and have their interests considered; and,
    - iii. If a member of Council staff proposes to make a decision under delegation and that decision will directly affect the rights of a person or persons, the member of Council staff must when making that decision complete a delegate report that records that notice of the decision to be made was given to the person or persons and such person or persons were provided with an opportunity to communicate their views and their interests considered.

## 5. Governance Framework

Good governance at Wyndham relies on Councillors, Council staff, the Wyndham community and other stakeholders being clear about their role and responsibilities and supporting positive and constructive relationships with each other.

Council accepts that due to its unique leadership position in the Wyndham community, it is incumbent on Councillors and Council Staff to set high governance standards on ensuring decision-making processes are as transparent, responsive, effective, equitable, inclusive and participatory as possible. Council's good governance policies and practices range across a variety of themes, including:

- Community Participation;
- Councillor and Officer Conduct; and
- Good Working Relationships.

Further to these themes, key benefits of practising good governance at Wyndham is that this enables Council to gauge, and better meet, increased community expectations and the pressures of constant change and growth.

The highest level of teamwork at Wyndham occurs as a result of Councillors and Council Staff demonstrating mutual respect and co-operating with each other to achieve Council's goals and implement Council's strategies. This teamwork is also supported at Wyndham through a sophisticated understanding of the strengths and limits of each other's roles and responsibilities. Council Staff are accountable through the CEO to the Council. Councillors provide the vision for the community and the policy framework for the organisation to implement.

To promote effective relationships, Council Staff commit to:

- Accepting that decision making occurs at Council and through formal instruments of delegation;
- Respecting the right and responsibility of Council to question recommendations and reports from Council Officers, and to disagree with them if they wish;
- Understanding the information requirements for good decision-making as directed by the CEO, and provide information to Council accordingly;
- Understanding that they are accountable for implementing decisions made by Council; and
- Implementing decisions of the whole Council and not the directions of individual Councillors.

In order to promote effective relationships, Councillors commit to:

- Accepting that their role is a leadership one, and that this role is fundamentally different from other roles such as managerial and administrative roles;
- Acknowledging that the CEO is responsible for all staffing matters (including directions) and discussions on these are best had in private with the CEO;
- Acknowledging that they have no individual authority to commit Council to any expenditure;
- Refraining from using their position to improperly influence members of staff in their duties or functions or to gain an advantage for themselves or others;
- Refraining from publicly criticising staff; and
- Treating Council Staff in ways that engenders mutual respect at all times.

## 6. Meeting Procedure

This section outlines the processes for Council meetings at Wyndham City Council.

### 6.1. Responsibilities of CEO

The responsibilities of the CEO under these Rules are to ensure:

- 1) Notice of the date, time and place of Council Meetings including adjourned Council Delegated Meetings is provided to the public via Council's website.
- 2) An agenda is prepared and provided to Councillors by 5pm on the fourth business day prior to the next Council Meeting and displayed on Council's website with the exception of confidential matters.
- 3) The minutes of each Council Meeting are kept.
- 4) A copy of the minutes is given to Councillors by noon on the fifth business day prior to the next meeting at which those minutes are to be confirmed.
- 5) Notices of motion are included on the agenda for that meeting in order of their receipt.
- 6) A register of notices of motion is kept.
- 7) Meetings are conducted in conformity with the Act, and these Rules.
- 8) Confirmed minutes, with the exception of confidential items and decisions, are displayed on Council's website.

### 6.2. Quorum

- 1) The quorum for a Council meeting is at least a majority of the members of the Council.
- 2) A meeting cannot commence, resume or continue without a quorum.

### 6.3. Inability to maintain a quorum due to disclosed conflicts of interest

- 1) This subsection applies if Council cannot maintain a quorum because of the number of Councillors who have a conflict of interest in a decision in regard to a matter.
- 2) Council must consider whether the decision can be made by dealing with the matter in an alternative manner.
- 3) For the purposes of sub-rule 6.3(2), an **alternative manner** may include:
  - (a) resolving to split the matter into two or more separate parts, so that a quorum can be maintained for each separate part; or
  - (b) making prior decisions on component parts of the matter at a meeting for which a quorum can be maintained, before deciding the overall matter at a meeting for which a quorum can be maintained.
- 4) Subject to complying with any requirements under any other Act, if Council is unable to use an alternative manner, Council must decide to establish a Delegated Committee to make the decision in regard to the matter consisting of:
  - (a) all the Councillors who have not disclosed a conflict of interest in regard to the matter; and
  - (b) any other person or persons that Council considers suitable.

- 5) Section 63(2) of the Act applies to a Delegated Committee established under subsection (4) to the extent possible after excluding all the Councillors who have disclosed a conflict of interest in regard to the matter.

#### **6.4. Mode of Address**

A Councillor, or any other person who addresses a meeting, must do so in a courteous manner.

#### **6.5. Conduct at Meetings**

- 1) A Councillor must not make statements that could mislead the public and must make every effort to ensure the information they refer to is accurate.
- 2) A Councillor must not make any indecent, abusive, offensive or disorderly statement or comment during the meeting.
- 3) If a Councillor makes a statement or comment in contravention of sub-rule 6.5(1), the Chairperson may require the Councillor to withdraw it, and the Councillor concerned must immediately and unreservedly do so.
- 4) A member of the public present in the gallery at a meeting must:
  - (a) remain silent and must not interject or take part in the debate and may only speak when the Chairperson invites them to do so;
    - i. when addressing the Council, extend due courtesy and respect to the Council and the processes under which it operates; and,
    - ii. take direction from the Chairperson when called upon to do so.
- 5) If a member of the public present in the gallery is called to order by the Chairperson for any improper or disorderly conduct more than once during the meeting, the Chairperson may order him/her to leave the meeting room or building.
- 6) The Chairperson may adjourn a disorderly meeting and may order that a person, including a Councillor, who fails to comply with a direction remove themselves from the meeting.
- 7) If a Councillor or a member of the public present in the gallery continues to disrupt the meeting, the Chairperson or the CEO may obtain the assistance of the local authority to ensure that the order of the meeting is maintained or that the safety of any person at the meeting is not at risk.

#### **6.6. Recording Meetings**

- 1) The CEO must record on any appropriate audio- or audio-visual device a Council meeting for the purposes of producing accurate minutes of the meeting. In making an audio recording of a Council meeting, the CEO must have regard to the Corporate Recording of Council Meetings Policy 2014.
- 2) A person representing the media must not record by any audio or audio visual or photographic device a Council meeting without obtaining the prior written consent of the CEO no later than noon two business days prior to the meeting. The consent of the CEO must not be unreasonably withheld.
- 3) In providing written consent under sub-rule 6.6(2) the CEO may prescribe any conditions that apply to their consent to record a meeting and must specify which meeting the consent is prescribed for.
- 4) Any other person (not representing the media) must not record by any audio or audio visual or photographic device a Council meeting without obtaining the prior written

consent of the CEO no later than noon two business days prior to the meeting. The consent of the CEO must not be unreasonably withheld.

- 5) The Chairperson may withdraw the consent given under sub-rule 6.6(2) and 6.6(4) at any time during the meeting.
- 6) A person who has not obtained consent under sub-rules 6.6(2) and 6.6(4) must not disclose, publish, edit, reproduce or otherwise communicate or provide information recorded to any other person for any purpose.

### **6.7. Business Matters**

- 1) No business can be dealt with at a Council Meeting unless it is included in the Agenda for the meeting, or it is considered to be urgent business.
- 2) The order of business at a meeting must be as set out in the Agenda but may be varied by the Chairperson, or by resolution of the Council.
- 3) If the order of business is varied, the Chairperson must advise the public in attendance at the meeting of that change as soon as practicable.
- 4) Unless the Council resolves to extend the meeting, the meeting must conclude no later than 10:30pm.
- 5) A Councillor may propose that the meeting be extended by no more than half an hour.
- 6) The Chairperson must not accept more than three such notices at the meeting to extend the meeting time.

### **6.8. Urgent Business**

- 1) The majority of Councillors present at the meeting may resolve to deal with a matter that is not on the Agenda as an item under the urgent business section of the Agenda.
- 2) A matter will be considered urgent if it cannot reasonably be deferred for inclusion in the Agenda of the next meeting of the Council.

### **6.9. Suspension of Standing Orders**

Standing Orders are the directions made to govern the procedure at Council Meetings contained in these Rules. The Standing Orders cover a range of matters including the order of business, rules of debate, procedural motions and election procedures. Standing Orders can be suspended to facilitate the business of a meeting.

- 1) To temporarily remove the constraints of formal meeting procedure and allow full discussion or clarification of an issue, Council may, by resolution, suspend standing orders.
- 2) Suspension of standing orders should not be used purely to dispense with the processes and protocol of the governance of Council.
- 3) No Motion can be accepted by the Chairperson or lawfully be dealt with during any suspension of standing orders, except a Motion to resume standing orders.
- 4) No Motion to suspend standing orders can be accepted by the Chairperson during a second extension of time for a meeting.

#### **6.10. Confirmation of the Minutes of a Meeting**

- 1) When confirming the minutes of a meeting, the Chairperson must ask if any item in the minutes is opposed.
- 2) A Councillor may only express opposition to an item in the minutes on the basis that the record is incomplete or inaccurate.
- 3) If a Councillor indicates opposition, they must specify the particular item in the minutes and may, after asking any questions to clarify the matter, only move a motion to correct the alleged error in the record.
- 4) If no Councillor indicates opposition, the Chairperson must call for a motion for the minutes to be confirmed.
- 5) The Chairperson must not allow discussion or motions on any other issue than the alleged omission from or inaccuracy of the minutes.

#### **6.11. Form of Motions**

- 1) A motion or amendment which is proposed by a Councillor at a meeting must be:
  - (a) actionable;
  - (b) clearly expressed and unambiguous;
  - (c) not be objectionable in nature;
  - (d) related to the powers or functions of Council; and,
  - (e) relevant to an item on the Agenda including an item which has been agreed to by Council as urgent business.
- 2) A motion or amendment which is different from the wording in a recommendation or notice of motion which is on the Agenda must, if requested by the Chairperson, be written out by the proposer.
- 3) A motion or amendment which is contrary to sub-rule 6.11(1) must be rejected by the Chairperson.

#### **6.12. Notices of Motion**

- 1) A Councillor may submit a notice of motion in writing, which includes by email, to the CEO and this must be prior to 9pm on the fifth business day before the meeting at which the Councillor wants the notice of motion to be considered. Prior to this time, advice on the wording may be sought by the Councillor or provided by the CEO.
- 2) A notice of motion that has not been submitted in accordance with sub-rule 6.12(1) will not be included in the Agenda for the meeting.
- 3) The CEO will review the notice of motion to ensure that:
  - (a) It is not contrary to the requirements in rules 6.11(1)(a) – (c); and,
  - (b) It is not contrary to a previous decision of the Council or Council Policy.
- 4) Before a notice of motion is included in the Agenda for the meeting:
  - (a) all the processes will comply with the requirements in rule 6.12 of these Rules;
  - (b) appropriate advice and assistance may be provided to a Councillor in relation to a notice of motion, including drafting officer comments for inclusion in the notice of motion;

- (c) the motion is assessed to determine whether it is consistent with any decisions or policies previously adopted by the Council; and
  - (d) the Mayor and Councillors are advised in writing of the notice of motion within 24 hours of its receipt, and
  - (e) councillors should ideally have an opportunity to discuss the notice of motion together at a Briefing on the day of lodgement listed in rule 6.12(1).
- 5) As the CEO is responsible for preparing and authorising the Agenda for a Council Meeting, and subject to the processes outlined in these Rules, they may reject a notice of motion after giving the Councillor submitting the proposed notice of motion an opportunity to amend it, if it is practicable to do so.

### **6.13. Motions and Amendments**

- 1) The procedure for a motion or an amendment to a motion is:
- (a) A Councillor who is proposing a motion or amendment to a motion must briefly state the nature of the motion or amendment and then move the motion or amendment without speaking to it;
  - (b) The Chairperson must then call for the motion or amendment to be seconded, unless it is a point of order or a formal motion, by any Councillor other than the mover, and if the motion or amendment is not seconded, it lapses. The mover must then speak immediately to the motion or amendment (whichever motion is before the Chairperson) or with the consent of the Chairperson, defer speaking to it until later in the debate;
  - (c) After the motion or amendment has been moved and seconded, and the mover of the motion or amendment has spoken, the Chairperson must ask if the motion is opposed and if there is no opposition, the Chairperson may ask if any Councillor wishes to add anything further to the debate prior to putting the motion to the vote without any further debate;
  - (d) If the motion is opposed, the Chairperson must first ask the Councillor who has indicated opposition to the motion to speak, then ask for a Councillor in favour of the motion to speak and continue this process of alternating speakers for and against the motion until there are no more speakers;
  - (e) The Chairperson will then ask whether any other Councillor who has not spoken for or against the motion wishes to add anything further to the debate. If no other Councillor wishes to speak, other than the mover of the motion who may exercise or waive their right of reply immediately before the vote is taken, the Chairperson will put the motion to the vote;
  - (f) The mover and seconder of an amendment do not have a right of reply;
  - (g) The mover of the motion does not have a right of reply to the substantive motion, if an amendment to the motion has been carried;
  - (h) If there is no speaker against a motion, then the mover of the motion will not have a Right of Reply; and
    - i. The mover and seconder to Amendments, Foreshadowed Motions, as well as Closure or Adjournment Motions do not have Right of Reply.
- 2) The Chairperson may undertake a recount of the votes cast as often as necessary to be satisfied of the result of the vote on a matter.

- 3) Once a motion or amendment is seconded it cannot be withdrawn or amended, except with the leave of the Chairperson and the consent of both the mover and seconder.
- 4) If the mover or seconder of a motion or an amendment indicates that they wish to withdraw from moving or seconding the motion or amendment, the Chairperson may seek another mover or seconder (as the case requires), but if no Councillor indicates their willingness to be the substitute mover or seconder, the motion lapses.
- 5) Apart from the mover's right of reply, a Councillor may only speak once on the motion and once on any amendment to the motion.
- 6) Before putting a motion or amendment to the vote, the Chairperson may have the text of the motion or amendment read to the meeting, unless the exact wording is in writing and available to all Councillors.
- 7) Additional limitations applying to an amendment to a motion are:
  - (a) Only one amendment can be before the meeting at a time and until it is put to the vote no further amendment can be proposed, but with the leave of the Chairperson, another amendment or a new motion can be foreshadowed by any Councillor stating in brief terms the nature of it;
  - (b) Any Councillor, excluding the mover or seconder of a motion or an amendment, may move or second an amendment or any further amendment;
  - (c) The mover of an amendment has no right of reply; and
  - (d) When an amendment is put to the vote and is declared carried by the Chairperson it becomes the motion and can be further amended.
- 8) At any time during the debate on a motion or amendment the Chairperson may ask whether the motion or amendment before the meeting is opposed or is further opposed and if no opposition or no further opposition is indicated, he or she may put it to the vote without further debate.
- 9) A Councillor may request at any time before a vote is taken on a motion or amendment which is in two or more parts, that each part be put to the vote separately. The Chairperson may agree with or refuse the request.
- 10) A motion or amendment must otherwise be put to the vote when the Chairperson believes that the issues have been reasonably canvassed in the debate.
- 11) A Councillor calling a point of order or foreshadowing a new motion or further amendment or making a request under sub-rule 6.13(9) is not deemed to be speaking on the motion or amendment before the meeting.

#### **6.14. Revocation or Alteration of Previous Resolutions**

- 1) A motion to revoke or alter a previous resolution of the Council can be made by:
  - (a) A notice of motion; or
  - (b) A recommendation contained in an Officer's report included in the Agenda.
- 2) A motion that proposes the revocation or alteration of a previous resolution of the Council must be included on the Agenda for the meeting at which it is to be considered and must not be proposed as an item of urgent business.
- 3) A previous resolution can only be revoked if it has not been acted upon.

### **6.15. Formal Motions**

- 1) Two types of formal motions are permitted under these Rules, being:
  - (a) "closure of debate"; and,
  - (b) "adjourning the debate".
- 2) A formal motion must be dealt with immediately by the Chairperson.
- 3) A formal motion is not required to be seconded.
- 4) The mover of a formal motion must not have moved, seconded or spoken to the motion before the Chairperson or any amendment of it.
- 5) A formal motion must not be moved by the Chairperson.

### **6.16. Formal Motion for Closure of Debate**

- 1) A motion "That the motion be now put":
  - (a) is a formal motion which if carried in respect to a motion, that motion must be put to the vote immediately without any further debate, discussion or amendment;
  - (b) if carried in respect to an amendment, that amendment must be put to the vote immediately without any further debate or discussion, and debate on the substantive motion may continue unaffected; and,
  - (c) if lost, debate may continue unaffected.
- 2) No debate is permitted, and the mover does not have a right of reply.
- 3) The motion cannot be amended.
- 4) The Chairperson may reject this motion if they believe that the motion on which it is proposed has not been sufficiently debated.

### **6.17. Formal Motion for Adjournment of Debate**

- 1) A motion "That the debate be adjourned" is a formal motion on which debate is permitted but, which may only be amended in relation to the time, date and place of the proposed adjournment.
- 2) A motion "That the debate be adjourned" must not be moved while any person is speaking or during the election of a Chairperson.
- 3) The mover does not have a right of reply.

### **6.18. Points of Order**

- 1) A Councillor may make a point of order at any time during the meeting if they consider that these meeting procedures or the Councillor Code of Conduct is not being complied with.
- 2) The Chairperson must request the Councillor making the point of order to identify the basis upon which they are making the point of order, including a reference to any provision in these meeting procedures or the Councillor Code of Conduct.
- 3) The Chairperson must not allow the point of order if the Councillor making it cannot identify the basis upon which they are making the point of order under sub rule 6.18(2).
- 4) When a point of order is made, the Councillor speaking at the time must stop (unless asked by the Chairperson for an explanation), until the Chairperson rules upon it.

- 5) The Chairperson may adjourn the meeting to consider a point of order which has been made and must rule upon it as soon as possible and before the business of the meeting proceeds further.
- 6) The Chairperson must, when ruling upon a point of order, state the provision of these Rules or other legislation, rule, custom or practice upon which they are basing the ruling.

#### **6.19. Time Limits for Debate**

A Councillor must not speak on any one motion or amendment or other matter before a meeting for a time longer than that stated below unless granted an extension by the Chairperson:

- (a) The mover of a motion or an amendment - five minutes;
- (b) Any other Councillor - three minutes, and,
- (c) The mover of a motion exercising a right of reply – three minutes.

#### **6.20. Miscellaneous Rules of Debate**

- 1) If the debate is adjourned by a formal motion, then the Councillor or member of a special committee who moved the adjournment has the right to speak first when the debate is resumed and no other Councillor or member of a delegated committee who has already spoken is permitted to speak again except with the leave of the Chairperson.
- 2) A Councillor must not be interrupted, except by the Chairperson or upon a point of order being made.
- 3) The Chairperson may speak on any matter under discussion but must vacate the Chair while they are speaking on the matter, except for a matter under rule 6.24 (5).
- 4) When exercising a right of reply, a Councillor must not introduce fresh matter.
- 5) No resolution may be discussed after it has been carried unless the Chairperson allows it.

#### **6.21. Voting**

- 1) Unless these Rules provide otherwise, or Council otherwise determines, voting must be by a show of hands.
- 2) The Chairperson may direct that the vote be recounted as often as may be necessary to be satisfied of the result.
- 3) Except for the election of a Mayor or a Deputy Mayor; or a vote to declare the office of Mayor or Deputy Mayor vacant, if the number of votes in favour of the question is half the number of Councillors present at the meeting at the time the vote is taken, the chairperson has a second vote.
- 4) A Councillor can abstain from voting however, the decision to do so should not be taken lightly. Not participating in decisions taken by Council could be seen as an abrogation of a Councillor's oath of office and responsibility to represent the community.

#### **6.22. Divisions**

- 1) At any meeting, a division may be called by a Councillor immediately after the Chairperson has put any motion, amendment or other question to the vote and has announced the result of that vote.
- 2) The calling of a division sets aside the result of the voting announced by the Chairperson.
- 3) When a division has been called, the Chairperson must:

- (a) ask Councillors voting in the affirmative to hold up their hands, then announce the names of those Councillors; and,
  - (b) ask for those voting in the negative to hold up their hands, then announce the names of those Councillors.
- 4) The names of Councillors voting in the affirmative and in the negative must be recorded in the minutes of the meeting.
  - 5) No Councillor is prevented from changing his/her original vote on the division, and the voting by division will determine whether the motion or amendment is carried or is lost.
  - 6) The Chairperson must announce the result of the vote immediately after the division is taken.

### **6.23. Recording of Opposition to a Vote**

At any meeting a Councillor may ask that his or her name be recorded in the minutes as having voted in the negative, immediately after the Chairperson has put any motion, amendment or other question to the vote and has announced the result of that vote.

### **6.24. Chairperson's Ruling**

- 1) Where these Rules do not provide a procedure for a meeting, the Chairperson shall decide the procedure to be followed.
- 2) When the Chairperson makes a ruling during a meeting, any motion dissenting from the Chairperson's ruling must be moved immediately.
- 3) The Chairperson is not required to stand down during the debate and vote on a dissent motion.
- 4) The Chairperson is bound by the result of the motion of dissent.
- 5) If the Chairperson's ruling on a matter is defeated that is not to be taken as a vote of no confidence in the Chairperson.

### **6.25. Public Participation and Public Question Time**

- 1) The Chairperson and Councillors, while encouraging public participation in a meeting through the submission of questions, acknowledge that the meeting is the primary decision-making forum of the Council, and that there are a number of ways in which members of the public can participate in matters being considered by the Council.<sup>1</sup>
- 2) Questions in writing provided by the CEO, will be accepted up to midday on the day of the meeting and may be submitted by email, mail or submission at the customer service counter at the Civic Centre.
- 3) Question time will take place prior to the end of the meeting.
- 4) The Chairperson may allow up to 30 minutes for public question time, having regard to sub rule 6.25(1) and business that is remaining on the Agenda.
- 5) A maximum of two questions may be submitted by any one person.

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<sup>1</sup> Examples of additional ways in which participation can occur in matters being considered by the Council or information can be obtained include matters under the Local Government Act 1989 where Council must give public notice under section 223 of the Act – Council budget, making local laws and submissions under the Planning & Environment Act, the Freedom of Information Act.

- 6) A maximum of two questions will be heard on any one subject, unless the Chairperson, having regard to sub rule 6.25(1), considers that further questions may be submitted, following which the Chairperson will proceed to the next subject, but may return to the previous subject if time allows.
- 7) If the Chairperson decides that they will respond to a question from the public, the Chairperson may vacate the Chair while the response is being provided. The CEO will determine which Officer will respond to a question from the public.
- 8) A person submitting questions must be present in the public gallery.
- 9) If the number of questions exceeds the time available for public questions time defined in these Rules, further questions will be noted and responded to in writing after the meeting.

#### **6.26. When is a Mayor to be Elected?**

- 1) A Mayor is to be elected:
  - (a) no later than one month after the date of a general election; or
  - (b) within one month after any vacancy in the office of Mayor occurs.
- 2) Before the election of the Mayor, Council must determine by resolution whether the Mayor is to be elected for a one year or a two-year term.
- 3) If the Mayor is elected for a one-year term, the next election of the Mayor must be held on a day to be determined by Council that is as close to the end of the one-year term as is reasonably practicable.
- 4) If the Mayor is to be elected for a two-year term, the next election of the Mayor must be held on a day to be determined by Council that is as close to the end of the two-year term as is reasonably practicable.
- 5) The election of a Mayor after the period specified in this rule does not invalidate the election.
- 6) A Councillor elected to fill a vacancy in the office of Mayor caused other than by the expiration of a one year or a two-year term serves the remaining period of the previous Mayor's term.

#### **6.27. Election of the Mayor**

- 1) At a Council meeting that is open to the public, the Councillors must elect a Councillor to be the Mayor of the Council.
- 2) Subject to section 167 of the Act, any Councillor is eligible for election or re-election to the office of Mayor.
- 3) The election of the Mayor must be chaired by the Chief Executive Officer.
- 4) Subject to sub rules 6.27(5) and (6), the Mayor must be elected by an absolute majority of the Councillors.
- 5) If an absolute majority of the Councillors cannot be obtained at the meeting, the Council may resolve to conduct a new election at a later specified time and date.
- 6) However, if only one Councillor is a candidate for Mayor, the meeting must declare that Councillor to be duly elected as Mayor.
- 7) In this rule, **absolute majority** means the number of Councillors which is greater than half the total number of the Councillors of a Council.

- 8) The Chief Executive Officer will invite nominations for the office of Mayor.
- 9) Every nomination shall require a seconder.
- 10) Any Councillor nominated may refuse nomination.
- 11) Where two or more nominations are received, the method of voting will be by show of hands.
- 12) If no candidate receives an absolute majority of votes where there are three or more candidates, the candidate with the least number of votes must be eliminated as a candidate and a further poll conducted between the remaining candidates.
- 13) If there are several candidates, the procedure must be repeated until a candidate receives an absolute majority of votes and that candidate shall be declared Mayor.
- 14) If for the purpose of eliminating the candidate with the least number of votes, two or more candidates have the same least number of votes, the candidate to be eliminated shall be determined by simple majority vote.
- 15) The election of the Mayor must be by show of hands.
- 16) The business at the meeting to elect the Mayor following the general election of Councillors must include:
  - (a) Appointment by the meeting of the CEO as the temporary Chair;
  - (b) Opening prayer;
  - (c) Declaration of the oath of office;
  - (d) Fixing of the Mayor and Councillors' allowance;
  - (e) Election of the Mayor and if the Council has resolved to appoint a Deputy Mayor, the election of the Deputy Mayor;
  - (f) Appointment of Councillors to external groups or organisations as the Council's representative or advisory committees of the Council; and
  - (g) Any other matter considered necessary by the CEO.

#### **6.28. Election of Deputy Mayor**

- 1) If Council resolves to appoint a Deputy Mayor, Rule 6.27, other than sub rule (3), applies to the election of a Deputy Mayor by the Councillors as if any reference in that rule to the Mayor was a reference to the Deputy Mayor.
- 2) Rule 6.29 applies to the election of a Deputy Mayor as if any reference in that section to the Mayor was a reference to the Deputy Mayor.

#### **6.29. Appointment of Acting Mayor**

- 1) Council must appoint a Councillor to be the Acting Mayor when—
  - a) neither the Mayor nor any elected Deputy Mayor is able for any reason to attend a Council meeting or part of a Council meeting; or
  - b) the Mayor and any elected Deputy Mayor are both incapable of performing the duties of the office of Mayor and Deputy Mayor respectively for any reason, including illness; or
  - c) the office of Mayor and Deputy Mayor are vacant.
- 2) An appointment under sub rule 6.29(1) must be for a period specified by Council.

- 3) If -
  - (a) an appointment has not been made under sub rule 6.29(1) or has expired; and
  - (b) any of the circumstances specified in sub rule 6.29(1)(a), (b) or (c) apply—
  - (c) Council must appoint a Councillor to be the Acting Mayor for a period specified by Council.
  
- 4) An Acting Mayor—
  - a) must perform the role of the Mayor; and
  - b) may exercise any of the powers of the Mayor—
 

until the circumstances specified in sub rule (6.29(1)) no longer apply or the period of the appointment expires, whichever first occurs.
  
- 5) If an Acting Mayor has been appointed, unless inconsistent with the context or subject matter, a reference in the Act (except in sections 20 and 23, Division 4 of Part 2 and sections 61(6) and 236(4)) to the Mayor includes a reference to the Acting Mayor.

## 7. Petitions

A petition is a request from members of the public for information or action in relation to a particular matter. Petitions are signed by residents or ratepayers and submitted to Council by a 'lead petitioner'. The lead petitioner becomes the contact for all communication. Written petitions must be in accordance with these Rules. A sample petition has been provided in [Appendix A](#).

Council has three types of petitions:

### 1) **Petitions with Notice with more than 15 signatures**

- A petition with notice is submitted before noon on the fifth business day prior to the next Council Meeting.
- It will be tabled at the next Council meeting and a report will be submitted to a subsequent meeting if it cannot be dealt with at that meeting.
- Details of the petition will also be included in the minutes of the meeting.

### 2) **Petitions without Notice with more than 15 signatures**

- A petition without notice is submitted after noon on the fifth business day prior to the next Council Meeting.
- It will be tabled at the next Council meeting however will be dealt with by a report at a subsequent meeting of Council.

### 3) **Petitions with or without notice with less than 15 signatures**

- It will be noted at the next Council meeting and then forwarded by the CEO to the appropriate member of Council staff for action and a response
- A copy of the officer's response will be provided to Councillors no later than one business day after the response has been sent to petitioners.

### **Petitions Relating to Town Planning**

Any petition referring to specific town planning application will not be viewed as a petition, but a joint submission, due to:

- a) Council has a range of separate legal requirements (under the Planning and Environment Act 1987), such as notice and time limits relating to town planning applications; and
- b) Council is required to consider each individual matter on its planning merits.

### **Lodgement of Petitions**

Petitions should be submitted to the Council. Written petitions should be forwarded by mail to Wyndham City Council via at PO Box 197, Werribee Vic 3030 or delivered in person to the Wyndham City Civic Centre, 45 Princes Highway, Werribee.

### **Requirements of a written petition**

- Although initial copies of petitions can be conveyed by email, the original document must be sighted and received by Council in a hardcopy format
- The petition must be legible and in permanent writing (i.e. no pencil)
- The petition must be in the English language, or accompanied by a translation, which will need to be certified by the CEO who will present it to be correct
- The petition must be addressed to the CEO, the Mayor, or a Councillor, containing a request for action to be taken by Council
- Each page of the petition must repeat the full wording of the petition as contained on the first page of the petition
- Any signature appearing upon a page which does not bear the whole of the petition or request will not be considered by Council
- In addition to the signatures of the petitioners, the full names and full residential addresses of all persons who signed the petition must be provided
- All signatures must be original signatures, not photocopied or scanned copies
- The petition should not be indecent, abusive or objectionable in language or content
- The petition should not relate to a Town Planning Application, and
- Every page of a petition, including signatories to the Petition must be on an original piece of paper and not pasted, stapled, or otherwise affixed to any other piece of paper.

### **How are petitions considered by Council?**

- A petition is a written from members of the public for information or action in relation to a particular matter, from more than one person and includes full name and full address of the individual signatories. The person who initiates the e-petition will have their name only included on the Council website.
- When received by Council it will be forwarded to governance to ensure validity and then distributed to Councillors for their information.
- If a petition with notice is addressed to a specific Councillor, that Councillor may read the petition out at a Council Meeting without debate, otherwise the CEO will read out all other petitions
- Council staff will deal with the petition organiser (or the first named signatory) as appropriate to clarify any of the issues raised in the petition
- All petitions presented to Council are then subject to a Quarterly Ordinary Council Meeting Report, updating Council on the actions of Council staff, and
- In accordance with Council's commitment to privacy, only the issues raised in the petition,

along with the number of signatories, will be presented to Council and included in the Agenda and Minutes. Note that initials and suburb name will be publicly visible if an e-petition is 'signed' on Council's website. These details will not be repeated in the report to Council or in the Agenda and Minutes of the meeting.

For a petition to be presented at a Council Meeting, the Requirements of a Petition must be met.

Note that in accordance with the Privacy and Data Protection Act 2014 and the associated privacy principles, the personal details of those who have signed a paper petition will not be used for other purposes except to communicate with the person about the issues which relate to the petition.

## **8. Delegated Reports**

- 1) There must be an item on the Agenda of Council Meetings to present Delegate's Reports where a Councillor appointed to be the Council's representative on external group/s, organisation/s or appointed to Delegated Committee/s of the Council may provide a verbal Report to the Council.
- 2) When presenting a Delegate's Report, immediately prior to the motion being put to a vote, a Councillor must not speak for longer than five minutes unless the agreement of the Chairperson to speak for a longer period of time has been obtained before noon on the day of the meeting.
- 3) A Councillor should include information in the Delegate's Report about changes or developments that the Councillor has become aware of, that could be important or relevant to the Council. The Councillor may table confirmed minutes of the Delegated Committee, group or organisation to support their report.
- 4) The Councillor Delegate's Report is to showcase the work of the committee/group, and the stewardship of the 'Councillor Delegate', or in the case of Council's Portfolio Committees, the 'Councillor Portfolio Holder'
- 5) The content of a Councillor Delegate's Report will be closely linked with the report in the Council Meeting Agenda.
- 6) The content of a Councillor Delegates Report will be discussed between the Councillor Portfolio Holder and the Sponsoring Director prior to the finalisation of the OCM Agenda
- 7) Important questions of clarification may be asked of the Councillor Delegate by another Councillor at the end of their report.
- 8) The recommendation of Councillor Delegate's Reports is for "Council to note all Councillor Delegates Reports" as there is no debate on each report.
- 9) The Councillor Delegates Report will be provided at the next OCM after the adoption of the Minutes, so that it represents the views of the whole Committee, and
- 10) In balancing the need to provide Councillor Delegates Reports with completing other business of a meeting, Councillors and the Executive will discuss the scheduling of Councillor Delegates Reports a few weeks prior to an OCM. As a rough guide, Councilor Delegates Reports should occur a few times each year.

## 9. Use of Common Seal

The Council's sealing rule must be as follows:

The COMMON SEAL of the WYNDHAM CITY COUNCIL was affixed by authority of the Council on the....day of .....20... in the presence of:

..... Councillor  
..... Chief Executive Officer

The Council must authorise by resolution the use of the Common Seal.

Documents to which the Common Seal is affixed must be signed by at least one Councillor and the CEO or an Officer acting as the CEO

The CEO must ensure the security of the Council's Common Seal at all times.

## 10. Delegated Committees

Council may establish Delegated Committees as part of its governance framework. Delegated Committees can comprise Councillors, members of Council staff and others and must be chaired by a Councillor. As Council may delegate specific powers, duties and functions to Committees, their meeting procedures need to be formal.

If Council establishes a Delegated Committee, these Rules will apply to the Delegated Committee Meetings with any necessary modifications.

- 1) For the purpose of sub- rule 10(1):
  - (a) a Council meeting is to be read as a reference to a Delegated Committee Meeting;
  - (b) a Councillor is to be read as a reference to a Member of the Delegated Committee; and
  - (c) a reference to the Mayor is to be read as a reference to the Chairperson of the Delegated Committee.
- 2) If Council establishes a Delegated Committee, Council may resolve that a provision of this governance rules do not apply to that Committee.

## 11. Community Asset Committees

The Act provides for Council to establish a Community Asset Committee for the management of a community asset such as a hall. Council may appoint members of the community to the committee and delegate to it powers, duties or functions. The powers delegated to a community asset committee must be limited in the amount and purpose of any financial delegation.

- 1) The Governance Rules may apply to any Community Asset Committee established by Council.
- 2) Council may resolve, in establishing a Community Asset Committee which chapters of the Governance Rules apply but as a minimum must include Chapters 12 (Minutes).
- 3) A Community Asset Committee must report the minutes of all Committee Meetings to the next practicable Council meeting.
- 4) A Community Asset Committee must act in accordance with its adopted Charter, Instrument of Delegation and any Terms of Reference adopted by Council.

## 12. Audit and Risk Committee

The Act provides for Council to establish an Audit and Risk committee to provide oversight.

- 1) The Governance Rules will apply to the Audit and Risk Committee established by Council unless otherwise provided in the Audit and Risk Charter.
- 2) Council may resolve, in establishing an Audit and Risk Committee that the meeting procedure chapter of these Governance Rules does not apply.
- 3) An Audit and Risk Committee must report the minutes of all Committee Meetings to the next practicable Council meeting.
- 4) An Audit and Risk Committee must act in accordance with its adopted Charter adopted by Council.

## 13. Election Period Policy

- 1) Council will have in place an election period policy that:
  - (a) Governs decision making during a local government election period, including what may be considered at a Council meeting
  - (b) Prohibits the use of Council resources for any election campaign purposes, including Federal, State or Council elections;
  - (c) Sets out the conditions for any community engagement required to be undertaken during an election period, including consultations, Civic events, and activities of Advisory Committees established by Council
  - (d) Sets out the requirements for any Council publications during a local government election period – including the website, social media, newsletters and advertising – to ensure Council does not publish materials that relate to issues that are the subject of election campaigns
  - (e) Defines roles and responsibilities in relation to who is the spokesperson for Council during an election period
  - (f) Sets out the requirements for a Councillor or member of Council staff who is a candidate in an election including a Federal, State or Council election.
- 2) At least once in each Council term and, not later than 12 months prior to the commencement of an election period, Council will review its election period policy.
- 3) The Election Period Policy forms part of these Governance Rules.
- 4) The operation of Council Advisory Committees shall be suspended upon the commencement of the election period ahead of a general Council election.
- 5) Any outstanding Delegate's Reports may still be reported to an ordinary meeting of Council during this period.
- 6) Council Committees shall resume meeting following the election and the appointment by the incoming Council of Councillors to each committee.

Council's Election Period Policy is attached as [Appendix B](#).

## 14. Conflict of interest

The Act defines general and material conflicts of interest and provides exemptions for remoteness and interests in common with a substantial proportion of ratepayers along with other specific circumstances.

The Act also provides Council must include in its Governance Rules procedures for disclosures of Conflicts of interest, including at meetings conducted under the auspices of Council that are not Council meetings. meetings conducted under the auspices of Council include those meetings arranged or hosted by Council.

These Rules provide the procedures for disclosures of conflicts of interest.

Further guidance is available from the Managing Conflicts of Interest guideline.

Obligations with regard to conflict of interest:

- 7) Councillors, members of Delegated Committees and Council staff are required to:
  - Avoid - all situations which may give rise to conflicts of interest;
  - Identify - any conflicts of interest; and
  - Disclose – or declare all conflicts of interest

#### **Councillors and Members of Delegated Committees**

- 8) May not participate in discussion or decision-making on a matter in which they have a conflict of interest.
- 9) When disclosing a conflict of interest, Councillors must clearly state their connection to the matter.
- 10) All disclosures of conflicts of interest will be recorded in the minutes of a Council or Delegated Committee Meeting.
- 11) Council will maintain a Conflict of Interest Register.

#### **Procedure at a Council or Delegated Committee Meeting**

- 12) At the time indicated in the Agenda, a Councillor with a conflict of interest in an item on that Agenda must indicate they have a conflict of interest before a matter is considered by clearly stating:
  - (a) The item for which they have a conflict of interest; and
  - (b) Whether their conflict of interest is general or material; and
  - (c) The circumstances that give rise to the conflict of interest.
- 13) If this would mean disclosing information that is confidential or private, particularly if it is about another person the Councillor can make a full disclosure to the CEO in writing before the meeting and then just disclose that class of interest in the meeting.
- 14) Immediately prior to the consideration of the item in which they have a conflict of interest, a Councillor or Member of a Delegated Committee must indicate to the meeting the existence of the conflict of interest and leave the meeting.
- 15) A Councillor who is not present at the designated time in the agenda for disclosures of conflicts of interest, must disclose their conflict of interest in the manner that required for the declarations of conflicts of interest at sub-rule (1) prior to leaving the meeting.
- 16) A Councillor or Member of a Delegated Committee who discloses a conflict of interest and leaves a Council meeting must not communicate with any participants in the meeting while the decision is being made.

- 17) Each Council report specifies that the Officers involved in preparing the report did not have a conflict of interest in the matter, this ensures that the Council does not unknowingly act on advice from a person with a conflict of interest.

Officers must disclose a conflict of interest if they:

- prepare a report for the Council;
- provide information to be included in a report; and
- approve a report to Council.

- 18) The Councillor completes a conflict of interest declaration form and the conflict is recorded in the Council minutes

#### **Procedure at other meetings organised, hosted or supported by Council**

- 19) A Councillor who has a conflict of interest must not participate in discussion of matters that will come before Council for a decision, or if a decision will be made by a member of staff acting under delegation.
- 20) At the time indicated on the Agenda, a Councillor with a conflict of interest will indicate the existence of the conflict of interest and the matter in which the conflict of interest arises.
- 21) If there is no Agenda, a Councillor with a conflict of interest will indicate the existence of the conflict of interest as soon the matter arises.
- 22) At the time for discussion of that item, the Councillor will leave the discussion and not communicate with any members of the meeting for the duration of the discussion.
- 23) The existence of a conflict of interest will be recorded in the minutes of the meeting.
- 24) If there are no minutes kept of the meeting, the conflict of interest will be recorded in a meeting record and provided to the Governance team for recording in the register of Conflicts of Interest.
- 25) The meeting minutes or record will also record the duration of the discussion and whether the Councillor left the meeting.
- 26) Meeting records and reports will be presented to Council for noting and inclusion on the public record.

#### **Council staff**

- 27) Must act in accordance with the Employee Code of Conduct.
- 28) Must not exercise a delegation or make a decision on any matter where they have a conflict of interest.
- 29) May be permitted to provide advice to a decision maker if a conflict of interest exists, subject to the procedure and disclosure provisions at Rule 5.6 and the Employee Code of Conduct.

#### **Procedure for disclosures of conflicts of interest by Council Staff**

- 30) Council staff must disclose the existence of all conflicts of interest in writing and in the form determined by the Chief Executive Officer.
- 31) All conflicts of interest disclosed by Council staff will be provided to the Governance team for recording in the register of Conflicts of Interest.

## Outside Employment

As specified in the Corporate Code of Conduct, any employment or an offer outside of Council (whether paid or unpaid) may create a conflict of interest under certain circumstances. This also includes the external employer who may be affected by any decision, action or advice of the Council. A conflict of interest may also arise from self-employment.

To ensure that an officer is not placed in conflict of interest situations, declarations to the relevant Manager, Director or CEO are required. All declarations of secondary employment will be maintained on a Register. In the instance where a conflict of interest occurs a declaration form must be completed and submitted to Governance.

## 15. Joint Council Meetings

*Regional collaboration provides benefits through collective procurement, increased advocacy and alignment for major projects. While on some matters that are worked on in partnership it's possible for the participating Councils to make their own decisions and determinations, in some circumstances, it may be beneficial to hold Joint Council Meetings as are provided for in the Act.*

- 1) Council may resolve to participate in a Joint Council meeting to consider:
  - (a) Matters subject to discussion of the [insert existing alliance]
  - (b) Collaborative projects
  - (c) Collaborative procurement
  - (d) Emergency Response
- 2) If Council has resolved to participate in a Joint Council meeting, the Chief Executive Officer (or delegate) will agree on governance rules with the participating Councils.
- 3) Where Wyndham is the lead Council on a matter to be brought for consideration at a Joint Council meeting, the Mayor will be nominated to Chair the Joint Council meeting
- 4) At a majority of Councillors will be appointed to represent Council at a Joint Council meeting.
- 5) Consistent information will be provided to Councillors prior to any Joint Meeting and every endeavour will be made by the Chief Executive Officer to facilitate a joint briefing.
- 6) A joint briefing arranged in accordance with sub-rule 15(5) may be held electronically.

## Appendix Contents

Appendix A - [Sample Written Petition](#)

Appendix B - [Election Period Policy](#)



## Appendix B

### Election Period Policy

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#### 1. Introduction

The Local Government Act 2020 (the Act) section 69 provides that during the 'election period' certain prohibitions apply to the general functions and powers of Council. It is during this time that Council enters the election period.

The 'election period' is defined by the Act as starting at the time that nominations close on nomination day and ends at 6pm on the Election Day. For the 2020 elections, the election period starts on 22 September 2020 and ends at 6pm on Saturday, 24 October 2020.

The Election Period Policy has been developed to ensure that Wyndham City Council's local general election to be held on Saturday, 24 October 2020, subsequent elections, and any by-elections are conducted in a manner that is ethical, fair and equitable and is publicly perceived as such.

#### 2. Objectives

**2.1** This policy facilitates the continuation of Council's ordinary business throughout the election period in a responsible and transparent manner, in accordance with statutory requirements and established 'caretaker' conventions.

**2.2** This policy applies to all Council staff, Councillors and candidates and explains how Council will conduct its business during the election period to ensure that the elections are not compromised by inappropriate electioneering by existing Councillors and safeguards the authority of the incoming Council.

**2.3** This policy aims to address and provide guidelines in respect of the matters listed below:

- Council decision-making
- Public consultation, meetings and Council events
- Council Publications
- Use of Council resources
- Access to Council information and assistance to candidates
- Media and publicity
- Section 76D of the *Local Government Act 1989* (misuse of position)

#### 3. General

**3.1** During the election period for a general election, Council:

- is prohibited from making decisions that:
  - relate to the appointment or remuneration of the Chief Executive officer but not to the appointment or remuneration of an Acting Chief Executive Officer; or
  - commits the Council to expenditure exceeding 1% of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
  - the Council considers could be reasonably deferred until the next

- Council is in place; or
- the Council considers should not be made during an election period
- will limit public consultation, public meetings and Council events in order to facilitate Council's day to-day business while avoiding any express or implied links to the election
- will not print, publish or distribute 'electoral matter'

**3.2** During the election period for a general election or a by-election, Council is prohibited from making decisions that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

**3.3** What is a Council decision?

For the purposes of sub rules 3.1 and 3.2 of this policy, **Council decision** means the following:

- (a) a resolution made at a Council meeting;
- (b) a resolution made at a meeting of a delegated committee; or
- (c) the exercise of a power or the performance of a duty or function of Council by a member of Council staff (which includes the Chief Executive Officer) or a Community Asset Committee under delegation.

**3.4** Election period

The 'election period' (also known as the 'caretaker period') refers to the period commencing on the last day on which nominations for the election can be received ('nomination day') and continues until 'election day'.

For the 2020 elections, the election period starts on 22 September 2020 and ends at 6pm on Saturday, 24 October 2020.

Recognising that electioneering can occur at any time throughout a term of Council, this policy is applicable at any time insofar that any candidate should not utilise any Council resource, advantage or benefit for the purposes of electioneering. This extends to practice that could create the public perception that some benefit or advantage has been gained by any candidate.

The definition of a candidate for the purposes of the paragraph is defined in the *Local Government Act 2020*.

**3.5** Communication of Policy

Following the adoption of the Policy, a copy of the Policy will be published on Council's website and copies will also be circulated to potential candidates via information packs.

## **4. Council Decision-making**

**4.1** Section 69 of the Act prohibits the making of some decisions during the election period.

a) **CEO**

Council must not, during the election period, make a decision that relates to the appointment or remuneration of the Chief Executive Officer (CEO), other than a decision to appoint an acting CEO.

b) **Contracts**

Council must not commit to expenditure with a value in excess of the equivalent of 1% of Council's rates and charges levied under section 158 of the Local Government Act 1989 Act in the preceding financial year. For the 2020 election, this amount is \$2.17 million

c) **General**

Council is prohibited from making a decision that:

- a. Council considers could be reasonably deferred until the next Council is in place; or
- b. Council considers should not be made during an election period.

d) **Resources**

Council are prohibited from making any decision during the election period that would enable the use of Council's resources in a way that is intended to influence, or is likely to influence, voting at the election.

#### 4.2 **Significant Decisions**

Council will use all reasonable endeavors to avoid making significant decisions. A significant decision is only prohibited to the extent that the decision could be characterized as a prohibited decision under S.69 of the Local Government Act 2020 or may offend S.304 of the Local Government Act 2020.

For the purposes of this policy, significant decisions include, but are not limited to:

- decisions that may irrevocably commit the incoming Council to substantial expenditure or to other significant actions e.g. spending unbudgeted monies, the allocation of community grants or other direct funding to community organisations.
- decisions that may have an irrevocable and significant impact on the municipality or a significant section of the community e.g. major planning scheme amendments, unplanned community consultation, endorsing a new policy or changes to strategic objectives and strategies in the Council Plan.

#### 4.3 **Significant decision considerations**

Where possible, the CEO will ensure that any anticipated significant decisions are scheduled for Council to consider and determine prior to the start of the election period or are scheduled for determination by the incoming Council.

During the election period, the CEO will determine if a significant policy decision is required and will advise Council accordingly. In making any such determination, the CEO will have regard to all circumstances, including, but not limited to:

- whether the decision is, in fact, significant;
- the urgency of the decision (i.e. if the decision could reasonably be made by the incoming Council);
- whether the decision is likely to be controversial or affect voting in the election;
- whether the decision would require the spending of unbudgeted monies;
- whether the decision is in respect of the completion of an activity already commenced and has been endorsed by the incumbent Council;
- whether the decision requires community engagement;
- whether the failure to make the decision would have a negative impact on Council, the municipality or the local community;
- whether the disadvantage of avoiding making the decision exceeds the benefit of making the decision;
- any relevant statutory obligations and timeframes;
- the best interests of the community and Council.

#### **4.4 Election Period statement**

During the election period, the CEO will ensure that an 'election period statement' is included in every report submitted to Council or to a special committee for a decision like one of the statements below:

1. *"The recommended decision is not a 'significant decision' within the meaning of Council's Election Period Policy 2020".*
2. *"The recommended decision has been determined by the CEO to be a 'significant decision' within the meaning of Council's Election Period Policy 2020 for the reasons set out below."*

## **5. Public consultation, meetings and Council events**

### **5.1 Public meetings and Council events**

Public meetings and events coordinated by Council will not be held during the election period, unless the meeting or event cannot be re-scheduled, and it would negatively impact Council or the community. Where it is deemed necessary to hold meetings or events during this period, prior approval is required by the CEO (as well as approval for running sheets and speeches). Where Council meetings or events are held during the election period, Councillors and candidates are not permitted to use events and meetings as forums for electioneering purposes and must not distribute election material.

In instances where a Councillor is invited to attend an external event or function in their capacity as a Councillor, roles are restricted to official duties only (where a Councillor would ordinarily perform such duties.) These duties must be performed in line with organisational protocols and Councillors must not use these events for the purposes of electioneering. Invitations are 'in the capacity as Councillor' where it is coordinated/received via the Mayor and Councillors office and when the invitee would not usually be invited in a private capacity.

## **6. Use of Council Resources**

- 6.1 Council staff and Councillors will ensure that due propriety is observed in the use of all Council resources in a way that is intended to; or is likely to affect the

result of an election under the Local Government Act 2020. Council resources include financial, human (e.g. a staff member's or a consultant's time) and material resources. In circumstances where it is unclear if the use of Council resources is related, or may be perceived as being related, to a candidate's election campaign, the use should be referred to the CEO for a determination.

## **6.2** The following specific restrictions apply:

- a) Council resources, including, but not limited to, office space, staff, hospitality services, catering, IT equipment, stationery and use by the Mayor of a Council-owned vehicle, may be used for normal Council business only during the election period and must not be used in connection with a candidate's election campaign.
- b) Reimbursement of Councillors' out-of-pocket expenses during the election period will continue to apply to expenses incurred in the performance of normal Council duties only. Expenses that are, or could be, perceived as supporting or being connected with a candidate's election campaign will not be reimbursed. The CEO's determination in the event of a dispute is final.
- c) Council's logo, letterhead, or any other Council branding may not be used for, or associated in any way with, a candidate's election campaign.
- d) Where Councillors receive Council-funded equipment or services (e.g. mobile phones, internet connections, use by the Mayor of a Council-owned vehicle), and it is impractical to discontinue that use during the election period, the Councillor will reimburse Council for the costs of using the services that is over and above their use for Council business. In the case of the Mayoral vehicle, the Mayor may be required to record distances travelled and the purpose of that travel where it is not for Council business. Importantly, Councillors must also be mindful to manage any perceived conflicts even where a direct expense may not be incurred, for example, receiving calls or emails in connection with candidature on a Council funded device or account.

## **7. Access to Council Information and assistance to candidates**

Council acknowledges that candidates expect Council to respond to their requests for information that relates to the election. Any such requests will be responded to equitably and as though all candidates have made the same request.

Accordingly, all candidates will receive the same information. Incumbent Councillors will continue to receive information that is necessary to fulfil their Council roles. Where information relates to what could be considered an 'election issue' or is not required to fulfil duties as a Councillor, requests will be denied. The CEO's determination in the event of a dispute is final.

### **7.1** All candidates will be treated equally which means that:

- a) Any assistance and advice to be provided to candidates as part of the conduct of the Council election will be provided equally to all candidates.
- b) All election process-related enquiries from candidates, whether sitting Councillors or not, will be directed to the election manager or, where the

matter is outside the responsibilities of the election manager, to the CEO or a designated member of Council staff.

- c) Photographs or images paid for by Council or taken by Council staff must not be used in election material by any candidate or incumbent Councillor. This extends to images of Councillors, events and any Council infrastructure. Equally, candidates are not authorised to utilise any Council images in connection with their campaign.
- d) Council logos or letterheads may not be used for or linked in any way to a candidate's election campaign.

**7.2** Councillors and other candidates will not be provided with information or advice from Council staff that may be perceived to support their election campaign. There will be complete transparency in the provision of information and advice during the election period. The following specific restrictions apply:

- a) Information and briefing materials prepared by staff for Councillors during the election period will relate only to factual matters or to existing Council services or projects. Such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to relate to a candidate's election campaign.
- b) An Information Request Register will be maintained during the election period. The Register will be made available on Council's website and will record all requests for information by Councillors and candidates, and Council's responses.
- c) Requests for information which require the use of significant Council resources in order to provide a response, or which might be perceived to support an election campaign, will be referred to the CEO for a determination as to whether a response may be provided.

## **8. Electoral Material**

### **8.1 Publishing 'electoral material'**

Electoral material is defined in the Act as an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting.

'Electoral matter' means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by or on behalf of the election manager for the purposes of conducting an election. The definition is to be taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- a) The election; or
- b) A candidate in the election; or
- c) An issue submitted to, or otherwise before, the voters in connection with the election.

Council staff and Councillors must not print, publish or distribute or cause, permit or authorize to be printed, published or distributed, electoral material containing electoral matter.

The definition of 'publish' extends to information published on Council's website and on social media. It includes, but is not limited to, material about the election, incumbent Council, election candidates and issues of contention in the election.

It does not include material produced by the election manager for the purpose of conducting the election, information about the election process, advertisements announcing the holding of meetings and statutory documents e.g. rates notices, food premises registrations and parking fines.

## **8.2** Some examples of what constitutes electoral matter are material that:

- publicise the strengths or weaknesses of a candidate
- advocates Council policies or those of a candidate
- responds to claims made by a candidate
- publicises the achievements of the incumbent Council or individual Councillors
- refers to matters known to be contentious in the community and likely to be the subject of election debate
- promotes the role or duty of a Councillor

The wide definition of electoral matter means that Councillors must consider communication activities in their capacity as a Councillor during the election period and the run up to the election period.

To minimise the risk of inadvertent publishing that contains electoral matter, it is best practice for Council to avoid publication activity during the election period, except where it is essential for the conduct of Council operations. This extends to all online and printed material, such as (but not limited to): Wyndham News, media releases, Wyndham News, Mayoral column, social media and all correspondence.

## **8.3** Annual report

The Annual Report is not considered to be an advertisement, handbill, pamphlet or however, the Annual Report must not include matter that may be electioneering or publicising attributes or achievements of individual Councillors.

# **9. Media and Publicity**

## **9.1** Council issued communications

Council publicity that contains general ongoing Council news or information about the election process is permitted. Council publicity will not be used in any way that might influence the outcome of the election and will not quote or feature Councillors.

## **9.2** The following specific requirements apply during the election period:

- a) Council staff must not make any public statement that could be

construed as influencing the election. This does not include statements of clarification that have the prior approval of the CEO (please note, statements of clarification should only be used where not issuing a statement could mislead or deceive the public in relation to core Council business.)

- b) Public events and related publicity campaigns, other than for the purpose of conducting the election, will be avoided wherever possible. Where a public event or publicity campaign is deemed necessary for a Council service or function, it must have the prior approval of the CEO.
- c) All media releases, responses or statements will be avoided where possible
- d) Council will only run paid advertisements in Wyndham's local newspapers where they are considered to be essential for Council operations and subject to the CEO's approval
- e) Any increase in the publication, distribution or availability of a publication must be approved by the CEO. Existing material available to the public e.g. in libraries, the civic centre and community centres will be assessed for inclusion of electoral matter and any such matter will be temporarily withdrawn or not prominently displayed in so far as this is practicable in the circumstances.

### **9.3 Council websites and social media**

During the election period, information about Councillors on Council's websites will be restricted to portrait photographs, names, titles, contact details and their membership of committees and other bodies to which they have been appointed by Council.

Council's website will be reviewed before the commencement of the election period to identify and temporarily remove any existing material that might be construed as electoral matter.

All Council-operated social media may only be used for the conduct of essential Council business and social media publications will require prior certification by the CEO.

### **9.4** The following specific requirements apply during the election period:

- a) A statement outlining Election period provisions will be published on Council's websites and social media accounts prior the period commencing.
- b) Council will only respond to service requests or requests for information published via social media as they relate to operational matters. Where possible, responses will be provided privately, rather than being published publicly.
- c) Council will not respond to online commentary throughout the election period, unless clarification is needed to ensure that the public is not misled or deceived in relation to core Council business.

## 9.5 Councillor-issued communication

- a) No media advice or assistance may be provided by staff in relation to election campaign matters, or regarding publicity that involves specific Councillors.
- b) Councillors are not permitted to use their position as elected representatives or their access to Council staff and other Council resources to gain media attention in support of their election campaign.
- c) Councillors and other candidates are permitted to issue their own media releases provided they do not use Council resources, including email, logo or any branding, letterhead or any Council-owned device. Councillors and candidates must make it clear that the views expressed are personal views only, and not the views of the Council.
- d) Councillors are not permitted to comment in an official capacity on any issues raised by the media during the election period. Any comments made to the media must be expressed as personal views only and not the views of Council.
- e) Only Councillors in office may use the title of 'Councillor' in electoral material.
- f) Councillors are not permitted to comment in an official capacity in respect of an electoral matter raised on social media during the election period. Councillors are not permitted to use social media as Councillors to respond to election issues.
- g) Councillors standing for re-election must carefully manage the use of their existing online profiles when utilising social media for re-election purposes. Councillors are encouraged to set up separate accounts, pages, profiles or presences in their capacity as election candidates.
- h) Council resources (e.g. Internet access, mobile phones, Council logos) must not be used in connection with setting up or maintaining any social media or online presence as candidates.

## 10. Section 76D – Misuse of Position

**10.1** Councillors and special committee members are reminded that pursuant to section 76D of the *Local Government Act 1989*, they must not misuse their position:

- a) to gain (or attempt to), directly or indirectly, an advantage for themselves or another person; or
- b) to cause or attempt to cause detriment to Council or another person.

**10.2** Circumstances that constitute a misuse of position, include, but are not limited to:

- a) making improper use of information acquired as a result of a position held;
- b) disclosing information that is confidential;

- c) exercising (or purporting to exercise) a power, duty or function with no authority to do so;
- d) using public funds or resources in an improper or unauthorised manner;
- e) failing to disclose a conflict of interest.

## **11. Policy Review**

This policy provides guidance for the 2020 election and will be reviewed and amended, if required, no later than 12 months prior to the commencement of each subsequent general election period.

[Return to Section 13. Election Period Policy](#)