



**Swan Hill Rural City Council
Election Period (Caretaker) Procedure
22 September to 24 October 2020**

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Local Government Act 1989

Signed: John McLinden **CEO** **Date:** 17/09/2020

DOCUMENT HISTORY

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1.3	September 2020	Review for the Local Government Act 2020

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- *All references to Councillors should be read as including the Mayor.*
- *All references to Chief Executive Officer should be read as including his/her delegate.*

CARETAKER PROCEDURE

1 What is this Procedure designed to achieve?

This Procedure applies during the 'Election Period' (see below for definition) and covers:

- (a) decisions that are made by Council, a special committee of the Council, or a delegate of the Council;
- (b) any material that is published by the Council;
- (c) attendance and participation in functions and events;
- (d) the use of Council resources;
- (e) access to Council information; and
- (f) media services.

2 Election Period

Statutory caretaker requirements apply during the "Election Period"; Council must avoid actions and decisions that could be seen to influence voters or which would have a significant impact on the incoming Council.

For the 2020 Swan Hill Rural City Council elections, the Election (Caretaker) Period commences on the last day on which nominations for that election can be received, 12pm Tuesday, 22 September 2020; and ends at 6 pm on Election Day, Saturday, 24 October 2020. A period of 32 days. During the Election Period the Council will be deemed to be in 'Election Period – caretaker - mode'.

The procedure will also cover reports presented to Council at the Ordinary Meeting on Tuesday, 20 October 2020.

As soon as possible, and no later than 30 days prior to the commencement of the Caretaker Period, the Chief Executive Officer will ensure that all Councillors, Managers and staff are informed of the requirements of this procedure.

3 Why is a Caretaker Procedure Required?

The Local Government Act (LGA) prohibits Councils from publishing or distributing electoral matter during the Election Period and the making of defined 'major policy decisions'. These statutory requirements are minimum governance standards only. In addition to providing guidance at an operational level to ensure compliance with those minimum standards, this procedure builds on the minimum statutory standards to enhance the transparency and accountability of the Council, Councillors, special committees, and Council staff during the Election Period. For example the procedure expands on the list of matters the Council will treat as major policy decisions and provides a process for dealing with them.

4 Is my proposed action affected by this procedure?

This procedure must be complied with during an Election Period if ANY of the following apply to you:

You are involved in making a major policy decision	If so, refer to Section 6.
You are involved in making a significant decision that will bind the incoming Council	If so, refer to Section 6.
You are about to publish written material which has reference in it to a candidate (which includes sitting Councillors) or the election or an issue before the voters in connection with the election	If so, refer to Section 7.
You are involved in the creation of any Council publication	If so, refer to Section 7.
You are involved in any public consultation process	If so, refer to Section 8.
You are a Councillor who is planning to attend a function or event	If so, refer to Section 9.
You supply resource support to Councillors	If so, refer to Section 11.
You are a Councillor requesting access to Council information	If so, refer to Section 12.
You are a Councillor requesting media advice or services	If so, refer to Section 13.

5 Operation of Procedure

5.1 Start and Finish dates

This procedure applies during the Election Period which:

- STARTS at the last day on which nominations for that election can be received, 12pm Tuesday, 22 September 2020; and
- FINISHES at 6pm on "Election Day", 24 October, 2020.

The Procedure will also cover reports presented to Council at Ordinary Meeting on Tuesday, 20 October 2020.

5.2 Election Policy Content

Section 69 LGA 2020 makes it mandatory for Councils to prohibit any Council decision during the Election Period for a general election that—

- relates 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 one per cent 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 (d) the Council considers should not be made during an Election Period.

An Election Period Policy must prohibit any Council decision during the Election Period for a general election or a by-election 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.

6 Decisions during the Election Period

6.1 Who does this part of the Procedure apply to?

This section of the Caretaker Procedure applies to significant decisions made by the Council, a special committee of the Council, or a delegate of the Council.

In the context of this procedure, a 'major policy' decision means any decision:

- (a) relating to the employment or remuneration of a Chief Executive Officer under section 94 LGA 1989, other than a decision to appoint an acting Chief Executive Officer;
- (b) to terminate the appointment of a Chief Executive Officer under section 94 LGA 1989;
- (c) to enter into a contract the total value of which exceeds whichever is the greater of
 - (i) \$100,000 {or such higher amount as may be fixed by Order in Council under section 186(1)} *nb amounts fixed are \$130,000 for goods & services contracts and \$180,000 for works contracts, or*
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year and
- (d) (d) to exercise any power under section 193 LGA 1989 – entrepreneurial powers - of the sum assessed in respect of the proposal exceeds whichever is the greater of \$100,000 or 1% of the Council's revenue from rates and charges levied under section 158 LGA 1989 in the preceding financial year.

In the context of this procedure, significant decisions include major policy decisions AND:

- Approval of contracts that require significant funding in future financial years or are regarded as politically sensitive;
- Decisions that have significant impacts on Council's income or expenditure or that relate to expenditure on politically sensitive matters;
- Decisions of a politically sensitive nature:
- Policy or strategy decisions.

6.2 Scheduling consideration of significant decisions

As a general principle, the Chief Executive Officer should, as far as is practicable, avoid scheduling decisions for the Election Period and instead, ensure that significant decisions are either considered by Council prior to the Election Period; or scheduled for determination by the incoming Council.

6.3 Significant decisions during Election Period

If a significant decision cannot be scheduled prior to or after the Election Period, then you need to refer to the list below to determine whether it is affected by this procedure. If you are unsure of whether a decision does or does not fall within the list below, speak with the Chief Executive Officer or their appointed delegate.

Proposed Decision	Is it allowed?	Source
Employment or remuneration of a Chief Executive Officer under section 94 LGA 1989, other than a decision to appoint an acting Chief Executive Officer.	No	This is prohibited by s69(2)a of the LGA 2020.
Terminating the appointment of a Chief Executive Officer under section 94 LGA 1989	No	This is prohibited by s69(2)a of the LGA 2020.
Entering into a contract with a total value exceeding either <i>\$130,000 for goods & services contracts and \$180,000 for works contracts</i> or 1% of Council's income from general rates, municipal charges and service rates and charges levied under section 158 LGA 1989 in the preceding financial year, whichever is the greater.	No	This is prohibited by s69(2)b LGA 2020.
Exercising any power under section 193 LGA 1989 of the Act (entrepreneurial powers) where the sum assessed under section 193(5A) in respect of the proposal exceeds either \$100,000 or 1% of Council's revenue from rates and charges levied under section 158 in the preceding financial year, whichever is the greater.	No	This is prohibited by s93A LGA 2020.
A decision that would affect voting in an election.	No	This is prohibited under section s69(3) LGA 2020.
A decision that could reasonably be deferred until the next Council is in place.	No.	This is prohibited under section s69(2)c LGA 2020.
Any other significant decisions not specified above that will bind the incoming Council, including policy or strategy decisions, will need advice from the Chief Executive Officer.	Only with approval from Chief Executive Officer Refer 6.4	This is an internal Council requirement which goes beyond the statutory requirements.

6.4 Considerations for the Chief Executive Officer in giving approval

In the case of a significant decision referred to the Chief Executive Officer which is not expressly prohibited under section 69 LGA 2020, in deciding whether to give approval the Chief Executive Officer will need to have regard to a number of factors including:

- (a) whether the decision is 'significant';
- (b) the urgency of the issue (that is, can it wait until after the election?);
- (c) the possibility of financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) whether the decision is in the best interests of the Council.

6.5 What about the announcement of decisions made prior to the Election Period?

To avoid doubt, the procedure applies only to the actual making of decisions, not the announcement of decisions that have been made prior to the Election Period. However, as far as practicable such announcements should be made before the Election Period begins.

7 Council publications during the Election Period

7.1 Prohibition on publishing materials during election

It is prohibited under the Act for a Councillor or member of Council staff to use Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the Election Period on behalf of, or purporting to be on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation

Publications should be read broadly to include all documents that are produced for the purpose of communicating with people in the community, including Council newsletters, advertisements and notices, media releases, leaflets and brochures, emails and mailouts to multiple addresses, electronic information and web based productions including Council's website, and Council program Facebook and Twitter accounts.

The controls do not cover advertisements that simply announce the holding of a meeting or about the election process itself. Despite this clause it is recommended that all material relating to the election go through the certification process.

Electoral matter is any matter that is "intended or likely to affect voting in an election" and this includes (but is not limited to) material that deals with the election, candidates or issues of contention in the election.

Material is definitely electoral matter if it:

- publicises the strengths or weaknesses of a candidate;
- advocates the policies of the Council or of a candidate;
- responds to claims made by a candidate; or
- publicises the achievements of the elected Council.

Councillors may publish campaign material on their own behalf, but cannot purport for that material to be originating from, or authorised by, Council or Swan Hill Rural City Council i.e. by use of Council logos.

7.2 Considerations of Chief Executive Officer in granting publication approval

In considering whether to grant approval for the publication of material during the Election Period, in accordance with the provisions in the Act, the Chief Executive Officer:

- (a) Must not permit any materials to be published which include reference to the following:
 - (i) the election;
 - (ii) a candidate in the election;
 - (iii) a current Councillor; or
 - (iv) an issue before the voters in connection with the election.
- (b) May approve publication of material which only contains information about:
 - (i) the election process itself; or
 - (ii) Council information that does not include any reference to a current Councillor otherwise precluded by this procedure.

7.3 Council Agendas/Reports

During the Election Period, the Chief Executive Officer will ensure that a “Caretaker Statement” is included in every report submitted to the Council or to a special committee of Council for a decision.

The “Caretaker Statement” will specify one of the following:

- I. “The recommended decision is not a “Major Policy Decision”, or a “Significant Decision” within the meaning of the Caretaker Procedure”.
- II. “The recommended decision is not a “Major Policy Decision”. The recommended decision is a “Significant Decision” within the meaning of the Caretaker Procedure, but an exception should be made for the following reasons [insert reasons for making an exemption]”.
- III. “The recommended decision is to seek an exemption from the Minister because the matter requires a “Major Policy Decision”
- IV. “The recommended decision is a “Major Policy Decision” , but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date]”.

During the Election Period, the Council will not make a decision on any matter or report that does not include one of these Caretaker Statements.

7.4 Swan Hill Rural City Website and Social Media

Social media is fast becoming popular with many Council stakeholders. It is a fast paced and highly interactive media which presents issues in terms of controlling content. This is of particular concern during the Election Period.

Council currently has a number of social media sites, including facebook pages for YouthInc, Performing Arts, the Pioneer Settlement, the Art Gallery, the Library and

Pioneers Week, as well as twitter feeds for Performing Arts, the Art Gallery and Fairfax Festival.

Council's social media sites should not be used for election campaigning. Any publication on official Council social media sites during caretaker mode requires certification by the Chief Executive Officer. This excludes publications relating to standard operational requirements, for example, posts promoting community events.

The ability for members of the public to post comments on Council's social media sites will be removed for the duration of the Election Period.

During the Election Period the corporate website will not contain material precluded by this procedure. Any references to the election will only relate to the election process. Information about Councillors will be restricted to titles, names, and contact details. Other information will be removed for the duration of the Election Period.

7.5 Annual Report

If the publication date of the Annual Report occurs during the Election Period, it is affected by the legislative restrictions on publications and therefore may not include information about Councillors beyond what is required by the Local Government Regulations.

7.6 Council Publications

Any Council publication which is potentially affected by this procedure will be reviewed by the Council's Governance department, and then certified in writing by the Chief Executive Officer, prior to publication. This is to ensure that any circulated, displayed or otherwise publicly available material during the Election Period does not contain material that may be construed as 'electoral matter'.

8 Public consultation during the Election Period

8.1 Prohibition

It is prohibited under this procedure for public consultation to be undertaken during the Election Period (new consultation or existing) on an issue that is contentious unless prior approval is given by the Council or the Chief Executive Officer.

For the purposes of this clause, public consultation means a process that involves an invitation or invitations to individuals, groups or organisations or the community generally to comment on an issue, proposed action or proposed policy.

8.2 Public consultations

Will cease to be initiated during the election (caretaker) period.

8.3 An exemption to the requirements of Clause 8.2 (above) relate to

Statutory public consultation required under the *Planning and Environment Act 1987*, but only where the matter could not be avoided during election.

8.4 Consultations under statutory provisions outlined in Clause 8.3

Shall only proceed after express agreement by the relevant Director in consultation with the Chief Executive Officer and then if it relates solely to the normal day-to-day business of Council.

8.5 Approval for public consultations

Due to the prohibition in section 8.1, it is prudent for the Council not to commission or approve any public consultation if such consultation is likely to run into the Election Period, unless the Council or the Chief Executive Officer gives prior approval.

Where public consultation is approved to occur during the Election Period the results of that consultation will not be reported to Council until after the Election Period except where approved by the Chief Executive Officer or his delegate.

9 Attendance at functions and events during Election Period

Reference to events and functions means gatherings of internal and external stakeholders to discuss, review, acknowledge, communicate, celebrate or promote a program, strategy or issue which is of relevance to the Council and its community and may take the form of conferences, workshops, forums, launches, promotional activities, social occasions such as dinners, receptions and balls.

9.1 Public Events Staged by External Bodies

Councillors may continue to attend events and functions during the Election Period.

9.2 Council Events and Functions

Council organised events and functions held during the Election Period will be reduced to only those essential to the operation of the Council. This may be varied by a Council resolution or where the Chief Executive Officer has given prior approval.

9.3 Speeches/Keynote addresses

Councillors may make speeches at Council organised or sponsored events and functions during the Election Period subject to prior approval of the Chief Executive Officer.

9.4 Publication of promotional material

In preparing any material concerning a Council organised or sponsored function or event that will be published or distributed during the Election Period, such preparation must be consistent with the controls under section 7 of this Procedure.

10 Considerations in giving approval under Clause 8 or 9

In the case of a matter referred to the Chief Executive Officer under clause 8 or 9 of this Procedure which is not expressly prohibited under this Procedure, in deciding whether to give approval the Chief Executive Officer will need to have regard to a number of factors including:

- (a) whether the decision is 'significant';
- (b) the urgency of the issue (that is, can it wait until after the election?);
- (c) the possibility of financial repercussions if it is deferred;
- (d) whether the decision is likely to be controversial; and
- (e) whether the decision is in the best interests of the Council.

11 Council Resources

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard. Council staff should avoid assisting Councillors in ways that could create a perception that they are being used for electoral purposes. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice will be sought from the Chief Executive Officer.

11.1 Council Resources

Council resources, including officers, support staff, hospitality services, equipment and stationery should be used exclusively for normal Council business during the Election Period, and should not be used in connection with an election campaign.

11.2 Correspondence

General correspondence addressed to councillors will be answered as usual. However, Councillors will sign only the necessary minimum of correspondence during the caretaker period and correspondence in respect to significant, sensitive or controversial matters should be signed by the Chief Executive Officer. Replies will be prepared so as to protect Council staff from perceptions of political bias.

11.3 Expenses Incurred by Councillors

Payment or reimbursement of costs relating to Councillors out-of-pocket expenses incurred during the Election Period should only apply to necessary costs that have been incurred in the performance of normal Council duties not campaigning, and not for expenses that could be perceived as supporting or being connected with a candidate's election campaign. In the case of Councillor claims that cover a combination of Council and electoral business, the Chief Executive Officer may approve a partial reimbursement to cover Council activities.

11.4 Council Branding and Stationery

No Council logos, letterheads, or other Swan Hill Rural City Council branding will be used for, or linked in any way to, a candidate's election campaign.

11.5 Purchases, Expenditure and Community Grants

Council Officers must consider whether any item purchased or expended during the Caretaker period may give an unfair advantage to a candidate. Where this may be the case the expenditure item should be referred to a Director or CEO for approval. It is preferable that any such expenditure or purchase is conducted after the Caretaker period.

11.6 Support Staff to the Mayor and Councillors

Support staff for the Mayor and Councillors must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

11.7 Community Meetings

Community Meetings will not be held during the Election Period.

12 Access to Council Information

All candidates have equal rights to access public information relevant to their election campaigns from the Council administration. Neither Councillors nor candidates will be provided information or advice from Council staff that might be perceived to support election campaigns, and there shall be transparency in the provision of all information and advice during the Election Period.

An Information Register will be maintained by Governance commencing on the opening of nominations on Thursday 17 September 2020.

- (a) This Register will be a public document (available on Council website) that records all requests for information of a non-election nature by all candidates, and the responses/documentation provided to those requests.
- (b) Details to be included within the Register include not only the request and response but also the name of the candidate making the request and the date request is made.

12.1 Information and Briefing Material

Information and briefing material prepared or secured by staff for a Councillor during the Election Period must be necessary to the carrying out of the Councillor's role and must not be related to election issues or to issues that might be perceived to be of an electoral nature.

13 Media and Media Services

Council's Public Relations services are intended to promote Council activities or initiatives and must not be used in any way that might favour a candidate.

13.1 Media Advice

Any requests for media advice or assistance from Councillors during the Election Period will be channelled through the Media and Public Relations Coordinator then referred to the Chief Executive Officer or the Director Corporate Services. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

13.2 Media Releases/Spokespersons

Media releases will not refer to specific Councillors. Where it is necessary to identify a spokesperson in relation to an issue the Chief Executive Officer or his delegate will determine the appropriate person.

13.3 Publicity Campaigns

During the Election Period, publicity campaigns, other than for the purpose of conducting the election will be avoided wherever possible. Where a publicity campaign is deemed necessary for a Council activity, the Chief Executive Officer or his delegate must approve it. In any event, Council publicity during the Election Period will be restricted to communicating normal Council activities and initiatives.

13.4 Councillors

Councillors will not use their position as an elected representative or their access to Council staff and other Council resources to gain media attention in support of an election campaign.

13.5 Council Employees

During the Election Period no Council employee may make any public statement that relates to an election issue unless the statement has been approved by the Chief Executive Officer or the relevant Director.

14 Equity in Assistance to Candidates

The Council affirms that all candidates for the Council election will be treated equally.

14.1 Candidate Assistance and Advice

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.

14.2 Election Process Enquiries

All election process related enquiries from candidates, whether sitting Councillors or not, will be directed to the Returning Officer or, where the matter is outside the responsibilities of the Returning Officer, to the Chief Executive Officer or his nominee.



Caretaker Period Certification Procedure 2020

Operation

This procedure applies during the Election Period or “Caretaker Period” (ie commences on the last day on which nominations for that election can be received, 12pm Tuesday 22 September 2020; and ends at 6pm Saturday 24 October 2020). The procedure is to be used for certifying any publication, pursuant to s.304 of the Local Government Act 2020.

Background

All requests for advertisements or publications during the Election Period must be certified by the CEO, to confirm that they do not contain election material, prior to being printed or published or distributed.

Definitions

“Publication” means any advertisement, pamphlet, handbill, press release, notice or similar.

Process

All publications during the Caretaker Period must be emailed to the Governance Officer, so that arrangements for certification can be made. If there is any doubt about whether the material is subject to the procedure, it should be forwarded to the above officer, for checking.

The role of Governance is to read the proposed publication and check that no election material is present (unless it is factual election process information).

Governance will send the proposed publication to the CEO via email with suggested wording as set out below.

CEO to send back approval and certify in writing (email is acceptable and preferable). CEO to use Corporate signature that is used in emails, certification wording is below.

When certification is received back from CEO, the email is to be saved into the Council Election 2020 - Caretaker Period Certified Documents folder on Alfresco. This will enable a record to be maintained of all certified publications.

Standard text to accompany Governance email to CEO:

“This material has been checked and does not contain any electoral or electoral related matter to the best of my knowledge. In accordance with the requirements of s.304 of the Local Government Act 2020 can you please certify in writing that you authorise for this material to be printed, published or distributed.”

Standard certification to be used by the CEO as part of “corporate signature” for certification emails:

“I certify that the attached material is suitable for printing, publishing or distributing on behalf of Swan Hill Rural City Council”

Extract from Local Government Act 2020

s.304 Prohibition on Councillor or member of Council staff

(1) A Councillor or member of Council staff must not use Council resources in a way that—

- (a) is intended to; or
- (b) is likely to— affect the result of an election under this Act.

Penalty: 60 penalty units.

(2) A Councillor or member of Council staff must not use Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the Election Period on behalf of, or purporting to be on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

Penalty: 60 penalty units.