

CP 21 Election Period Caretaker Policy

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A. Preliminary

1. Introduction

The Election Period Policy (Caretaker Policy) has been developed to ensure transparency, good governance and accountability are adhered to by Councillors and officers so that general elections held for Benalla Rural City Council are conducted in a manner that is ethical, fair and equitable and are publicly perceived as such.

In addition to supporting probity and confidence in the election process, observance of the caretaker period is a statutory requirement. The *Local Government Act 1989* (the Act) governs municipal elections and requires the Council to prepare, adopt and maintain an Election Period (Caretaker) Policy in relation to procedures to be applied by the Council during the period leading up to a general election. The statutory requirements are minimum governance standards.

The policy will assure the community that Benalla Rural City will not use public resources in election campaigning or make major decisions that may bind the incoming council, while continuing to function on behalf of the community.

2. Objectives

- To ensure the highest standard of good governance is achieved by the incumbent Council and all Council staff.
- To supplement the requirements of the Act with additional measures to ensure that best practice is achieved in supporting the fair and unbiased conduct of general elections.
- To ensure that Council elections are conducted in an environment that is open and fair to all candidates by outlining: the use of council resources, council publications, functions and events, requests for information, liaison with the media and Councillor expenditure in the lead up to an election.
- To recognise that the incumbent Council will require support, information and resources to fulfil its role as elected representatives of the community within the confines of this policy.

3. Legislation

This policy should be read in conjunction with the Act, particularly the following sections-

3.1 Section 55D Prohibition on Council

- (1) *A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or*

notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer.

- (2) *The Chief Executive Officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.*
- (3) *Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.*
- (4) *A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.*

Penalty: 60 penalty units

3.2 Section 93A Conduct of Council during election period

- (1) *Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.*
- (2) *If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.*
- (3) *If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.*
- (4) *A major policy decision made in contravention of this section is invalid.*
- (5) *Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the Council for that loss or damage.*
- (6) *In this section, a major policy decision means any decision—*
 - (a) *relating to the employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer;*
 - (b) *to terminate the appointment of a Chief Executive Officer under section 94;*
 - (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); or*
 - (ii) *1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;*
 - (d) *to exercise any power under section 193 if the sum assessed under section 193(5A) 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 in the preceding financial year.

3.3 Section 76D Misuse of position

(1) *A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—*

(a) *to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or*

(b) *to cause, or attempt to cause, detriment to the Council or another person.*

Penalty: 600 penalty units or imprisonment for 5 years or both.

(2) *For the purposes of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include—*

(a) *making improper use of information acquired as a result of the position he or she held or holds; or*

(b) *disclosing information that is confidential information within the meaning of section 77(2); or*

(c) *directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or*

(d) *exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or*

(e) *using public funds or resources in a manner that is improper or unauthorised; or*

(f) *failing to disclose a conflict of interest as required under this Division.*

(3) *This section—*

(a) *has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and*

(b) *does not prevent the institution of any criminal or civil proceedings in respect of that liability.*

3.4 Section 76E Improper direction and improper influence

(1) *A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.*

(2) *A Councillor must not direct, or seek to direct, a member of Council staff—*

(a) *in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or*

(b) *in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or*

- (c) *in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or*
 - (d) *in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.*
- (3) *This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.*

4. Definitions

Where terms used in this policy are defined in the Act, their use in this policy is consistent with the definitions in the Act.

Definitions used in this policy which are not defined by the Act are:

Act	<i>Local Government Act (Vic) 1989</i>
caretaker period	<p>Is used interchangeably with 'election period' as defined in section 3(1) of the Act.</p> <p>While the Act states that the election period starts on the last day nominations for an election can be received, section 44(1) of the <i>Interpretation of Legislation Act 1984</i> provides that, 'where in an Act or subordinate instrument a period of time is expressed to begin on, or to be reckoned from, a particular day, that day shall not be included in the period'.</p> <p>Election (caretaker) period ends at 6 pm on election day</p> <p>In 2016 Council's election period will start on 21 September and end at 6pm on 22 October.</p>
Chief Executive Officer	Chief Executive Officer of Benalla Rural City including their delegate
Councillors	Councillors including the Mayor
Council resources	Council stationery, motor vehicles, telephones, computers, office equipment, Council staff and contractors
electoral matter	<p>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 returning officer for the purposes of conducting an election. Without limiting the definition, electoral matter 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 -</p> <ul style="list-style-type: none"> (a) the election; or (b) a candidate in the election; or

	<ul style="list-style-type: none"> (c) an issue submitted to, or otherwise before the voters in connection with the election. (d) advocates the policies of the Council or of a candidate (e) refers to matters that are known to be contentious in the community and likely to be the subject of election debate
event or function	Any planned gathering or social occasion organised or sponsored by Benalla Rural City
publication	Includes any means of publication including letters and information on the Internet and social media
public (or community) consultation	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 and includes discussion of that matter with the public. It does not include providing a statutory notice relating to planning permit applications or other decisions.
significant policy decision	A decision that does not meet the criteria for 'major policy decision' under s. 93A(6) of the Act but would bind an incoming Council that either relates to the commitment of substantial expenditure or action or a decision which affects the municipality and community that cannot be reversed.

B. Application

1. Who the policy applies to

Councillors must comply with the policy, regardless of whether they intend to nominate or have already nominated as candidates for election.

Staff and Special Committee members must act in accordance with this policy during the election period.

Council staff who are candidates for election must comply with this policy and in addition:

- a. take leave from their duties for the duration of the election period in accordance with section 29(3) of the Act (if not enough paid leave is accrued, unpaid leave will be available)
- b. return any council equipment (including, but not limited to, motor vehicle, telephone and computer), documents or information which is not available to the public for the duration of the election period
- c. immediately resign upon election in accordance with s 29(3) of the Act.

Council committee members who are candidates for election are expected to comply with this policy and in addition:

- a. submit apologies for any committee meetings or other activities held during the election period
- b. return any council equipment, documents or information which is not available to the public for the duration of the election period
- c. immediately resign from the committee upon election

Other candidates for election are expected to comply with the obligations of this policy where they apply.

Prior to the election (caretaker) period the Chief Executive Officer will ensure that all members of Council staff are advised in regard to the application and scope of the caretaker procedures.

2. What activities the policy covers

The policy applies during an election period to cover:

- a. decisions that are made by the Council, a special committee or a person acting under delegation of the Council
- b. any material that is published by the Council or on the Council's behalf
- c. protocols for Council and Special Committee meetings
- d. public consultations
- e. attendance and participation in functions and events
- f. the use of Council resources
- g. access to Council information
- h. media and media services.

3. The policy commits the Council to

- a. avoid making significant new policies or decisions that could unreasonably bind an incoming Council
- b. avoid making inappropriate decisions or using resources inappropriately
- c. rescheduling the release of publications and communications where possible. Any publications and communications must be checked and certified by the Chief Executive Officer to ensure they do not contain any electoral matter before being released.
- d. ensuring that public resources, including staff time, are not used in election campaigning or in a way that may improperly influence the result of an election or advantage existing Councillors as candidates.
- e. ensuring that information held by the Council is made equally available and accessible to all candidates during the election.

C. Policy

This policy replaces and overrides any previous policy or document that refers to the Caretaker period.

1. Council resources

- 1.1. It is an established democratic principle that public resources must not be used in a manner that would influence the way people vote in elections. The Council commits to this principle in that it will ensure Council resources are not used inappropriately during a Council election.
- 1.2. In accordance with section 55D of the Act, the Council will ensure that probity is observed in the use of all Council resources during the election period and Council staff are required to exercise appropriate discretion to ensure compliance with section 55 D of the Act. In any circumstances where the use of Council resources might be construed as being related to a candidate's election campaign, advice must be sought from the Chief Executive Officer or the General Manager Corporate and Community.
- 1.3. In determining whether the use of Council resources during the election period is appropriate, officers will have regard to whether these same resources are available to other candidates at the election.
- 1.4. Council resources, including (but not limited to) offices, meeting rooms, officers, hospitality services, photographs, equipment, Council funded telephone numbers, iPads, motor vehicles and email addresses and stationery will be used exclusively for normal Council business during the election period and will not be used in connection with any election campaign.
- 1.5. Reimbursements of candidates' out-of-pocket expenses during the election period will only apply to costs that have been incurred in the performance of normal Council duties, 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.
- 1.6. Council logos, publications, letterheads, or other Benalla Rural City branding are not to be used for, or linked in any way to, a candidate's election campaign.
- 1.7. Council staff will not be asked to undertake any tasks connected directly or indirectly with the election campaign of a Councillor standing for re-election.
- 1.8. Officers will not provide candidates with access to databases, contact lists, property counts, email addresses or any other information that would assist in mailing or other distribution of election material.
- 1.9. Photos or images taken by or provided by the Council are not to be used by Councillors for the purposes of electioneering or in support of their election campaign. This includes photos or images provided by the Council for past Council activities. This applies equally to images on the Council website that may be able to be copied.

2. Council information

- 2.1. The Council affirms that all candidates for the Council election will be treated equally.
- 2.2. For the purposes of this Policy any Councillor – whether standing for re-election or not – will be regarded as a candidate
- 2.3. 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.
- 2.4. Customer Service staff will be educated in relation to requests for Council information.
- 2.5. Briefing material prepared by staff for Councillors during the caretaker period will relate only to factual matters or to existing Council services to assist Councillors in conducting normal day to day activities. 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 be connected with a candidate's election campaign.
- 2.6. Responses to candidates' requests will be provided by the Chief Executive Officer or their delegate. Only information that can be reasonably accessed will be released.
- 2.7. Section 76D of the Act prescribes serious penalties (600 penalty units or imprisonment, or both) for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to gain an advantage.
- 2.8. Any Freedom of Information (Fol) applications lodged during the caretaker period on matters such as expenses, costs etc regarding current Councillors will be dealt with where possible outside of the caretaker period (the Fol Act specifies a 42-day period in providing a response to a Fol application).
- 2.9. An Information Request Register will be maintained by the Customer Service Centre staff. This register will be a public document (available for inspection and available on the Council's website) that records all requests for information of a non-election nature by all candidates and the responses given to those requests as well as the name of the candidate making the request and the date request is made.

3. Public consultation

- 3.1 Public consultation of a limited kind normally associated with routine administration will continue through the election period. However significant community consultation on major strategy or policy issues will not occur, or if already commenced, should be discontinued during the election period
- 3.2 Public consultation required under the *Planning and Environment Act 1987*, or matters subject to section 223 of the Act are not affected by this policy.

4. Council publications

The Act specifically prohibits Council publishing or distributing electoral matter thus providing fairness to all candidates by preventing elected representatives from receiving an advantage. The policy will assist the Council to meet these statutory obligations.

- 4.1 Section 55D of the Act places limitations on the Council from printing, publishing or distributing or causing, permitting or authorising to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during a caretaker period unless the advertisement, handbill, pamphlet or notice has been certified, in writing, by the Chief Executive Officer. This is to ensure that the Council does not utilise public funds that may influence or be seen to influence people's voting decisions.
- 4.2 Best practice recommended by Local Government Victoria – in line with State and Federal Governments – is where possible to limit the release of documents to those that are essential for the conduct of Council operations.
- 4.3 Section 55D of the Act refers specifically to 'any advertisement, handbill, pamphlet or notice'. Local Government Victoria suggests this can be broadly interpreted to refer to documents produced for the purpose of communicating with the community (including on the internet) and lists the following as examples:
 - Council newsletters
 - Advertisements and notices, except newspaper notices of meetings
 - Media releases
 - Leaflets and brochures
 - Mailouts to multiple addresses

The following examples are also included in this policy:

- Social media posts
 - Council noticeboards
 - New website material
 - E-Newsletters
 - Reports
 - Material to publicise an event
 - Publication and distribution of councillor speeches.
- 4.4 The Council must not print, publish or distribute the publications specified in 4.3 during the caretaker period unless they have been certified in writing by the Chief Executive Officer to ensure they do not contain electoral matter. The Chief Executive Officer must not delegate the power to certify publications to a member of Council staff.
 - 4.5 Penalties apply to the certification, printing, publishing or distribution of documents containing electoral matter.

Material should be forwarded to the Chief Executive Officer prefaced with the following wording:

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 section 55D(1) of the Local Government Act 1989 please certify in writing that you authorise for this material to be printed, published or distributed.

Certified by the Chief Executive Officer in accordance with section 55D(1) of the Local Government Act 1989

Chief Executive Officer signature.....

Date.....

4.6 The Annual Report is required by law to be submitted to the Minister for Local Government no later than 30 September each year. Where this means it is published during the caretaker period, it is subject to the legislative restrictions on publications and therefore may not include information about Councillors beyond what is required by the Local Government Regulations.

The *Local Government (Planning and Reporting) Regulations 2014* require the Annual Report to show each Councillor's name, a photograph and a list of membership of special committees and other bodies to which they have been appointed by the Council. It must not include attributes or achievements of individual Councillors.

If a greater number of copies than usual of the annual report are to be distributed, then it may be regarded as a pamphlet and should be subject to certification by the Chief Executive Officer. Similarly any publication of an extract or summary of the annual report must be certified by the Chief Executive Officer.

4.7 Council meeting business papers are not considered advertisements, handbills, pamphlets or notices and therefore do not require certification. The exception to this is if agenda and business papers are published for wider distribution than normal. All reports to Council and Special Committees will be assessed by the CEO, in accordance with the Act and this policy

4.8 Social media includes, but is not limited to:

- Facebook
- Twitter
- YouTube
- Flickr
- LinkedIn
- Pinterest

<http://www.benalla.vic.gov.au>

<http://www.bpacc.com.au/>

<http://www.benallaartgallery.com.au/>

<http://www.enjoybenalla.com.au/>

4.9 In accordance with paragraph 4.5, any publications on social media sites under the auspices of the Council during the election period require certification by the CEO, prior to publication. This may mean messages and/or responses to questions may not be posted as quickly as normal.

- 4.10 Protocols have been developed for managing the council's social media and online channels.

During the election period, the Manager Arts Communications and Events and the Communications Coordinator will monitor and oversee all online channels to ensure they are managed in accordance with this policy. Any other staff member who manages a social media or online channel as part of their role with Benalla Rural City is required to apply the same protocols.

During the election period, the following social media controls will be implemented.

- The 'Visitor Posts' facility will be removed
- No posts or comments that may be construed as electoral matter will be permitted on council sites
- No hosting or responding to political content will be permitted
- Comments will be moderated in accordance with the policy
- Any inappropriate posts will be removed as soon as practicable
- Members of the Council will not be profiled on council social media during the election period

- 4.11 Council's existing internet and social media sites will be examined by the Communications Coordinator and where appropriate any material that might reasonably influence voters in connection with the election will be temporarily withdrawn.

- 4.12 During the election period the Council internet and social media sites will not contain material which contravenes the policy or the statutory requirements relating to publications. Any references to the election will only relate to the election process.

- 4.13 Profiles of the current members of the Council who are candidates will be removed from the Council's website during the caretaker period but retain their contact details for their day-to-day role as a Councillor. Information about Councillors will be restricted to:

- names
- photographs
- contact details
- titles
- membership of special committees and other bodies to which they have been appointed by the Council.

- 4.14 Any new material published on the Council's website during the caretaker period that may be considered to be an advertisement, handbill, pamphlet or notice must also be subject to the certification process.

- 4.15 The following disclaimer will be included on the front page of the Benalla Rural City Council websites and other digital media sites:

As the Benalla Rural City Council Election is being held on 22 October 2016, the Council has assumed a caretaker role from 21 September 2016. During the election period, content will only be added to this site in accordance with the Council's Election Period Policy.

4.16 Copies of all certified documents will be retained for the Council records.

5. Media

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

5.1 Media Advice

Any requests for media advice or assistance from members of the Council during the caretaker period will be channelled through the Chief Executive Officer. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

5.2 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 their delegate will determine the appropriate person.

5.3 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, it must be approved by the CEO. In any event, Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and will not involve specific Councillors.

5.4 Billboards and posters

Council-owned land and buildings will not be used for the purposes of candidates electioneering signage. In the case of signage and pop-up stalls on privately-owned land the normal permit application processes will apply.

5.5 Councillors

Members of the Council 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.

5.6 Council employees

During the caretaker period, no employee will initiate any public statement that relates to an election issue. Public statements include not only formal media releases but also verbal comments at meetings, functions and events being attended as part of their Council role.

6. Functions and events

6.1. Public events staged by external bodies

Councillors may continue to attend events and functions during the caretaker period.

6.2. Council events and functions

Council organised events and functions held during the caretaker period will be reduced to only those essential to the operation of the Council. Where events do occur Councillors should be advised they are representing the Council and should not use the opportunity for electioneering.

Citizenship ceremonies should be postponed until after the election or conducted by the Chief Executive Officer instead of the Mayor.

6.3. Speeches

Councillors may make speeches at Council organised or sponsored events and functions during the caretaker period subject to prior approval of the Chief Executive Officer. Speeches for Councillors will only be prepared by Council staff in relation to events that are part of the normal services or operation of the Council and such speeches will not be circulated or available for publication.

6.4. 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 caretaker period, such preparation must be consistent with sections 4 and 5 of the Policy.

7. Decisions

The Council will comply with section 55D and section 93A of the Act with respect to making major policy decisions. Any major policy decision made during the caretaker period is invalid under the Act. Decisions refer to those made by the Council, Special Committees of the Council and delegated staff. The Council may apply in writing to the Minister for Local Government for an exemption if it considers that there are extraordinary circumstances.

7.1 In addition to major policy decisions, other decisions may be controversial. Council Management will present advice on these matters in the context of:

- (a) Council obligations under relevant legislation
- (b) Existing Council policies and strategies
- (c) Good professional practice.

7.2 The Council will, where possible, avoid making significant decisions during an election period, unless the matter under consideration is urgent and cannot be deferred without having a negative impact on the Council, the municipality or the local community.

7.3. The Council will operate in a limited capacity while it is in a caretaker role. Appropriate decisions will be made by officers with delegated authority to allow day to day operational matters to continue. Before making a decision the inappropriate decision criteria under section 94B(5) will be considered:

- (a) Could the decision reasonably be made after the election
- (b) The possibility of financial repercussions if it is deferred
- (c) Whether the decision is likely to be controversial

- (d) Would the decision affect voting at the election
- (e) The best interests of the council.

Advice must be sought from the Chief Executive Officer or their delegate if there is any doubt on where a decision fits within the policy or if it should be made at all.

8. 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 their nominee.

9. Related Legislation

Local Government Act 1989

10. References

Benalla Rural City Council Staff Code of Conduct

Benalla Rural City Council Councillor Code of Conduct 2013

Local Government Victoria, Reforms arising from the Local Government Amendment (Improved Governance) Act 2015 - A guide for councils

Local Government Victoria, Governance Practice Note No. 5 – Election Caretaker Arrangements

11. Breach of policy

Any breach of the policy relating to staff conduct is to be referred to the Chief Executive Officer.

Alleged breaches relating to all other matters are to be referred to the Local Government Investigations and Compliance Inspectorate at www.dpcd.vic.au/inspectorate or (03) 9665 9555.