



# Caretaker Policy

(Election Period Policy)

**Adopted by Moira Shire Council  
23 October 2019**

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<b>Policy type</b>	Council
<b>Adopted by</b>	Moirá Shire Council
<b>Responsible General Manager</b>	General Manager Corporate
<b>Responsible officer</b>	Senior Governance Officer
<b>Date adopted</b>	23 October 2019

## 1. Introduction

Moirá Shire Council is committed to providing good governance and to fair and democratic elections and therefore adopts and endorses the principles and procedures within this policy to apply during the 2020 election period. This policy will be maintained and reviewed no later than 12 months before the commencement of each subsequent general election.

Council will be in a caretaker role during the five-week election period leading up to the next Council Election to be held on 24 October 2020. During this time, Council will operate in a limited capacity to safeguard the authority of the incoming Council, with actions or decisions being rescheduled where possible.

In addition to being a statutory requirement, observance of a caretaker period is important to support probity and confidence in the election process. A caretaker period is a moral obligation that has evolved over time, following federal and state government conventions. It provides fairness to all candidates by preventing elected representatives from receiving an advantage or carrying out inappropriate electioneering.

This policy commits Council to:

- Avoid making significant new policies or decisions that could unreasonably bind a future Council.
- Avoid making inappropriate decisions or using resources inappropriately.
- Rescheduling the release of publications and communications where possible. Any publications and communications must be checked and certified by the Chief Executive Officer as not containing any electoral matter before being released.
- Avoid holding Council meetings, Special (section 86) Committee meetings, Advisory Committee meetings (including the Audit Committee) unless there are special circumstances. Councillors will not attend any Special or Advisory Committee meetings held.
- Avoid holding public consultation, Council events, functions or other meetings.
- 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.
- Ensuring that information held by Council, which would normally be available to Councillors, is made equally available and accessible to all candidates during the election.

## 2. Definitions

**document** has the same meaning as the *Interpretation of Legislation Act 1984*

**Election period**, in relation to an election, means the period that –

- (a) Starts on the last day on which nominations for that election can be received; and
- (b) Ends at 6 p.m. on election day.

**electoral advertisement, handbill, pamphlet or notice**, means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper 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 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:

- (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.

**inappropriate decisions** made by a Council during an election period includes any of the following—

- (a) decisions that would affect voting in an election;
- (b) decisions that could reasonably be made after the election.

**publish** means publish by any means including by publication on the Internet;

**the Act** means the *Local Government Act 1989*

## 3. Start and finish dates

This Caretaker Policy applies for the Election Period which:

- Starts at **midnight on Friday 18 September 2020**; the end of the last day for nominations to be received, and
- Finishes at **6.00pm on Saturday 24 October 2020** on Election Day.

## 4. Roles and Responsibilities

### Councillors

- Observe the protocols for interactions with Council staff.
- Avoid misuse of Council resources for electioneering.
- Establish an alternative email and computer network for electioneering to achieve zero use of Council's IT resources.
- Be mindful that when representing Council at external meetings it is not appropriate to use the opportunity for electioneering.
- Do not use the role of Councillor or access to Council staff and resources to gain media attention in support of an election campaign.
- When publishing any campaign material on your own behalf, assume responsibility for compliance and not purport that the material to be originating from, or authorised by Moira Shire Council (eg by use of Council logos).
- Refrain from moving motions or raising matters at a Council meeting that could potentially influence voting in the election (should special circumstances require a meeting to be held).

## **Chief Executive Officer**

- Responsible for overseeing implementation of Council's Caretaker Policy.
- Manage and monitor interactions between staff and Councillors (or candidates).
- Approve and certify publications or communications to be released.
- Ensure that information held by Council, which would normally be available to Councillors, is made equally available and accessible to all candidates.

## **Council staff (or contractors)**

- Observe the protocols for interaction with Councillors and apply the same to candidates.
- Remain neutral and don't become involved or interested in candidates or the politics of the election.
- Avoid participating in activities which support a candidate, including fundraising or campaign activities.
- Avoid misuse of Council resources, specifically for electioneering by candidates.
- Seek approval from the Chief Executive Officer for any publication or communication that needs to proceed.
- Consider the requirements within this policy before making a decision under delegation.

## **5. Why is a Caretaker Policy required?**

The Act requires Council to prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period leading up to a general election. Council more commonly refers to this policy as the Caretaker Policy.

The policy will safeguard the authority of the incoming council and ensure that elections are not compromised by inappropriate electioneering by existing councillors. These statutory requirements are minimum governance standards.

In addition to meeting legislative requirements, the policy will meet Council's moral obligation of observing a caretaker period. As a result the transparency and accountability of the Council, Councillors, Council staff (or contractors) during the election period will be enhanced.

## **6. Is my proposed action affected by this policy?**

The following is a quick reference on where to find guidance:

- You are involved in making a decision for Council (under delegation). refer to section 7
- You are involved in creating any kind of Council publication or communication. refer to section 8
- You are about to publish material which has reference to a candidate (which included sitting Councillors), or the election, or an issue before the voters in connection with the election. refer to section 8
- You are involved in preparing an agenda for a Council meeting, Special Committee or Advisory Committee meeting (meetings will only be held under special circumstances) refer to section 8
- You are involved in planning a public consultation process. refer to section 9
- You are involved in planning an event, ceremony, function or meeting. refer to section 9

- You are a sitting Councillor who is planning to attend a function or event. refer to section 9
- You provide administrative support to Councillors. refer to section 10
- You are a Councillor or candidate requesting access to Council information. refer to section 11
- You are a Councillor requesting media advice or services refer to Section 12
- You have been requested to provide assistance or advice to a candidate refer to Section 13

## 7. Decisions

The timing of decisions will be scheduled to avoid the election period when Council is in a caretaker role. During the election period, Council commits to only making appropriate decisions, whether for operational purposes or pursuant to a statutory requirement.

There are no Council meetings or Special (section 86) Committee meetings scheduled to be held during the election period. The Chief Executive Officer or a member of Council staff acting under delegation can also make decisions.

Guidance in this policy is not legally binding on the Council. If it becomes important to make a decision contrary to this policy during the election period, the necessity will need to be justified to the Chief Executive Officer or demonstrated to the community.

### Prohibited decisions

Section 93A of the Act prohibits major policy decisions being made. Council may apply in writing to the Minister for an exemption if it considers that there are extraordinary circumstances.

Prohibited decisions	Source
Employment or remuneration of a Chief Executive Officer under section 94, other than a decision to appoint an acting Chief Executive Officer.	Section 93A
Terminating the appointment of a Chief Executive Officer under section 94.	Section 93A
Entering into a contract with a total value exceeding either \$150,000 for goods or services, or \$200,000 for works, <b>or</b> 1% of Council's rates revenue (based on the preceding financial year), whichever is the greater (\$233,941 for 2018/19)	Section 93A
Exercising any power under section 193 of the Act (entrepreneurial powers) where the sum assessed under section 193(5A) in respect of the proposal exceeds either \$100,000 <b>or</b> 1% of Council's rates revenue (based on the preceding financial year), whichever is the greater (\$233,941 for 2018/19)	Section 93A
An irrevocable decision that significantly affects the municipality	Caretaker Policy
Any other significant decisions not specified above which will bind the incoming Council. For example a major planning scheme amendment or a change to the strategic objectives or strategies in the Council Plan.	Caretaker Policy

Allocating community grants or other forms of direct funding for community organisations including the following programs: Community and Events Grants, and Achievers Award Assistance Program.	Caretaker Policy
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## Allowable decisions

Council will operate in a limited capacity while it is in a caretaker role. Appropriate decisions will be made by Council staff to allow day-to-day operational matters to continue. Before making a decision the “**inappropriate decision**” criteria under section 93B(5) will be considered:

- (1) Could the decision reasonably be made after the election;
- (2) Would the decision affect voting at the election.

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. Publications and Communications

Publications and communications are broadly considered to be documents or information prepared for the community, for example:

- Council newsletters
- Advertisements and notices
- Agendas for Council or Special Committee (section 86) meetings
- Media releases
- Brochures, leaflets and posters
- Mail-outs or emails to multiple addressees
- Material on Council’s internet sites
- Social media, blogs etc

Where possible the release of publications or communications will be scheduled to avoid the election period when Council is in a caretaker role.

During the election period all publications and communications must be checked, then signed off and certified by the Chief Executive Officer that they do not contain electoral matter before being released.

Guidance will be provided to recognise electoral matters with instructions on the process to be followed to obtain approval and certification by the Chief Executive Officer.

## Statutory requirements

It is prohibited under the Act for Council to:

- (a) print, publish or distribute; or
- (b) cause, permit or authorise others to print, publish or distribute on behalf of the Council,

any advertisement, handbill, pamphlet or notice during the election period unless it has been certified, in writing by the Chief Executive Officer. There is an exception for any document required to be published in accordance with, or under, any Act or regulation.

The Chief Executive Officer must not certify any material about the election, unless it is information about the election process. The power to certify material under s55D of the Act cannot be delegated by the Chief Executive Officer to a member of Council staff or any other

person.

### **Certification of publications and communications by the Chief Executive Officer**

The Chief Executive Officer will ensure that information is provided to Councillors and Council staff (or contractors) prior to the election period to preclude unauthorised publication of materials during the election period.

The Chief Executive Officer's certification must be in writing and importantly, cannot be delegated.

### **Criteria for Chief Executive Officer's approval (certification)**

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:
  - (i) the election; or
  - (ii) a candidate in the election; or
  - (iii) an issue before the voters in connection with the election; or
  - (iv) a current Councillor; or
  - (v) the strengths or weaknesses of a candidate; or
  - (vi) advocates the policies of the Council or of a candidate; or
  - (vii) responds to claims made by a candidate; or
  - (viii) publicises the achievements of the elected Council.
- (b) **May approve** publication of material which only contains information:
  - (i) about the election process itself; or
  - (ii) which is essential for the conduct of Council operations; and
  - (iii) does not include any reference to a current Councillor otherwise precluded by this policy.

### **Council's internet and social media sites**

In the months, leading up to the election period Council's internet and social media sites will be examined and where appropriate any material that might reasonably influence voters in connection with the election will be temporarily withdrawn.

Social media includes, but is not limited to Facebook, Instagram, Twitter, YouTube, Flickr, LinkedIn, Pinterest. Council sites include:

Moirá Shire Council

- <http://www.moiravic.gov.au/>
- <https://www.facebook.com/moirashirecouncil/>
- <https://www.facebook.com/moirayouth/>
- <https://www.facebook.com/moirabusiness/>

Sun Country on the Murray

- <http://www.visitthemurray.com.au/places-to-go/central/suncountry>
- <https://www.facebook.com/visitsuncountry/>
- <http://www.cobrambarooga.com.au>
- <https://www.facebook.com/cobrambarooga/>

<http://nathaliabarmah.com.au/>

<https://www.facebook.com/NathaliaBarmahTourism>

<https://www.facebook.com/NumurkahTourism>

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

[http://www.yarrowongamulwala.com.au/ \\*](http://www.yarrowongamulwala.com.au/)

[https://www.facebook.com/yarrowongamulwalatourism/ \\*](https://www.facebook.com/yarrowongamulwalatourism/)

\* collaborate with Yarrowonga Mulwala Tourism on their site

During the election period Council internet and social media sites will not contain material which contravenes this policy. Any references to the election will only relate to the election process. Information about Councillors will be restricted to their name, a photograph, contact details, title, membership of special committees and other bodies to which they have been appointed by the Council.

A disclaimer will be included on the front page of Moira Shire Council internet and social media sites indicating that during the election period, while Council is in a caretaker role, content will only be added to this site in accordance with Council's Caretaker Policy.

### **Council meeting agendas**

Council meetings will not be held during the election period. However, should special circumstances require that a meeting be held, the content of the agenda will be checked to ensure that no agenda item would potentially:

- (a) influence voters' intentions; or
- (b) encourage use by councillor candidates for electioneering.

Once checked the agenda will require certification by the Chief Executive Officer before distribution.

### **Council's Annual Report**

Information about Councillors in the 2019-20 Annual Report will be restricted to names, photographs, contact details, titles and membership of special committees and other bodies to which they have been appointed by the Council.

### **Email usage**

The Chief Executive Officer will ensure that information is provided to Councillors, staff and contractors prior to the election period to preclude unauthorised publication of materials via Council's email system during the election period.

### **Council notice boards and buildings**

During the election period Council noticeboards and buildings will not be used to display electoral matter.

## 9. Public Consultation, Events, Functions and Meetings

Council will avoid holding or sponsoring public consultation, events, citizenship ceremonies, functions and meetings while Council is in a caretaker role. The timing of these activities will be scheduled to be held before the election period or after the new Council is elected.

If special circumstances require public consultation to be held, Council will justify to the community why it is necessary and how the risks of affecting voting at the election will be mitigated or prevented.

If special circumstances require an event, function or meeting to be held the reasons must be justified and any risk of affecting voting at the election will need to be mitigated, or prevented, to the satisfaction of the Chief Executive Officer.

### **Council, Special (section 86) Committee and Advisory Committee meetings**

Meetings are not scheduled to be held during the election period. If special circumstances require a Special (section 86) or Advisory Committee meeting to be held the Councillor representative will not attend.

### **Events staged by external bodies**

Councillors may continue to attend events and functions during the election period. However, Councillors need to be mindful that they are representing Council and not use the opportunity for electioneering.

### **Speeches or keynote addresses**

Councillors should not give welcome speeches, speeches or keynote addresses at any events, whether organised by Council or by an external body.

### **Recording of attendance at external meetings and functions**

The presence of Councillors at external meetings and functions may be recorded in attendance records, except where this record of attendance is in conjunction with information or promotional material (text or images) that may be considered as electoral material.

### **Publication of promotional material**

Any material promoting an event, function or meeting that has permission to proceed from the Chief Executive Officer must be consistent with the controls under section 8 – Publications and Communications.

## 10. Council resources

Council resources refer to anything owned, purchased, leased or paid for by Council. For example council vehicles, buildings, property, equipment, stationery, hospitality, email, phones, Council employees or contractors.

Due propriety will be observed in the use of Council resources. Councillors, Council staff and contractors are required to exercise appropriate discretion and diligence in that regard.

Council staff and contractors must avoid assisting the Mayor or Councillors in ways that could be perceived as being connected directly or indirectly with an election campaign.

Guidance on the use of resources will also be taken from Local Government Victoria's Governance Practice Note No. 5 on Election Caretaker Arrangements.

### **Support to the Mayor and Councillors**

Support services to the Mayor and Councillors will be kept to a minimum. Council staff, including support staff for Mayor and Councillors, must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

### **Correspondence**

The Mayor will avoid sending correspondence during the election period. If a response is required it will be made by the Chief Executive Officer or their delegate, provided it meets the criteria for certification under section 8 – Publications and communications.

### **Council branding and stationery**

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

### **Councillor photographs**

Councillors are not permitted to use photos or images taken by, or provided by Council, for the purposes of their election campaign (including photographs that appear on Council's websites).

### **Use of Council equipment and services by Councillors**

Councillors may continue to use any equipment and services provided to them to facilitate their duties in accordance with Council's Reimbursement of Expenses and Support Policy. When using Council equipment and services during and leading up to the election period Councillors should avoid incurring costs to Council which are or could be perceived to be for election related purposes.

### **Expenses incurred by Councillors**

Payment or reimbursement of costs must relate to actual out-of-pocket expenses that are necessary in the performance of Council duties. Councillors are responsible for expenses that relate to, or could be perceived to relate to, an election campaign.

If it can be demonstrated that an expense covers both Council and electoral business the Chief Executive Officer may approve partial payment or reimbursement for Council duties.

Councillors will be required to make a declaration that any expenses incurred accord with this policy, when:

- making a claim for out-of-pocket expenses; or
- making requests for Council payment for services.

### **Forums**

No local community forums, including opportunities for discussion, meet and greet sessions or community afternoon teas will be organised for Councillors during the election period.

### **11. Access to Council information**

Information held by Council, which would normally be available to Councillors, will be made equally available and accessible to candidates during the election.

There will be transparency in the provision of all information and advice during the election period. Where practicable, and not prohibited by legislation, information that is made available to Councillors will also be made available to candidates.

Preparation of briefing notes and weekly newsletter for Councillors will be suspended during

the election period, and Council briefing meetings will not be held.

Requests for information will be directed to the Chief Executive Officer or their delegate for determination and distribution to all Councillors and candidates, if appropriate. Once approved and certified by the Chief Executive Officer the information will be circulated, usually via an email or by publishing on Council's internet site.

## 12. Media and corporate communications

During the election period Council's media and corporate communications will be restricted to essential advice for the community and must not be used in any way that might favour a candidate.

### Media advice

Any requests for media advice or assistance from Councillors during the election period will be channelled through the Chief Executive Officer or their delegate. No media advice or assistance will be provided on election issues or publicity that involves specific Councillors.

### 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 will determine the appropriate person. A media release must be certified and approved by the Chief Executive Officer before being released.

### Publicity campaigns

During the election period, publicity campaigns, other than for the purpose of conducting the election will be avoided. Where a publicity campaign is deemed necessary for a Council activity, it must be approved by the Chief Executive Officer or their delegate.

### Councillors

Councillors will not use their access to Council staff and other Council resources, to gain media attention in support of an election campaign.

### Council employees

During the election period employees must not make any public statement that relates to an election issue unless statements have been approved and certified by the Chief Executive Officer.

## 13. Misuse of position (by a Councillor)

Section 76D prevents Councillors from misusing their position, and section 76E prevents Councillors giving improper direction, or exerting improper influence over a member of Council staff. Penalties apply for breaching these sections and the penalty for 76D includes possible imprisonment.

## 14. Equity in assistance and advice

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

### Candidate assistance and advice

Any assistance and advice provided to a candidate as part of the conduct of the Council election will be provided equally to all candidates.

## **Election process enquiries**

Enquiries from Councillors or candidates relating to the election process will be directed to the Returning Officer appointed by the Victorian Electoral Commission. Where the matter is outside the responsibilities of the Returning Officer, enquiries will be referred to the Chief Executive Officer or their delegate.

## **15. Breach of policy**

Any breach of this 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 Inspectorate at <https://w.www.vic.gov.au/lgi.html> or 03 7017 8212.

## **16. Related Policies**

Checking and certifying Publications – CEO Policy.

## **17. Related Legislation**

Local Government Act 1989

## **18. References**

Moirá Shire Council

Employee Code of Conduct 2017

Councillor Code of Conduct 2017

Local Government Victoria

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

Governance Practice Note No. 5 – Election Caretaker Arrangements

## **19. Review**

This policy will be reviewed before the commencement of the next general election caretaker period (ie by 22 September 2023) as required under section 93B of the *Local Government Act 1989*, with operational amendments as required in accordance with Council's approval.