

Election Period Policy 2020

(A4026459)



Lifestyle Capital of Victoria

1. Policy statement

Frankston City Council is committed to probity in its elections.

Special statutory restrictions apply during the 32 day period leading up to a general Council election; a Council must avoid actions and decisions that could be seen to influence voters or which would have a significant impact on the incoming Council. These requirements are often referred to as election “caretaker” requirements.

The Local Government Act 1989 (“the Act”) requires a Council to have an election period policy. Section 93B of the Act stipulates that an election period policy must include:

- a. procedures to prevent the Council from making inappropriate decisions or using resources inappropriately during the election period before a general election;
- b. limits on public consultation and the scheduling of Council events; and
- c. procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.

2. Reason for Policy

This policy has been prepared to satisfy the requirements of section 93B of the Act, and to provide guidance to candidates, Councillors, staff and the community about the particular requirements and expectations that apply during the election period.

3. Scope

3.1 Election period start and finish dates

This policy applies during the election period which:

- STARTS at midnight at the end of the last day of nominations, being Tuesday 22nd September 2020; and
- FINISHES at 6:00pm on election day, Saturday 24th October 2020.

3.2 What does this policy cover?

This policy applies to:

- a. all material published by Council (excluding any document that is required by the Act to be published, for example the annual report);
- b. decisions made by Council, a special committee of the Council, or a delegate of the Council;
- c. the use of Council resources;
- d. public consultation;
- e. the scheduling of Council events and functions;
- f. attendance at and participation in functions and events;
- g. access to Council information;
- h. communication services;
- i. equity in assistance to candidates; and
- j. other matters related to elections.

4. Authorisation

This policy was adopted by Council at Ordinary Meeting 2019/OM11 on 2 September 2019.

5. Revision date

This policy will be reviewed and presented to Council by September 2024, or earlier if deemed necessary by Council or the CEO.

6. Principles

This policy covers the following principles:

- 6.1 Decisions during the election period
- 6.2 Council publications during the election period
- 6.3 Public consultation during the election period
- 6.4 Events and functions during the election period
- 6.5 Preventing misuse of Council resources
- 6.6 Access to Council information
- 6.7 Communication services
- 6.8 Equity in assistance to candidates
- 6.9 Staff member standing for election
- 6.10 Election signage

6.1 Decisions during the election period

6.1.1 Who does this part of the policy apply to?

This section of the Election Period Policy applies to decisions made by the Council, a special committee of the Council, or a delegate of the Council.

6.1.2 What decisions are prohibited during the election period?

Section 93A of the Act prohibits a Council from making major policy decisions during the election period, unless extraordinary circumstances apply and a Ministerial exemption from the prohibition has been granted.

Major policy decisions include:

- the appointment or dismissal of a Chief Executive Officer, or the remuneration of a Chief Executive Officer;
- approval of contracts with a total value exceeding \$1,222,110 (ie 1% of Council's total revenue from rates and charges levied under s.158 in the 2018/19 financial year); and
- the exercise of any entrepreneurial power under s.193.

6.1.3 Preventing inappropriate decisions

In the interests of good governance, and to preserve the integrity of the election process and the authority of the incoming Council, Council will not make inappropriate decisions during the election period.

Inappropriate decisions during the election period are decisions that would affect voting in an election; or may unreasonably bind an incoming council, and could reasonably be made after the election, including:

- 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;
- changes to strategic objectives and strategies in the Council Plan;
- policy or strategy decisions;
- allocation of community grants or other direct funding to community organisations;
- major planning scheme amendments; and
- decisions of a politically sensitive nature.

6.1.4 Scheduling the consideration of decisions

The Chief Executive Officer will ensure that any matters that would constitute an inappropriate decision during the election period are either considered by Council prior to the election period, or scheduled for determination by the incoming Council.

No Council meetings will be held during the election period, unless exceptional circumstances require a Council decision (ie. a decision is absolutely necessary for Council operational purposes, or pursuant to a statutory or legal requirement).

In deciding whether exceptional circumstances warrant the consideration of an item by Council during the election period, the Chief Executive Officer will have regard to a number of factors including:

- whether a decision is necessary to enable the continuation of an essential Council service or operation;
- the urgency of the issue (that is, can it wait until after the election?);
- the possibility of financial or other repercussions if the decision is deferred;
- whether a decision is likely to be controversial; and
- whether a decision is in the best interests of the municipality.

6.1.5 Council meeting reports and agendas

If extraordinary circumstances necessitate the consideration of an item by Council during the election period, the Chief Executive Officer will ensure that an “election period statement” is included in the officer’s report.

The following are examples of an “election period statement”:

- a. The recommended decision is not a “major policy decision”, as defined in section 93A of the *Local Government Act 1989*, or an “inappropriate decision” as defined in section 93B (5) of the *Local Government Act 1989*.
- b. The recommended decision is to seek an exemption from the Minister because the circumstances require the making of a “major policy decision” (as defined in section 93A of the *Local Government Act 1989*) during the election period.
- c. The recommended decision is a “major policy decision”, as defined in section 93A of the *Local Government Act 1989*, but an extraordinary circumstances exemption was granted by the Minister for Local Government on [insert date].

6.1.6 Announcement of decisions made prior to the election period

The election period restrictions apply to the actual making of decisions, rather than to 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 commencement of the election period.

6.2 Council publications during the election period

6.2.1 Prohibition on publishing materials during election

It is prohibited under section 55D of the Act for Council to print, publish or distribute; or to cause, permit or authorise others to print, publish or distribute on behalf of the Council, any advertisement, handbill, pamphlet or notice that contains electoral matter during the election period.

The Act also requires that all Council publications during the election period must be certified in writing by the Chief Executive Officer. An Election Period Certification Procedure has been developed as a related document.

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, Facebook account and Twitter page.

The controls do not cover advertisements that simply announce the holding of a meeting or about the election process itself.

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 Frankston City Council i.e. by use of Council logos.

The prohibition does not apply to documents published before the election period, or documents that are published in accordance with a requirement of the Act (eg. the Annual Report, rate notices, food premises registrations, parking fines).

6.2.2 Council publications

Any Council material that is required to be published during the election period will be reviewed by Council's Governance department, and then (if appropriate) sent to the Chief Executive Officer to be certified in writing in accordance with the Election Period Certification Procedure, prior to publication.

6.2.3 Considerations 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:

- must not permit any materials to be published which include reference to:
 - the election;
 - a candidate in the election;
 - a current Councillor; or
 - an issue before the voters in connection with the election.

- may approve publication of material which only contains information about:
 - the election process itself; or
 - Council services (as long as the material does not include any reference to a current Councillor, an issue before the voters in connection with the election, or any content that is otherwise precluded by this policy).

6.2.4 Frankston City Council website and social media

During the election period Council's corporate website will not contain material precluded by this policy. 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.

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.

6.3 Public consultation during the election period

Public consultation is an integral part of Council's policy development, process and operations. However, public consultation undertaken in the lead up to an election has the potential to become an election issue in itself, and can influence voting.

For the purposes of this policy, 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.

It is prohibited under this policy for public consultation (new or ongoing) to be commissioned or undertaken during the election period on an issue that is contentious unless prior approval has been given by the Council or the Chief Executive Officer.

In considering whether to grant approval for public consultation during the election period, the Council or Chief Executive Officer will have regard to a number of factors including:

- whether special circumstances make it necessary for the consultation to occur during the election period;
- the possibility of financial or other repercussions if the consultation is deferred; and
- whether the risks of influencing the election can be mitigated or avoided.

This clause does not apply to public consultation that is required to be undertaken in accordance with section 223 of the Act, or under the Planning and Environment Act 1987. However, consideration will be given to whether such statutory processes can be delayed until after the election period.

6.4 Events and functions during the election period

The scheduling of Council events and functions during the period leading up to an election can create issues due to a perception that such events and functions have the potential to be used by sitting Councillors for electioneering purposes.

For the purposes of this policy, **events** and **functions** include any gathering 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. An event or function may take the form of a conference, workshop, forum, Annual General Meeting, launch, promotional activity or a social occasion such as a dinner, reception, ball or similar.

6.4.1 Public events and functions staged by external bodies

Councillors may continue to attend events and functions staged by external bodies during the election period. However, Council resources cannot be used to facilitate attendance or participation in such events. Any speeches prepared by Council officers for the Mayor or the Mayor's representative for events during the election period will include only basic material, and will not include any content that could be construed as **electoral matter** (see definitions).

6.4.2 Council events and functions

Where possible, public Council events and functions will be scheduled outside the election period. 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.

In considering whether to grant approval for a Council event or function to be held during the election period, the Council or Chief Executive Officer will have regard to a number of factors including:

- whether special circumstances make it necessary for the event or function to occur during the election period;
- the possibility of financial or other repercussions if the event or function is deferred; and
- whether the risks of influencing the election can be mitigated or avoided.

6.4.3 Accords and community meetings

Meetings of accords, local area community working groups and committees will not be held during the election period.

6.5 Preventing misuse of Council resources

Council is committed to ensuring that due propriety is observed in the use of all Council resources.

During the election period, additional measures will be implemented to prevent the use of Council resources by candidates for electioneering purposes.

For the purposes of this policy, **Council resources** include Council officers and support staff, hospitality services, vehicles, property, equipment and stationery.

6.5.1 Use of Council resources

Council resources will be used exclusively for normal Council business during the election period, and will not be used in connection with an election campaign. Some specific examples of Council's commitment to this principle are set out below:

- a. The use of resources including bulk paper, photocopying and printing, will be monitored.
- b. Photographs and images taken by or on behalf of Council will not be used for the purposes of electioneering.
- c. Equipment and facilities provided to Councillors for the purpose of conducting normal Council business will not be used for election campaign purposes.
- d. Council email addresses will not be used for election campaign purposes.
- e. Where a Councillor has an existing Council funded service (mobile phone, smart phone, land line or internet connection) and it is impractical to discontinue use of the service during the election period, the Councillor will reimburse Council for any usage of the service during the election period that exceeds normal usage levels.

It is acknowledged that certain improper actions during the election period can have serious consequences; for example, the use of Council resources for private purposes such as electioneering can be a criminal misuse of a Councillors' position, in breach of section 76D of the Act.

6.5.2 Council officers

Council staff should avoid assisting Councillors or candidates in any way that could create a perception that they are being used for electoral purposes.

The Mayor and Councillors' support staff must not be asked to undertake any tasks connected directly or indirectly with an election campaign.

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.

6.5.3 Mayor and Councillors' correspondence

General correspondence addressed to the Mayor and/or Councillors will be answered in accordance with Council's usual administrative procedures. However, the Mayor and Councillors will sign only the necessary minimum of correspondence during the election period. Correspondence in respect to significant, sensitive or controversial matters will be signed by the Chief Executive Officer. All correspondence will be prepared so as to protect Council staff from perceptions of political bias.

6.5.4 Expenses incurred by Councillors

Section 75 of the Act provides that Councillors are entitled to be reimbursed for any reasonable out-of-pocket expenses incurred in performing their duties as a Councillor.

A claim for payment or reimbursement of a Councillor's out-of-pocket expenses incurred during the election period should only relate to necessary costs that have been incurred in the performance of normal Council duties. Reimbursement will not be paid for any expenses that are connected with campaigning, or that could be perceived as supporting or being connected with a candidate's election campaign.

In the case where a Councillor's expenses claim covers a combination of Council and election-related business, the Chief Executive Officer may approve a partial reimbursement to cover Council activities.

6.5.5 Council branding and stationery

Items bearing Frankston City Council's logo, letterhead or other Frankston City Council branding will not be used for, or linked in any way to, a candidate's election campaign.

6.6 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 with 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.

6.6.1 Councillor briefings

Councillor briefings are informal gatherings of Councillors at which the Council administration provides advice to Councillors on items of a complex nature or of significant community impact.

Councillor briefings will not be held during the election period, except in relation to urgent matters.

6.6.2 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.

6.6.3 Candidate information request register

The Governance team will maintain a register of candidate information requests during the election period. The register will include all requests made by Councillors and candidates for information (including requests that were unable to be met) and the responses given to those requests. The register will be available for public inspection.

6.6.4 Candidate information file sharing site

To facilitate the secure, swift and efficient sharing of information with candidates, a candidate information file sharing site will be established for use during the election period. Documents that the Council administration has supplied to a candidate will be uploaded to the candidate folder on the FTP site wherever practicable, so that they can be viewed by all candidates. The login credentials will be supplied to candidates as soon as possible after the close of nominations.

6.7 Communication services

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

6.7.1 Media advice

Any requests for media advice or assistance from Councillors during the Election Period will be channelled through the Chief Executive Officer or his delegate. No media advice or assistance will be provided in relation to election issues or in regard to publicity that involves specific Councillors.

6.7.2 Media releases and spokespersons

Media releases during the election period 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.

6.7.3 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. Council publicity during the election period will be restricted to communicating normal Council activities and initiatives.

6.7.4 Restriction on 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.

6.7.5 Public statements by 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.

6.8 Equity in assistance to Candidates

Council affirms that all candidates will be treated equally.

6.8.1 Candidate assistance and advice

Any assistance and advice provided to candidates as part of the conduct of the elections will be offered equally to all candidates.

6.8.2 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.

6.9 Staff member standing for election

In the event that a member of Council's staff is contemplating standing for election as a Councillor for Frankston City Council, they would need to:

- take leave to stand for election to the office of Councillor (with leave commencing, at the latest, from the time of nominating as a candidate); and
- if elected, resign from the Council staff immediately upon being declared elected.

These requirements are set out in section 29(1)(d) and (3) of the Act.

6.10 Election signage

The rules which apply to signs that promote candidates in an election, or that relate to election issues, are set out in Council's Election Signs and Events Policy. This document can be accessed on Council's website.

7. Roles and responsibilities

This policy will be managed by the Governance and Information Department.

8. Policy non-compliance

Non-compliance with this policy has the potential to compromise the integrity of the election process and the authority of the incoming Council.

It is acknowledged that certain improper actions during the election period can have serious consequences; for example, the use of Council resources for private purposes such as electioneering can be a criminal misuse of a Councillors' position, in breach of section 76D of the Act.

9. Related documents

- Local Government Act 1989 and in particular:
 - section 55D *Prohibition on Council*;
 - section 76D *Misuse of position*;
 - section 93A *Conduct of Council during election period*;
 - section 93B *Council to adopt an election period policy*.
- Election Period Certification Procedure.
- Register of Candidates' Requests for Information.
- Election Signs and Events Policy.

10. Implementation of the Policy

In accordance with section 93B(4) of the Act, the Chief Executive Officer will ensure that a copy of the election period policy is:

- given to each Councillor as soon as possible after it is adopted; and
- available for inspection by the public at the Civic Centre; and
- published on Council's website.

As soon as possible and no later than 30 days prior to the commencement of the election period, the Chief Executive Officer will ensure that all staff are informed of the requirements of this policy.

11. Definitions and notes

Relevant definitions from various sources including some Acts of Parliament have been consolidated below. In this policy:

document	<p>includes, in addition to a document in writing—</p> <p>(a) any book, map, plan, graph or drawing;</p> <p>(b) any photograph;</p> <p>(c) any label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever;</p> <p>(d) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;</p> <p>(e) any film (including microfilm), negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and</p> <p>(f) anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.</p> <p style="text-align: right;"><i>Interpretation of Legislation Act 1984, s.38</i></p>
Chief Executive Officer	means the Chief Executive Officer of Council or his/her delegate.
Council resources	include Council officers and support staff, hospitality services, vehicles, property, equipment and stationery.
Councillor briefings	are informal gatherings of Councillors at which the Council administration provides advice to Councillors on items of a complex nature or of significant community impact.
	Part D of the <i>Frankston City Council Governance Local Law .1</i>
election period	<p>in relation to an election, means the period that –</p> <p style="text-align: center;">starts on the last day on which nominations for that election can be received; and</p> <p style="text-align: center;">ends at 6 p.m. on election day.</p> <p style="text-align: right;"><i>Local Government Act 1989, s.3</i></p>
	<i>Local Government Act 1989, s.3</i>

<p><i>electoral matter</i></p>	<p>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.</p> <p>Matter is 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"> - the election; or - a candidate in the election; or - an issue submitted to, or otherwise before, the voters in connection with the election. <p style="text-align: right;"><i>Local Government Act 1989, s.3 (1A) and (1B)</i></p>
<p><i>event</i></p>	<p>includes a gathering 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. An event may take the form of a conference, workshop, forum, Annual General Meeting, launch, promotional activity or a social occasion such as a dinner, reception, ball or similar.</p>
<p><i>function</i></p>	<p>includes a gathering 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. A function may take the form of a conference, workshop, forum, Annual General Meeting, launch, promotional activity or a social occasion such as a dinner, reception, ball or similar.</p>
<p><i>inappropriate decisions</i></p>	<p>made by a Council during an election period includes decisions that would affect voting in an election; and decisions that could reasonably be made after the election.</p> <p style="text-align: right;"><i>Local Government Act 1989, s.93B(5)</i></p>

major policy decision	<p>means any decision</p> <p>(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;</p> <p>(b) to terminate the appointment of a Chief Executive Officer under section 94;</p> <p>(c) to enter into a contract the total value of which exceeds whichever is the greater of—</p> <p>(i) \$100 000 or such higher amount as may be fixed by Order in Council under section 186(1); or</p> <p>(ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;</p> <p>(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.</p> <p style="text-align: right;"><i>Local Government Act 1989, s.93A(6)</i></p>
public consultation	<p>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.</p>
publish	<p>means including by publication on the internet.</p> <p style="text-align: right;"><i>Local Government Act 1989, s.3</i></p>
<p>All references to Councillors should be read as including the Mayor.</p>	