6.01.3 Local Government Elections (caretaker period provisions)

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Introduction

Under the Local Government Act 1993 (NSW), council elections are held on the second Saturday in September every four years. Councils can either conduct their own elections or outsource the coordination of their election to the NSW Electoral Commission.

Leading up to an election, Council will enter a caretaker period. During this time the Council cannot make any major policy decisions. Instead, applications must be made to the Minister for Local Government for an exemption in extraordinary circumstances should any decision need to be made.

To help facilitate continued operations during a caretaker period, Council has prepared, adopted and will adhere to the provisions included in this procedure, which in summary contains the following:

- Procedures intended to prevent Council from making inappropriate decisions or Councillors using resources inappropriately during the election period before a general election.
- Limits on public consultation and the scheduling of Council events.
- Procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- Inappropriate decisions made by a Council during the election caretaker period are described as:
  - Decisions that would affect voting in an election.
  - Decisions that could reasonably be made after the election.
  - The publishing or distribution of material during the election period likely to influence voting on Election Day.

Council employees and Elected Officials must observe specific legislative and governance requirements during the period leading up to an election including the caretaker period.

Purpose

The purpose of this procedure is to ensure:

- Councillors, community and staff are aware of what can and cannot be done during the election caretaker period.
- Council complies with the election period caretaker provisions of the Local Government Act 1993 (the Act), and
- Council continues to provide high standards of service to the community during an election period.

Coordinating an Election

In the past Bega Valley Shire Council has outsourced the coordination of its Local Government Elections. The decision to outsource this function must be made by way of Council resolution. In 2012 and 2016, Council voted to outsource the election to the NSW Electoral Commission.

To facilitate the election process however, relevant Council officer(s) from the People and Governance Team will liaise with appropriate representatives of the NSWEC. The employees most likely to assist with elections are:

- The General Manager
- Executive Manager (People and Governance)
- Governance Coordinator, and
- Executive Assistants to the Mayor and General Manager.

The Council Officers listed above will be delegated to assist with organising the following:

- Preparation of non-Residential rolls
- Scoping of pre-poll voting venues
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- Scoping of polling venues
- Scoping of Returning Officer venue
- Information for prospective candidates relevant to Bega Valley Shire Council.
- Provision of relevant information regarding key dates and election processes
- Preparations of Councillor Induction Training Programs after election results are declared.
- Scheduling of mandatory training and public meetings.
- Preparation of the Business Papers for Council meetings

Key dates in the Election period

Non-residential rolls
The non-Residential rolls close forty (40) days prior to Election Day.

Candidate Nominations
Candidate nominations open Monday 1 August 2016, and close at noon on the Wednesday 10 August 2016.
All nominations, withdrawal or nominations and requests to form groups on the ballot paper must be lodged by noon on the day nominations close.

Postal voting
Applications for postal voting open once ballot papers become available and close on the Monday of the week leading up to the Election Day.

Pre-polling
Pre-poll voting takes place up to two weeks prior to the official Election Day. Residents will be advised of the appropriate venues made available for pre-polling leading up to the official Election Day.
Bega Valley Shire Residents will be able to access pre-poll voting in the following venues:
The number of days in which pre-polling will be available can vary. For confirmation of the availability of pre-poll services, members of the community will be able to contact the Council’s Customer Service team on 6499 2222 or the NSW Electoral Commission 1300 135 736 or visit www.votensw.info

Post-Election Day - Counting of Votes
The official day of election is the second Saturday in September every four years. The counting of votes will take place from 6pm on the day of election and during the week following. Completed postal vote ballot papers must be received by the Returning Officer.
The Caretaker period

The following arrangements are made to allow Council to maintain its operations at the required service level during the election process, particularly during what is referred to as the ‘caretaker’ period.

Like Commonwealth and State Governments, Council is expected to assume a caretaker role during the election period. The reason for this action is to ensure major decisions are not made which would limit or bind the actions of an incoming Council during the declared period.

The arrangements regarding caretaker periods are made through the Local Government (General) Regulations. Clause 393B of the Regulation requires that the Council, the General Manager or any other delegate of the Council (other than a Joint Regional Planning Panel) must not exercise the following functions during the four weeks preceding an election (the caretaker period):

- Entering into any contract or undertaking involving an expenditure or receipt by the council of an amount equal to or greater than $150,000 or 1% of the council’s revenue from rates in the preceding financial year (whichever is the larger).
- Determining a controversial Development Application, except where a failure to make such a determination would give rise to a deemed refusal, or such a deemed refusal arose before the commencement of the caretaker period. The term “controversial Development Application” is defined as one for which at least 25 persons have made submissions by way of objection.
- Appointing or renewing the appointment of the General Manager or terminating their employment. (This does not include the appointment of an acting or temporary General Manager).

The caretaker period commences at the time in which Councillor Nominations close. It ends at 6pm on the Election Day.

Although the official caretaker period ends at 6pm on the day of the Election, Council will not be responsible for making any decisions until at least its first official Ordinary Meeting; prior to which all newly or re-elected Councillors will commence a formal induction process.

Decision Making

For the purposes of this procedure, major decisions made by Council or under delegation are typically characterised as:

- Decisions relating to the appointment, termination or remuneration of the General Manager other than decision to appoint to an acting General Manager.
- Decisions to enter into a contract or exercise any entrepreneurial powers exceeding 1% of the council’s revenue from rates and charges levied in the preceding financial year.

Council Resources (Councillor Candidates)

In order to adhere to the provisions made under the Model Code of Conduct for Local Councils in NSW, in particular, Part 7 – Access to Information and Council Resources, the following procedures are in place to ensure Councillors and staff do not use resources inappropriately in the lead up to the election and during the election caretaker period (the election period).

Council resources, including offices, support staff; hospitality services, equipment, email address and stationary should be used exclusively for normal Council business during the election period and should not be used in connection with an election.
• Councillors can only make operational requests through the Customer Request Management (CRM) system covering issues such as but not limited to roads, footpaths, trees, waste management and general amenity. Such requests will be administered as community requests.

• Requests for Council records can be submitted under the Government Information Public Access (GIPA) Act 2009. If a formal application is made during the election period, the usual requirements of this Act will apply.

• Photocopying for election campaigning purposes by Councillors or employees on office machines is not permitted.

• Data-bases and mailing lists held by the organisation remain the property of the Council, are subject to the requirements of the Privacy and Personal Information Protection (PPIP) Act 1998, and are therefore not available to members of the public, candidates or to Councillors.

• The organisation will not prepare or produce any materials associated with a Councillor’s individual election campaign.

• No Council logos, letterheads, or other Council branding should be used for, or linked in any way to, a candidate’s election campaign.

• Councillors will not use Council issued mobile phones, iPads, email addresses, Council issued branded Corporate Clothing or Mayoral Vehicle for election campaigning. The use of Council’s internet or intranet sites, including Council’s social media sites for any activity to do with election campaigning is prohibited. There will be no links from the Council’s website to a candidate’s private website.

• The organisation will continue to provide support to Councillors with respect to their normal day-to-day Council business. Out-of-pocket expenses paid by Councillors during the election period for necessary costs incurred in the performance of their duties, which do not relate to any election campaign, will be reimbursed as normal.

• No election campaigning material is to be distributed from or displayed in or on Council facilities, libraries or community noticeboards.

• Council facilities booked for electoral campaigning purposes by Councillors, candidates or supporters or other persons during the election period will be hired out at the same rate to all hirers.

Throughout the election period, including the time in which the Council is in a caretaker period, Councillors are required to adhere to the provisions made in the following Council procedures:

• The Model Code of Conduct for Local Councils in NSW

• Elected Officials Communication Protocol

Events and Meetings

Council events and meetings

Public events and meetings held during the election period can sometimes raise election issues and involve Councillors in the discussion. Therefore Council will not host any public events during the election period. Community events organised outside of Council, scheduled at a specific time which coincides with the caretaker period may still be attended by Councillors. However, in these circumstances Councillors must not use the opportunity for electioneering. There will be no Council officer support for administering attendance, preparing briefing notes or speeches.

External events

Councillors may sometimes be asked to attend externally organised events such as business breakfasts, Annual General Meetings, launches, openings and exhibitions. Councillors can attend these externally organised events, however they will not be provided with administration assistance, briefing notes or speech writing for external events.
The General Manager will have final sign-off on all publications produced and distributed by the Council during the election period. The General Manager must certify the publication does not contain electoral matters, i.e. any matter “intended or likely to affect voting in an election”.

This should be broadly interpreted to refer to documents produced for the purpose of communicating with the community including:

- Council newsletters
- Advertisements and notices
- Media releases and responses to media enquiries
- Leaflets, brochures, stickers etc.
- Mail outs to multiple addresses

Documents exempted from General Manager Certification are:

- Publications that were published prior to the commencement of the election period.
- Publications that are required to be published in accordance with any Act or regulation.

The requirements for publishing and communications mentioned above extend to online communication, not just hard copy documents.

General Manager Certification process of publications

The following personnel have been designated to vet publications submitted to the General Manager for publication during the election period. Each respective position listed below will be responsible for checking the validity and accuracy of the document contents before sending to the General Manager.

- Director | Assets and Operations
- Director | Business and Governance
- Director | Planning and Community
- Executive Manager | People and Governance

When certifying material, the following statement will be included in all documentation:

“I Certify that the attached material is suitable for printing, publishing or distributing on behalf of Bega Valley Shire Council in accordance with the NSW Local Government Act 1993’.

Once a determination has been made by the General Manager, staff will be advised of the outcome of the request for certification process and a record of all certified publications will kept via Council’s records management system.

Website information

During the election period, Bega Valley Shire Council website will continue to provide information to the community about accessing Council’s services.

Councillor profile pages during the election period will be limited to names, contact details, date elected and membership of committees. There will be no photographs, biographies or policy statements.

Any reference to the election on the website will be restricted to process only. For current information relating to the Election please visit www.votensw.gov.au

New pages or new content can only be added to the website, or content updated, if the content does not refer to election candidates, including current Councillors, or issues before the voters in an election and has been Certified by the General Manager.
Old pages pre-dating the election period will not be deleted but will not be featured through links to the home page during the election period. ‘Hot Topics’ will be removed from the home page during the election period.

**Media**

Media releases and media responses during an election period are at times, issued to inform the community about Council’s services and activities. The General Manager and/or respective Director or Executive Manager has final sign-off on all media releases and media responses. These will be developed and distributed in consultation with the Communications Coordinator.

Media releases must not refer to Councillors or any candidate. Where it is necessary to identify a spokesperson in relation to an issue the General Manager will determine the appropriate person. Fewer than usual media releases are expected to be published during the election period.

The General Manager will take on the role of spokesperson of the Council where the matters refer to the election.

During the election period, public comment on behalf of Council will be provided by the General or a Council Officer nominated by the General Manager. Councillors must not use their position as an elected official to gain media attention.

**Social Media**

Council has a number of social media sites including several Twitter feeds and Facebook pages. Council’s Communications Team monitors social media sites between the hours of 9.00 am and 5.00 pm on weekdays (excluding public holidays). Pages and accounts managed by other employees are similarly monitored during business hours.

During the election period Council managed social media sites must not be used for election campaigning. Any publication of comments or new content on social media sites (auspiced by Council) will generally require approval by the General Manager, Directors or Executive Manager during an election period.

The ability for members of the public to post comments on Council’s social media sites will continue during the election period. The Communications Team will monitor and remove any comments that reference election candidates or the current election.

**Access to Council Information**

As required by the Government Information Public Access (GIPA) Act 2009, the following procedures ensure access to information held by Council is made equally available and accessible to candidates during the election period.

Councillors will continue to receive information necessary to fulfil their existing roles as a Councillor during the election period.

Neither Councillors nor candidates will receive information or advice from Council staff perceived to support election campaigns.

When carrying out their duties, Council staff should not offer comment to members of the public about any Councillors or candidates, except to provide contact details for current Councillors.

No other information other than what would normally be made available to any member of the general public on request will be provided to a Councillor or a candidate.

**Information requests – process, record, and access**

All candidate requests for information relating to electoral matters and non-routine requests will be processed by the General Manager, Executive Manager | People and Governance, the Governance Coordinator. A record
of requests will be maintained by the Governance Coordinator. A copy of the request and the officer response will be made available to all candidates via an email database.

Enquiries from Councillors, candidates and the public about the election process will be referred to the Returning Officer for the election so that a consistent response is maintained.