BOROONDARA

Election Period Policy

June 2024

Responsible Directorate: Chief Executive Officer
Authorised By: Council
Date of Adoption: 24 June 2024
Review Date: 24 June 2028

Acknowledgement of Traditional Owners

The City of Boroondara acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners and original custodians of this land, and we pay our respects to their Elders past and present.

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1 Introduction

1.1 Purpose

This policy has been developed to ensure the City of Boroondara Council general elections and by-elections are conducted in a manner that is ethical; fair and equitable; and are publicly perceived as such.

The policy contains:

a) procedures intended to assist the Council in making appropriate decisions and using resources appropriately during the election period before an election;

b) guidelines 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.

1.2 Scope

This policy applies to all Councillors, Candidates, Councillor-Candidates and members of council staff. This policy only applies during the legislated election period.

This policy does not restrict or regulate the actions or behaviours of prospective candidates outside of the legislated election period.

1.3 Corporate framework

This policy supports the Boroondara Community Plan 2021-31 by addressing Theme 7: Leadership and Governance.

Strategy 7.1: Decision-making is transparent and accountable through open governance processes with timely communication and reporting.

2 Background

2.1 Policy context

Section 69(1) of the Act requires a Council to include an election period policy in its Governance Rules. The Act states that an election period policy must prohibit any Council decision during the election period for a general election that:

- relates to the appointment or remuneration of the Chief Executive Officer; or

- commits the Council to expenditure exceeding one per cent of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year; or
- the Council considers could be reasonably deferred until the next Council is in place; or
- the Council considers should not be made during the election period.

An election period policy must also prohibit any Council decision during the election period that would enable the use of Council resources in a way that is intended to influence, or is likely to influence, voting at the election.

The Act prescribes the election period to start at the time that nominations close on nomination day and ends at 6pm on election day.

3 Policy statement

The ordinary business of Council will continue throughout the election period in a responsible and transparent manner and in accordance with statutory requirements as well as best practice.

The role of a Councillor must be kept separate from the role that a person may take as a Candidate (or prospective Candidate) in an election. A Councillor must avoid any conflicts, or appearance of conflict between the two roles and endeavour to demonstrate they understand the separation between the two roles.

3.1 Responsibility

3.1.1 Council

Council will function in accordance with this Election Period Policy during the election period.

3.1.2 Chief Executive Officer

In addition to the Chief Executive Officer's statutory responsibilities, the Chief Executive Officer will:

- Ensure as far as possible, that all councillors and officers are informed of the application of this policy at least 30 days prior to the commencement of the election period.
- Not include in the order of business for any Council meeting scheduled during the election period, any matters requiring prohibited decisions or matters that could be considered prohibited decisions.
- Ensure that matters of Council business requiring prohibited decisions are

scheduled for Council to consider prior to the commencement of the election period or deferred where appropriate for determination by the incoming Council.

The Chief Executive Officer may issue guidelines to staff on the role and responsibilities of staff in the implementation of this policy.

The Chief Executive Officer may also issue guidelines to Councillors to inform them about changes to services, processes and procedures that may impact them in their role during the election period.

3.2 Decisions by Council

3.2.1 Decisions - Council and Delegated Committee meetings

During the election period reports to Council and Delegated Committee meetings will be carefully vetted to avoid listing matters on the agenda which could foreseeably influence voters' intentions at the forthcoming election; or encourage Councillor- candidates to use the matter as part of their election platform.

Councillors commit to refrain from moving motions on, or raising matters at Council or Delegated Committee meetings that could potentially influence voting at the election.

3.2.2 Decisions - Delegates

The ordinary, day-to-day business of local government must continue throughout the election period. That business will be conducted by Council, its delegates, and staff in a responsible and transparent manner, in accordance with statutory requirements.

Most Council decisions are not made at meetings of the Council. Significant decision-making power is formally delegated to staff and the decision of a delegate is 'deemed' to be a decision by Council.

Because a delegate's decision is the same as a Council decision, the same constraints that apply to decisions made in Council and Delegated Committee meetings apply when delegates make decisions. Delegates should therefore give careful consideration to the exercise of their powers during the election period.

Should a delegate be required to make a decision under delegation in the ordinary course of Council business during the election period, the delegate must satisfy themselves beforehand that the decision is not a prohibited decision.

The following matters will also be considered a prohibited decision during the election period:

- Allocation of community grants;
- Direct funding to community organisations;

- Major planning scheme amendments; or
- Changes to strategic objectives and strategies in the Council Plan.

3.2.3 Invalid decisions

In accordance with section 69(4) of the *Act*, if the following decision are made during the **election period**, the decisions are invalid:

- relating to the appointment or remuneration of the Chief Executive Officer, but not the appointment or remuneration of an Acting Chief Executive Officer; and
- committing the Council to expenditure exceeding 1% of the Council's income from general rates, municipal charges and service rates and charges in the preceding financial year.

3.2.4 Compensation

In accordance with section 69(5) of the Act, any person who suffers any loss or damage as a result of acting in good faith on a Council decision that is determined to be invalid by a court of law, is entitled to compensation from the Council for that loss or damage.

3.3 Community engagement

Community engagement is an integral part of Council's policy development process and operations.

Council will not continue or commence community engagement on prohibited decisions or contentious and politically sensitive matters after the commencement of the election period.

It is strongly recommended that surveys, blogs, invitations for submissions, and other community engagement activities should be avoided during the election period. However, it is acknowledged that some community engagement activities may be necessary during the election period to facilitate the day-to-day business of Council.

Community engagement associated with activities and decisions which are the subject of statutory processes (for example, applications under the Planning and Environment Act 1987), can be expected to continue through the election period to ensure Council does not breach its statutory obligations.

Community engagement not associated with activities and decisions which are the subject of statutory processes shall only proceed if prior approval is given by the Chief Executive Officer.

Where community engagement has occurred prior to the election period but the report has not yet proceeded to a Council or Delegated Committee meeting, results of the

consultation will also not be provided to a Council or Delegated Committee meeting until the election period has concluded.

Any community engagement that does proceed during the election period will be vetted for electoral matter and express or implicit links to the election.

3.3.1 Postponing consultation

Council reserves the right where possible and practicable, to postpone public consultation and any associated decisions where the matter is considered likely to affect voting in the election.

3.3.2 Council publications

Council must not publish material that contains electoral matter. The words "advertisement, handbill, pamphlet or notice" are to be interpreted broadly and will include, amongst other things:

- Brochures, pamphlets, handbills, flyers, magazines, and books
- Newsletters and other circulars (hardcopy and/or electronic)
- New website material and social media posts
- Mass mail outs or letters to a large number of people
- Media releases
- Material to publicise a function or event
- Notices or posters placed on Council controlled property, including walls, noticeboards, and electronic noticeboards and screens.

New Council documents to be printed, published or distributed during the election period must first be certified by the Chief Executive Officer or delegate. They will review the document and must determine that document does not contain any electoral matter. If it is determined that the document does contain electoral matter it will not be certified and cannot be published by the organisation.

The certification process does not apply to the majority of documents published before the commencement of the election period or publication of any document required to be published in accordance with, or under, any Act or regulation.

3.3.3 Council publications including councillor information

References to councillors who are standing for re-election in Council publications printed, published, or distributed during the election period could be considered electoral matter and will be carefully vetted during the certification process.

During the election period Councillor profile pages will be limited to names, contact details, date elected and councillor assignments. There will be no biographies or policy statements.

3.3.4 Existing publications

Existing publications will be reviewed before the start of the election period. Publications or material which is prominently displayed and might be regarded as likely to influence how people vote may be temporarily removed from display. Any material so removed may still be provided to members of the community upon request.

In the context of Council's website, prominently displayed means content visible on the City of Boroondara's website: www.boroondara.vic.gov.au and all pages contained within.

3.3.5 Annual Report

Council is required by the Act to produce its Annual Report. In the year of a general election the Annual Report will be published during the election period. The Annual Report must not contain any material that could be regarded as overt electioneering or that inappropriately promotes individual councillors.

Any publication of an extract or summary of the Annual Report should not contain information that could be considered electoral matter.

3.3.6 Council and Delegated Committee meetings

Council is required by the Governance Rules to:

- Give public notice of Council meetings and Delegated Committee meetings; and
- Produce and make available agendas and minutes of Council meetings and Delegated Committee meetings.

To enable Council compliance with our statutory obligations and the Governance Rules both of the above categories of documents will continue to be published during the election period.

3.3.7 Social media

At the start of the election period a message will be posted on Council's social media channels and website stating these channels will have no new content added until after the election period unless it relates to existing Council services.

Any new publication on social media sites including Facebook, X, Instagram, blogs and wiki pages created by Council during the election period should not contain information that could be considered electoral matter.

As public comments posted on Council's social media sites could be considered electoral matter, staff responsible for administering social media sites will, where possible, disable public commenting.

Where public commenting cannot be disabled, staff will monitor their respective sites during the election period and where possible, remove information that could be considered electoral matter as soon as reasonably practicable after it is posted.

3.4 Council events

Where practicable, civic and ceremonial Council events should not be scheduled during the election period. Civic and ceremonial events do not include routine events and programs conducted as part of Council's day-to-day activities (e.g. immunisation sessions, gallery exhibitions, library programs).

Any civic or ceremonial Council event held during the election period should meet one or more of the following criteria:

- It is a planned event endorsed by the current Council Plan;
- It is routinely held at the same time of year;
- It is a commemorative or anniversary event held on or near the anniversary date;
- It demonstrates a clear community benefit, or serves an educational or welfare purpose; or
- It contributes to cultural development, social awareness or sense of community identity.

Councillors may attend events as required by their Council duties but are not permitted to use these appearances for electioneering.

3.5 Council resources

3.5.1 Application of equipment and resources

Councillors may continue to use any Council equipment provided to them to facilitate their performance of normal Council duties during the election period. At no time can Council equipment be used to promote a councillor as an election candidate.

Council resources, including offices, staff, hospitality, services (including phone, internet, and email), property, equipment and stationary must be used exclusively for normal Council business during the election period and must not be used in connection with any election campaign or issue.

Councillor-candidates must not use Council resources in connection with any activities associated with their election campaigns, regardless of any entitlement to "reasonable personal use" of Council equipment under any other policy, protocol, or terms of use.

Councillor-candidates should also be mindful to manage any perceived conflicts even where a direct expense isn’t incurred, this may include for example:

- Where campaign-related emails are received in a Council email account, send any responses from a private email and encourage the correspondent to use that account in future.
- Where campaign-related calls are received on a Council device, provide and encourage the caller to use a non-council number for future calls.

3.5.2 Role of Council staff

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.

3.5.3 Councillors' entitlement to reimbursement

Reimbursements of councillors' out-of-pocket expenses during the election period will only apply to expenses incurred in the performance of normal Council duties, and not for expenses that support or are connected with a candidate's election campaign.

3.5.4 Council branding

No Council logos, letterheads, Council taken photos or other City of Boroondara Council branding may be used for, or linked in any way to, a candidate's election campaign.

3.5.5 Cessation of ward meetings

Ward meetings and ward-specific publications will not be arranged by Council during the election period.

3.5.6 Councillor correspondence

While the routine business of Council must continue, it is important that the administration is not perceived as providing Councillor-candidates any undue advantage whilst campaigning.

During the election period, any responses prepared by the administration in response to correspondence addressed to a Councillor-candidate, will be signed by the Chief Executive Officer or relevant Director or Manager as appropriate.

Such responses will acknowledge the administration is responding due to limitations imposed upon councillors during the election period.

3.5.7 Officers' discretion

The Council will ensure that due propriety is observed in the use of all Council resources, and Council staff are required to exercise appropriate discretion in that regard.

Where the use of Council resources appears to relate to the election campaign of a councillor standing for re-election, the matter must be referred to the Chief Executive Officer.

3.6 Media services

3.6.1 Restriction on services

New Council publicity during the election period will be restricted to communicating normal Council activities and initiatives and subject to approval by the Chief Executive Officer or delegate.

3.6.2 Media releases/spokespersons

Media releases during the election period will minimise references to specific councillors and will not identify any councillor in a manner that could promote a councillor as an election candidate. Where it is necessary to identify a spokesperson, the Chief Executive Officer or his delegate will be consulted.

3.6.3 Councillors

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

3.6.4 Council employees

During the election period no Council employee may make any public statement that relates to an election issue unless prior approval from the Chief Executive Officer or delegate has been obtained.

3.7 Information

3.7.1 Candidates' access to information

Council recognises that all election candidates have certain rights to information relevant to their election campaigns from the Council administration subject to legislative constraints such as:

- Section 123 of the Act which prohibit Councillor-candidates from misusing or inappropriately making use of their position; and
- the Privacy and Data Protection Act 2014.

Councillors will continue to receive information that is necessary to fulfil their existing elected roles. Beyond that, only information that is readily available to any member of the community will be provided to any candidate.

3.7.2 Information request register

An Information Request Register will be maintained by the Manager Governance and Legal during the election period. This Register will be a public document and record requests by persons who identify themselves as candidates when seeking information relating to electoral matters or when making other general enquiries. The register will also record the responses provided.

Any candidate may, upon request, obtain information about the recorded requests made by another candidate as recorded in the Information Request Register and a copy of information given in response to the request.

The Manager Governance and Legal may, at their discretion, automatically circulate to all candidates, the response to any request recorded in the Information Request Register.

3.8 Assistance to candidates

All election related enquiries from candidates, whether sitting councillors or not, will be directed to the Election Manager or, where the matter is outside the responsibilities of the Election Manager, to the Chief Executive Officer or delegate.

3.8.1 Candidate information

Council will develop a Councillor Candidate Information Kit to assist them in running and nominating for Council. The Candidate Information Kit will be uploaded onto the election page of the Council website no later than a month before nomination day.

The Councillor Candidate Information Kit may include:

- Information about this policy;
- Information about nominating as a candidate;
- Information about other sources of information, including from the Victorian Electoral Commission and the Election Manager; or
- Information about election campaign donation returns.

3.8.2 Council staff

Upon becoming a candidate in a City of Boroondara Council election, the Council staff member must:

- Inform the Chief Executive Officer;
- Take leave from their duties at least for the duration of the election period in accordance with sections 34(2) and 256(8) the Act;

- Return any Council equipment (including, but not limited to, motor vehicles, telephones and computers), documents or information that is not available to the public at least for the duration of the election period; and
- If elected, immediately resign from their employed position at Council, in accordance with sections 34(2) and 256(8) Act.

3.8.3 Member of Council Delegated or Advisory Committees

Upon becoming a candidate, any person who is a member of one of Council's Delegated Committees or Advisory committees is expected to:

- Comply with this policy;
- Inform the Chief Executive Officer;
- Take leave from the Delegated Committee or Advisory committee.
- Return any Council equipment, documents or information which is not available to the public for the duration of their candidacy and/or the election period; and
- If elected, immediately resign from the Delegated Committee or Advisory committee.

3.9 Advertising signage on Council-controlled land

Any individual who intends to affix, attach or place advertising signs on Council controlled land or a Council road must comply with all permit requirements under the Boroondara City Council Amenity Local Law.

3.10 Breaches

Sections 123 of the Act prohibits Councillors from misusing or inappropriately making use of their position. A breach of section 123 attracts serious penalties, including possible imprisonment. Allegations of breaches of the Act are independently received and investigated by the Local Government Inspectorate.

Section 304 of the Act prohibits Councillors or a member of Council staff from using resources in a way that is intended to or likely to affect the result of an election.

In addition, section 304 of the Act also prohibits Councillors or a member of Council staff from using Council resources to intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed any electoral material during the election period on behalf of, or purporting to be on behalf of, the Council unless the electoral material only contains information about the election process or is otherwise required in accordance with, or under, any Act or regulation.

3.10.1 Councillor Code of Conduct

Allegations of breaches of this Policy will be dealt with under the Dispute Resolution Procedures of the Councillor Code of Conduct. The Chief Executive Officer will take the place of the Mayor in managing complaints received under the Election Period Policy.

Complaints must be directed to the Chief Executive Officer in writing, providing details of the alleged contravention, when it occurred and who it involved.

The Chief Executive Officer will assess the information and follow the provisions of the Dispute Resolution Procedures of the Councillor Code of Conduct including, where necessary, the appointment of an external arbiter.

4 Implementation and monitoring

4.1 Evaluation

Council will review and, if required, amend the policy prior to the next general or by-election.

4.2 Accountabilities

For all queries or feedback regarding this policy, please use the contact details for the responsible department below.

Position title	Contact number	Contact department email
Manager Governance and Legal	9278 4470	governanceteam@boroondara.vic.gov.au

5 References

5.1 Related documents

- Governance Rules
- Councillor Code of Conduct
- Election Period Guidelines for Council Staff
- Election Period Guidelines for Councillors

5.2 Definitions

Include a list of key terms and definitions if required.

Term	Definition
Advertising sign	Means any placard, board, poster, banner, sign, card, structure or other similar device, whether portable or affixed or attached to any land, building, vehicle, trailer, person or other thing, used for the purpose of soliciting goods or services or displaying information but excludes any placard, board, poster, banner, sign, card or similar device attached to or on any vehicle or trailer: a) and used for the purpose of promoting a registered political party or a person's candidature or prospective candidature at an election; or b) if the use of the vehicle or trailer is ancillary to another use connected with activities being carried out on land (such as the use of a vehicle or trailer in connection with building or commercial activities being carried out on land).
Candidate	Means a person: 1. Who has nominated as a candidate for an election under section 256 of the Act.
Chief Executive Officer (CEO)	Means the person appointed by a *Council* to be its *Chief Executive Officer* under section 44 of the *Act* or any person acting in that position; and/or a)
Council	Means the City of Boroondara Council and Boroondara City Council, whether constituted before or after the commencement of this Policy.

Term	Definition
Council- controlled land	Means any land which *Council*, owns, occupies, manages, has leased or licensed to another person or is otherwise under *Council's* control and management, other than a road.
Councillor- Candidate	Means a current Councillor who has nominated, or is considering nominating for election at the next general or by-election.
Electioneering	Means any action, statement and or publication that contains material directly related to, or likely to influence, a Councillor's re-election or a candidate's election.
Election Manager	Means: a) The Victorian Electoral Commission; or b) The person appointed in writing by the Victorian Electoral Commission.
Electoral material	Means an advertisement, handbill, pamphlet or notice that contains electoral matter, but does not include an advertisement in a newspaper that is only announcing the holding of a meeting.

Term	Definition
Electoral matter	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 Election Manager for the purposes of conducting an election. Without limiting the generality of the definition of electoral matter, 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. Electoral matter includes material which: • 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 • Publicises the achievements of the elected *Council*.
Election period	Means the period that: • starts at the time that nominations close on nomination day; and • ends at 6 p.m. on election day;
Nomination Day	Means the last day on which nominations to be a candidate at a *Council* election may be received in accordance with this *Act* and the regulations.

Term	Definition
Prohibited decision	Means any decision - a) relating to the appointment or remuneration of a *Chief Executive Officer*, but not to the appointment or remuneration of an Acting *Chief Executive Officer*; or b) commits the *Council* to expenditure exceeding 1% of the *Council's* income from general rates, municipal charges and service rates and charges in the preceding financial year; or c) the *Council* considered could be reasonably deferred until the next *Council* is in place; or d) that *Council* considered should not be made during an election period; or e) that would enable the use of *Council's* resources in a way that is intended to influence voting at an election. f) Means an irrevocable decision that significantly affects the municipality.
Prospective candidate	Means an individual who has publicly expressed an intention to run as a candidate in the election.
Publication	Means: a) a published work in any form (e.g. hardcopy or digital) including but not limited to brochures, articles, letters, posters, policies, strategies, papers, letters, commentary. b) the act or process of publishing.
Publish	Means publish by any means including by publication on the Internet.

Term	Definition
Community engagement	Means a process which 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.
Road	Road includes: a) a street; and b) a right of way; and c) a public highway; and d) any land reserved or proclaimed as a street or road under the Crown Land (Reserves) *Act 1978* or the *Land Act 1958*; and e) a public road under the *Road Management Act 2004*; and f) a passage; and g) a cul de sac; and h) a by-pass; and i) a bridge or ford; and j) a footpath, bicycle path or nature strip; and k) any culvert or kerbing or other land; and l) works forming part of the Road
Staff, Council staff or Staff member	Means any employee of *Council* whether permanent or temporary or casual, and includes contractors, and volunteers carrying out work for or on behalf of the City of Boroondara Council.