

Procedure title	Local Government Elections (Caretaker Period provisions)
Responsible manager(s)	General Manager
Contact officer(s)	General Manager
Directorate	Executive Services
Approval date	
Community Strategic Plan Objective	Objective 9: Innovative and Proactive Leadership
Delivery Program link	9.1.2 Implement Effective Governance
Operational Plan link	9.1.2.2 Assist the Council in meeting its statutory obligations and roles

## Summary

Under the *Local Government Act (1993)*, council elections are held on the second Saturday in September every four years. Due to the COVID-19 pandemic, the 2020 council elections were postponed to December 2021. The new Council that is elected at the 2021 election will serve for a 3-year term.

Councils can either conduct its own elections or outsource the coordination of its election to the NSW Electoral Commission. Eurobodalla Shire Council resolved at its meeting on 26 February 2019 to outsource the coordination of its election to the Electoral Commission for the 2021 Local Government Elections.

Leading up to an election, Council will enter a caretaker period. During this time the Council cannot make any major policy decisions. 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, the General Manager has prepared, the *Local Government Elections (Caretaker Period) Procedure* and it is within this context that Council 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.

Inappropriate decisions and actions by Council during the election caretaker period are described as:

- Decisions that would affect voting in an election.
- The publishing or distribution of material during the election period that is intended or likely to affect voting in an election.

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

During the caretaker period, the Mayor will continue to exercise their functions as Mayor as outlined in *Section 226 of the Local Government Act 1993*:

*“The role of the mayor is:*

- *to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council*

- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office.”

This Procedures covers the following:

1	INTRODUCTION .....	2
1.1	Purpose .....	2
1.2	Legislation .....	2
1.3	Coordinating an Election.....	3
1.4	Key dates in the Election period .....	3
1.4.1	Non-Residential rolls.....	3
1.4.2	Candidate Nomination.....	3
1.4.3	Postal voting .....	3
1.4.4	Pre-polling.....	3
1.4.5	Post-Election Day – Counting Votes .....	4
2	THE CARETAKER PERIOD .....	4
2.1	Decision Making .....	5
2.2	Council Resources .....	5
2.3	Events and Meetings.....	6
2.4	Publishing and Communication .....	6
2.5	Website Information.....	7
2.6	Media .....	7
2.7	Social Media .....	7
2.8	Access to Council Information .....	8
3	GOVERNANCE.....	8

## 1 INTRODUCTION

### 1.1 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).
- Council continues to provide high standards of service and governance to the community during an election period.

### 1.2 Legislation

[Local Government Act 1993](#)

[Model Code of Conduct for Local Councils in NSW](#)

[Local Government Regulations \(General\) 2005](#)

### 1.3 Coordinating an Election

Following Council's resolution on 26 February 2019, to engage the NSW Electoral Commission (NSWEC) to run Eurobodalla Shire Council's 2021 Local Government Election, relevant Council officers have been and will continue to liaise with representatives of the NSWEC to facilitate the coordination of the election. These officers will include the General Manager, Corporate Manager Governance and Administration and Executive Services staff.

The Council Officers listed above have and will assist with organising the following:

- Preparation of non-Residential roll.
- Scoping of pre-poll voting venues.
- Scoping of Returning Officer venue.
- Information for prospective candidates relevant to Eurobodalla Shire Council.
- Preparation of Councillor Induction Training Programs after election results are declared.

### 1.4 Key dates in the Election period

#### 1.4.1 Non-Residential rolls

The non-Residential rolls close forty (40) days prior to the Election Day, which is **25 October 2021**.

Information on non-Residential nomination forms can be found at <https://www.esc.nsw.gov.au/council/councillors/elections/elections-open>

#### 1.4.2 Candidate Nomination

Candidate nominations open Monday 25 October 2021, and close at noon on Wednesday 3 November 2021.

All nominations, withdrawal or nominations and requests to form groups on the ballot paper must be lodged with the Returning Officer by noon on the day nominations close (Wednesday 3 November 2021).

#### 1.4.3 Postal voting

Applications for postal voting open once ballot papers become available on Tuesday 26 October 2021 and must be received to the NSW Electoral Commission no later than 5.00pm on **Monday 29 November 2021**.

Postal vote application forms will be available after nominations close from: <https://www.elections.nsw.gov.au/Voters/Other-voting-options/Postal-voting>.

#### 1.4.4 Pre-polling

Pre-poll voting takes place up to two weeks prior to the official Election Day. Eurobodalla Shire residents will be able to access pre-poll voting at the following venues:

Venue	Dates
Narooma Sports and Leisure Centre	Monday 22 November 2021 – Friday 3 December 2021
Mackay Park Function Centre, Batemans Bay	Monday 22 November 2021 – Friday 3 December 2021
Mechanics Institute, Moruya	Monday 22 November 2021 – Friday 3 December 2021

#### 1.4.5 Post-Election Day – Counting Votes

The counting of votes will take place from 6.00pm on the day of election and during the week following the election. Completed postal vote ballot papers must be received by the NSW Electoral Commission by 5.00pm on Monday 29 November 2021.

## 2 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 and rates in the preceding financial year (whichever is the larger).
- Determination of 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 will commence at 12.01am on Friday 5 November until 6.00pm on Saturday 4 December 2021.

Although the official caretaker period ends at 6.00pm on the day of the Election, Council will not be responsible for making any decision until at least its first official Ordinary Meeting; prior to which all newly or re-elected Councillors will commence a formal induction process.

## 2.1 Decision Making

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

- 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 and rates in the preceding financial year (whichever is the larger).
- Determination of 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).

## 2.2 Council Resources

In order to adhere to the provisions made under the Model Code of Conduct for Local Councils in NSW, in particular, Part 8 – 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 stationery should be used exclusively for normal Council business and should not be used in connection with an election. Resources should only be used for Council business at all times.

- Councillor can only make operational requests on behalf of themselves through the Customer Service Request system covering issues such as but not limited to roads, footpaths, trees, waste management and general amenity. Such request will be administered as community requests.
- Similarly, Councillors receiving requests on behalf of the community should also be made through the Customer Service Request system. These requests must reference the community member they are representing. To ensure the request is completed in a timely manner, the address and contact number of the community member being represented must be provided to staff.
- Request 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 of election campaigning purposes by Councillors or staff on office machines is not permitted.

- Data-bases and mailing lists held by the organisation remain the property of 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 as Councillors.
- The organisation will not prepare or produce any materials associated with a Councillor's individual election campaign.
- No Council logos, letterhead, 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 for election campaigning. The use of Council's internet and 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 Mayor Vehicle is under a leaseback arrangement and is available for private use during the caretaker period.
- 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, sporting facilities, community centres and 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 rates to all hirers.
- No Mayoral column will be published during the caretaker period.

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

- [The Model Code of Conduct for Local Councils in NSW](#)

### 2.3 Events and Meetings

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.

### 2.4 Publishing and Communication

The General Manager will have final sign-off on all publications produced and distributed by the Council during the election period.

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

- council newsletters

- advertisements and notices – other than statutory requirements such as advertising or notifying of development applications
- media releases and response to media enquiries
- leaflets, brochures etc
- mail outs to multiple addresses– other than statutory requirements such as advertising or notifying of development applications
- social media content.

Documents exempted are:

- publications that were published prior to the commencement of the election period
- publications that are required to be published in accordance with any Council policy or code, Act or regulation.

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

## 2.5 Website Information

During the election period, Eurobodalla 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, and membership of committees. Photographs will be removed.

Any reference to the election on the website will be restricted to process only. For current information relating to the Election please visit <https://www.elections.nsw.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.

## 2.6 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 has final sign-off on all media releases and media responses. These will be developed and distributed in consultation with the Corporate Manager Communications.

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.

During the election period, public comment on behalf of Council will be provided by the General Manager or a Council Officer nominated by the General Manager.

## 2.7 Social Media

Council has social media sites including Facebook and Instagram.

During the election period Council-managed social media sites must not be used for election campaigning. Any publication of comments or new content on Council-managed social media sites will require approval by the General 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 and must adhere to the published community guidelines for each site.

### 2.8 Access to Council Information

As required by the *Government Information Public Access (GIPA) Act 2009* and Code of Conduct, 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.

Councillors and candidates must not ask for advice or information 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.

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.

## 3 GOVERNANCE

### *Related legislation and policies*

Name	Link
Related Council Policy or Code	<a href="http://www.esc.nsw.gov.au">www.esc.nsw.gov.au</a>
<i>Local Government Act 1993</i>	<a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182">www.austlii.edu.au/au/legis/nsw/consol_act/lga1993182</a>
<i>Local Government Regulations (General) 2005</i>	<a href="http://www.legislation.nsw.gov.au/#/view/regulation/2005/487/part11/div11/sec393b">http://www.legislation.nsw.gov.au/#/view/regulation/2005/487/part11/div11/sec393b</a>
<i>Government Information Public Access (GIPA) Act 2009</i>	<a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/giaa2009368/">http://www.austlii.edu.au/au/legis/nsw/consol_act/giaa2009368/</a>
OLG Circulars	<a href="https://www.olg.nsw.gov.au/councils/essential-information-and-publications/circulars-for-council">https://www.olg.nsw.gov.au/councils/essential-information-and-publications/circulars-for-council</a>

### *Change history*

Version	Approved date	Approved by	Min No	File No	Change
1	19 July 2016	General Manager		E15.9129	New code commenced



## Procedure

2	15 June 2021	General Manager		S012-T00021	Updated procedure
3	28 July 2021	General Manager		S012-T00021	Updated procedure – minor date changes.

### *Internal use*

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