



Greater Dandenong Policy

Election Period (Caretaker) Policy

Policy Endorsement:	Endorsement required by Council		
Policy Superseded by this Policy	Not Applicable		
Directorate:	Corporate Services		
Responsible Officer:	Manager Governance		
Policy Type:	Legislative		
File Number:		Version No:	002
1 st Adopted by Council:	15 March 2016 Minute No. 1277, 1278	Last Adopted by Council:	28 January 2020 Minute No. 1317
Review Period:	No later than 12 months before general election period	Next Review:	June 2022

Table of Contents

1. Purpose	3
2. Background	3
3. Scope	4
4. References	4
5. Definitions	4
6. Council Policy	5
Caretaker Period	5
Misuse of Position	6
Contact with Staff	6
Councillor Expenditure	6
Council Resources	6
Community Grants Program Funding.....	7
Decision Making	7
Extraordinary Circumstances	7
Caretaker Statement	7
Public Consultation.....	8
Council Communications and Publications	8
Social Media	9
Functions and Events	10
Access to Information	11
Candidate Information	11
Information Request Register.....	11
Role of Returning Officer.....	12
Grievances	12
Disclaimer.....	12
7. Related Documents	12
8. Appendix 1 – Guide for Staff Participating in Election Activities Outside Their Role Within Council (Not During Work Time)	13
9. Appendix 2 - Relevant Sections from the <i>Local Government Act 1989</i>	14
Section 55D Prohibition on Council.....	14
Section 76B Primary principle of Councillor conduct	14
Section 76BA General Councillor conduct principles.....	14
Section 76C Councillor Code of Conduct.....	15
Section 76D Misuse of position	16
Section 76E Improper direction and improper influence	17
Section 93A Conduct of Council during election period	18
Section 93B Council to adopt an election period policy	18
Section 95 Conduct principles.....	19
10. Appendix 3 – Election Period Certification Procedure for Council (Organisation) Publications	20

Greater Dandenong Policy

1. Purpose

The purpose of this policy is to:

- Meet the legislative requirements of the *Local Government Act 1989* (LGA);
- guide Council and Council's operational administrators during the lead up to Council General Elections;
- ensure Councillors, candidates and Council staff understand their statutory requirements and obligations during an Election Period as defined by the *Local Government Act 1989* and under the respective Councillor Code of Conduct and Staff Code of Conduct; and
- maintain the community's trust in the transparency of Council and the Council elections process.

This policy details the statutory "Election Period" requirements under sections 55D (Prohibition on Council), 76D (Misuse of Position) and 93A (Conduct of Council during Election Period) of the *Local Government Act 1989*, which applies certain limitations to the functions and powers of Council as it enters the "Caretaker Period" while ensuring that the normal business of Council continues and its responsibilities to the community are met.

2. Background

Under the LGA, the Election Period applies to all Victorian Councils. Its purpose is to ensure that public resources are not used in a way that may unduly affect election results and to prevent Councils from making certain types of decisions that may unduly limit the decision-making ability of the incoming Council.

Greater Dandenong City Council is strongly committed to ensuring fair, democratic and transparent Council elections and endorses the principles set out in this policy and the relevant sections of the *Local Government Act 1989*.

At the commencement of the Election Period, Greater Dandenong City Council will enter into what is known as the 'Caretaker Period'. This policy outlines Council's Commitment to ensuring that:

- no major policy decisions are made during the election period;
- no decisions that significantly affect the municipality or unreasonably bind the incoming Council are made during the election period;
- public resources, (including staff when employed by Council), are not used for election campaigning, or in a way that may improperly influence the result of an election;
- no electoral matter is published or distributed during the election period, unless it is simply information about the election process; and
- elected members do not receive, or are perceived to receive, any advantages or disadvantages over other candidates due to their position on Council.

3. Scope

This policy applies:

- to elected members, candidates, Council committee members and Council employees.
- throughout the Election Period (Caretaker Period) of the Greater Dandenong City Council General Elections.

4. References

- *Local Government Act 1989*
- *Local Government (Electoral) Regulations 2005*
- *Planning and Environment Act 1987*
- *Victorian Electoral Act 2002*
- Greater Dandenong City Council Councillors' Support, Reimbursement and Accountability Policy
- Greater Dandenong City Council Community Partnership Funding Policy
- Greater Dandenong City Council Community Response Grants Policy
- Greater Dandenong City Council Community Support Grants Policy

5. Definitions

Election Period	in relation to an election, means the period that: <ul style="list-style-type: none">(a) starts on the last day on which nominations for that election can be received; and(b) ends at 6pm on Election Day.
Caretaker Period	has the same meaning as 'Election Period'.
Electoral advertisement	includes a handbill, pamphlet or notice and means an advertisement, handbill, pamphlet or notice that contains electoral matter. This does not include an advertisement in a newspaper announcing the holding of a meeting or general information about the election process.
Publish	to present in a public forum by any means including verbally, via the internet or social media.
Public consultation	a process that involves inviting individuals, groups or organisations or the community in general to comment on an issue or proposed action or proposed policy, and which includes discussion of that matter with the public.

Significant decision	an irrevocable decision that commits an incoming Council to substantial financial expenditure, major operational actions or limits the freedom of an incoming Council to make a decision, or a decision that will significantly impact upon the municipality.
Electoral matter	<p>for the purpose of this policy, means any matter that is 'intended or likely to affect voting at the Council election' excluding material produced for the purpose of conducting the election.</p> <p>In the LGA, electoral matter means matter which is intended or likely to affect voting in an election but does not include any electoral material produced by, or on behalf of, the returning officer for the purpose of conducting an election.</p> <p>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:</p> <ul style="list-style-type: none">(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.

6. Council Policy

Caretaker Period

The Caretaker Period for Victorian Local Government General Elections commences at 12.00noon on the last day on which nominations for that election can be received and ceases at 6.00pm on Election Day.

During the Caretaker Period, Council will be deemed to be in election 'caretaker mode'.

The areas of Council's operations that will be impacted during the Caretaker Period by the caretaker provisions are:

- decision making (including major contract and policy decisions or decisions relating to the employment of the Chief Executive Officer);
- use of council resources;
- events;
- media;
- publications;
- public consultation;
- requests for information;
- Councillor expenditure;
- grants funding; and
- contact with staff.

The Chief Executive Officer will ensure that all employees are informed of the requirements of this policy at least 30 days prior to the commencement of the Caretaker Period.

Misuse of Position

Councillors and candidates must be given equal access to support and information in the lead up to an election. Under Section 76D of the LGA, Councillors cannot use their current position to gain access to information or resources that would otherwise not be available.

Councillors must not use their position as an elected representative or their access to Council resources to gain media attention specifically in support of an election campaign.

No member of staff, when working as an employee of Greater Dandenong City Council and during work time, including the Mayor and Councillors Executive Assistant, can undertake any tasks connected directly or indirectly with a Councillor's election campaign. What a staff member can do in their own personal time (as a private citizen) has been clarified in Appendix 1 – Guide for Staff Participating in Election Activities Outside Their Role Within Council

Under the LGA, the penalty for misuse of position is 600 penalty units or imprisonment or both.

Contact with Staff

The Chief Executive Officer or any staff member, when working as an employee of Greater Dandenong City Council and during work time, cannot be asked to undertake any tasks connected directly or indirectly with electioneering. Similarly, all candidates must respect the privacy and wishes of staff when they are not at work (i.e., not all staff wish to be approached in any way outside of business hours.)

All queries and requests for access to information during the Caretaker Period are to be directed through the Executive Management Team or the Manager Governance.

Council staff must act with integrity at all times. Any staff member who considers that they have been asked to undertake any task connected directly or indirectly with electioneering must advise their Manager, the Manager Governance and their Director immediately. (See Appendix 2 for a copy of the provisions in the LGA under section 95 Conduct Principles.)

Councillor Expenditure

During the Caretaker Period, claims for reimbursement of expenses must be used exclusively within the requirements set out in the Councillors Support, Reimbursement and Accountability Policy and under no circumstance used in relation to any election campaigning or activities.

Councillors shall not participate in any interstate or overseas travel or undertake training or professional development activities in their capacity as a Councillor during the Caretaker Period.

Council Resources

Public resources must not be used in a manner that may influence voting in an election or provide an undue advantage or disadvantage to a candidate.

Greater Dandenong Policy

During the Caretaker Period, Council resources including offices, vehicles, staff, hospitality, services, property, equipment, stationery, Council logos, photos or images must be used exclusively for the purposes of the day-to-day operations of the Council and under no circumstances used in relation to any election campaigning or activities.

In the event that Council resources may be perceived as being related to election campaigning, advice should be sought from the Chief Executive Officer. (See Appendix 2 for a copy of the provisions in the LGA under section 55D.)

Community Grants Program Funding

Assessment of all Community Grants applications will be suspended during the Caretaker Period. Council will still accept applications during this time, but they will not be considered until after the day of the election. (See Community Grants policies.)

Decision Making

Council will continue to hold Ordinary Meetings of Council and Council Committee meetings during the Caretaker Period to ensure Council continues to meet the needs of the community.

The following designated decisions are prohibited pursuant to section 93A of the LGA:

- decisions relating to the employment, remuneration or termination of a permanent Chief Executive Officer;
- decisions to enter into contracts that are valued at more than \$150,000 (for purchase of goods and services) or \$200,000 (for carrying out of works) or 1% of the Council's revenue from rates and charges in the preceding financial year (whichever is greater); or
- decisions to enter into entrepreneurial ventures that are valued at more than \$100,000 or 1% or the Council's revenue from rates and charges in the preceding financial year.

The prohibition prescribed in section 93A of the LGA also applies to delegated decisions by Council Committees or Council Staff. (See Appendix 2 for a copy of the provisions in the *Local Government Act 1989* under section 93A.)

During the Caretaker Period, Council will also not make any major policy decisions or any significant decisions that may be perceived to inappropriately bind the incoming Council or any decisions that could reasonably be made after the elections.

Extraordinary Circumstances

If Council considers that there are extraordinary circumstances where the Greater Dandenong City Council and its community would be significantly disadvantaged by Council not making a particular major policy decision, the Council can, by resolution, request an exemption from the Minister for Local Government in accordance with section 93A(2) of the Act

Caretaker Statement

During the Caretaker Period the Chief Executive Officer will ensure that a Caretaker Statement is included in every report submitted to a Council meeting for decision.

The Caretaker Statement will specify one of the following statements:

- a) the recommended decision is not a Major Policy Decision as defined in Section 93A of the *Local Government Act 1989*, or a significant decision within the meaning of Council's Election Period (Caretaker) Policy.

or

- b) 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).

Public Consultation

Public consultations should be avoided during the Caretaker Period with the exception of public consultation required under the *Planning and Environment Act 1987* or matters subject to section 223 of the *Local Government Act 1989*.

If it is imperative to the day-to-day operations of Council that a public consultation needs to be conducted during the Caretaker Period, it must be authorised in writing by the Chief Executive Officer.

Should Council be required to conduct a public consultation during the Caretaker Period, the consultation must not express any links to the election. In the likelihood that the consultation process is to become contentious or politically sensitive it should not proceed.

Council Communications and Publications

Council communications and publications in all formats (with the exception of Council's newsletter "the City") will remain distributed and accessible during the Caretaker Period, however they will be limited to promoting normal Council services and activities.

Under no circumstances are Council communications and/or publications that might influence voting or provide an undue advantage for a candidate to be distributed during the Caretaker Period. This limitation does not apply to electoral material that is only about the process of the election.

Section 55D of the LGA places limitations on Council from printing, publishing or distributing publications during the Caretaker Period. This is to ensure that Council does not utilise public funds that may influence or be seen to influence voters.

Council must not print, publish or distribute a publication during the Caretaker Period unless it has been certified in writing by the Chief Executive Officer (the Chief Executive Officer must not certify a publication that contains electoral matter). Despite section 98(2) of the LGA, the Chief Executive Officer cannot delegate the power to certify any Council publications.

Greater Dandenong Policy

Any Council publication which is potentially affected by this policy will be reviewed by the Governance Business Unit and then certified by the Chief Executive Officer in accordance with the Election Period Certification Procedure for Council (Organisation) Publications (see Appendix 3).

Every publication will contain the following statement from the Chief Executive Officer:

This document has been certified by the Chief Executive Officer in accordance with section 55D of the *Local Government Act 1989*.

Note: Some publications may need to be certified prior to the Caretaker Period if they are scheduled for distribution during the Caretaker Period.

A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute, or cause, permit or authorise to be printed, published or distributed any electoral matter in the name of Council or using Council resources during the Caretaker Period.

Under these provisions and during the Caretaker Period, Council will not publish its October edition of *the City*, Greater Dandenong's monthly magazine.

A Council employee must not make any public statement that could be construed as influencing the election. Statements of clarification may be required from time to time and these must be approved by the Chief Executive Officer.

In the event that a Council spokesperson is required for a statement, the Chief Executive Officer will fulfill that role.

During the Caretaker Period, Councillor profiles on the Council Website will be limited to a name and contact details only, for the purpose of their day-to-day role as an existing Councillor. (See Appendix 2 for a copy of the provisions in the LGA under section 55D.)

Social Media

Section 55D of the LGA applies to all council-controlled communication mediums including social media.

In the same way that Council cannot print any advertisements or notices without certification in writing by the Chief Executive Officer, Council cannot publish any notices on social media without certification in writing by the Chief Executive Officer.

Social Media includes, but is not limited to:

- Facebook;
- Twitter;
- Youtube; and
- blogs

Greater Dandenong Policy

Any subject matter that is posted on council-controlled social media sites during the Caretaker Period (including any posts by members of the public) that could be viewed as electoral or campaigning material will be removed, such as photos of Councillors at publicity events as well as Councillor profiles from Council's website (excluding Councillor contact details).

The site will be monitored regularly during business hours and any material deemed to be election campaign material by the CEO or his delegate will be removed as soon as practicable. Postings over the weekend will be monitored, however, removal may be delayed until the following business day.

While Councillors still undertake duties of their office during the Caretaker Period, they must not use Council-related material, opinion or commentary within their own personal social media sites during that period.

No media advice or assistance will be provided to Councillors in relation to election campaign matters.

Functions and Events

Normal Council events are not prohibited during the Caretaker Period, however it is position under this policy that Council keeps them to a minimum.

Any event or function held during the Caretaker Period shall relate only to the normal annual business of Council and shall not be used in connection with any election activity.

All publicity, invitations and speeches prepared for use as part of a Council event or function held during the Caretaker Period must be certified in writing by the Chief Executive Officer.

Where possible, the Chief Executive Officer, or delegate, will preside over any Council event or function held during the Caretaker Period. Councillors should avoid making a speech at any event or function during the Caretaker Period.

Where circumstances require a Councillor to speak, the speech must not contain any political references, nor shall it provide or be perceived to provide an undue advantage to the Councillor in relation to the upcoming elections.

The following events will have variations:

- Mayors Annual Event – which may be scheduled earlier in the year, so it is not held during the Caretaker Period
- Citizenship Ceremonies – will not be conducted during the Caretaker Period.

Councillors must be reminded that if representing Council at a function or event during the Caretaker Period that they are representing the Council and must not use the opportunity for electioneering.

Functions and events for the purpose of electioneering must not and will not be resourced or publicised by Council.

Access to Information

During the Caretaker Period, Councillors and candidates shall not request or receive information or advice from Council staff to support election campaigns, nor shall staff provide such information.

While it remains important that sitting Councillors continue to have access to information or advice that is necessary to fulfill their existing roles, the provision of this information must be exercised with caution and limited to current matters that relate to the day-to-day operations of Council as required by the Councillor in the performance of his/her duties as a Councillor.

Council will ensure transparency in the provision of all information and advice during the Caretaker Period. Information and briefing material prepared by staff for Councillors during the Caretaker Period will relate only to factual matters or to existing services to assist Councillors in maintaining the day-to-day operations and activities of Council.

All enquiries from candidates (including sitting Councillors) in relation to the conduct of the election will be directed to the Returning Officer.

Section 76D of the LGA prescribes serious penalties for any Councillor who inappropriately makes use of their position or information obtained in the role of Councillor, to advantage or disadvantage any person.

Any Freedom of Information applications required to be processed during the Caretaker Period on matters, costs or expenses relating to sitting Councillors will be dealt with in accordance with the *Freedom of Information Act 1982* but, where possible, outside of the Caretaker Period. (See Appendix 2 for a copy of the provisions in the LGA under section 76D.)

Candidate Information

In conjunction with the Victorian Electoral Commission and Local Government sector industry bodies, Council will provide candidates with a Councillor Candidate Information Kit and opportunities to attend a Candidate Information Session to assist them in running and nominating for Council.

The Information Kits and Candidate Information Session will outline the obligations and requirements of nominating at the 2020 Local Government Elections.

Information Request Register

Council recognises that all election candidates have equal rights to public information from Council Administration subject to the *Privacy and Data Protection Act 2014* which may prevent disclosure of certain information.

To ensure Council maintains complete transparency in the provision of all information and advice during the Caretaker Period, the Governance Unit will maintain an Elections Information Request Register during the Caretaker Period.

Greater Dandenong Policy

The Elections Information Request Register will be a public document that records all requests relating to electoral matters and non-routine requests for information by Councillors and candidates and the response given to those requests.

Responses to requests for information by candidates should only be responded to by a Manager, Director or Chief Executive Officer and should be in writing.

All requests relating directly to electoral process or campaigning matters will be referred to the Returning Officer.

Role of Returning Officer

All election related enquires from candidates, whether sitting Councillors or not, will be directed to the Returning Officer. Where the matter is outside the responsibilities of the Returning Officer, candidates will be referred to the Greater Dandenong City Council's Chief Executive Officer or his delegate.

Grievances

Council confirms that all candidates for the 2020 General Elections will be treated equally. Any complaints or grievances in relation to this policy should be referred to the Manager Governance. Any complaints or grievances in relation to the conduct of the elections should be referred to the Returning Officer appointed by the Victorian Electoral Commission.

Disclaimer

This policy should be used as a guide only and is not a substitute for legal advice. If necessary, legal advice should be sought independently to clarify the relevant aspect of *the Local Government Act 1989* and/or any other relevant regulations relating to the 2020 Council Elections Caretaker Period.

7. Related Documents

Local Government Act 1989

Freedom of Information Act 1982

Privacy and Data Protection Act 2014

Greater Dandenong City Council Code of Conduct - Councillors

Greater Dandenong City Council Code of Conduct - Staff

Greater Dandenong City Council Councillor Support, Reimbursement and Accountability Policy

Greater Dandenong City Council Community Partnership Funding Policy

Greater Dandenong City Council Community Response Grants Policy

Greater Dandenong City Council Community Support Grants Policy

8. Appendix 1 – Guide for Staff Participating in Election Activities Outside Their Role Within Council (Not During Work Time)

It is understood that members of staff may live and participate in Greater Dandenong City Council elections as part of their normal community affairs as a private citizen. Some members of staff may choose to electioneer for candidates in Greater Dandenong City Council elections.

If a member of staff has a significant role in an election candidate's campaign, there is potential for a conflict of interest between taking a position on issues and impartially performing their official Council duties. In such circumstances, the employee should discuss such potential conflicts of interest with the Manager People and Procurement or Manager Governance.

Members of staff should also be aware that there are obligations in relation to conflicts of interest under the *Local Government Act 1989* and the Greater Dandenong City Council Code of Conduct – Staff.

If a member of staff is involved in electioneering activities, they should make it clear that they are not undertaking these activities in their capacity as an employee of Council. This includes not using Council's email address, email footer or letterhead, and not wearing any council uniform or logo while undertaking those electioneering activities. In addition:

- Staff must not use any Council resources in undertaking electioneering activities.
- Staff must not undertake electioneering activities during work time.
- Staff must ensure that their electioneering activities do not influence or interfere with their performance at work.

Staff must also ensure that, if undertaking electioneering activities and making comment on Council activities that they are involved in, they make it clear that they are expressing their own views as a private citizen, and not making an official comment on behalf of Council as an employee.

9. Appendix 2 - Relevant Sections from the *Local Government Act 1989*

Section 55D Prohibition on Council

- (1) A Council must not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the election period unless the advertisement, handbill, pamphlet or notice has been certified, in writing by the Chief Executive Officer.
- (1A) For the purposes of subsection (1), the publication of a document of a kind specified in that subsection does not include:
 - (a) publication of any document published before the commencement of the election period; and
 - (b) publication of any document required to be published in accordance with, or under, any Act or regulation.
- (2) The Chief Executive officer must not intentionally or recklessly certify an electoral advertisement, handbill, pamphlet or notice during the election period unless it only contains information about the election process.

Penalty: 60 penalty units

- (3) Despite section 98(2), the Chief Executive Officer must not delegate the power to certify any advertisement, handbill, pamphlet or notice under this section to a member of Council staff.
- (4) A Councillor or member of Council staff must not intentionally or recklessly print, publish or distribute or cause, permit or authorise to be printed, published or distributed an electoral advertisement, handbill, pamphlet or notice during the election period on behalf of, or in the name of, the Council or on behalf of, or in the name of, a Councillor using Council resources if the electoral advertisement, handbill, pamphlet or notice has not been certified by the Chief Executive Officer under this section.

Penalty: 60 penalty units

Section 76B Primary principle of Councillor conduct

It is a primary principle of Councillor conduct that, in performing the role of a Councillor, a Councillor must:

- (a) act with integrity; and
- (b) impartially exercise his or her responsibilities in the interests of the local community; and
- (c) not improperly seek to confer an advantage or disadvantage on any person.

Section 76BA General Councillor conduct principles

In addition to acting in accordance with the primary principle of Councillor conduct specified in section 76B, in performing the role of a Councillor, a Councillor must:

- (a) avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations;
- (b) act honestly and avoid statements (whether oral or in writing) or actions that will or are likely to mislead or deceive a person;
- (c) treat all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, Council staff and other persons;
- (d) exercise reasonable care and diligence and submit himself or herself to the lawful scrutiny that is appropriate to his or her office;
- (e) endeavour to ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully and in accordance with the trust placed in him or her as an elected representative;
- (g) support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

Section 76C Councillor Code of Conduct

- (2) A Council must, within the period of 4 months after a general election,
 - (a) call a special meeting solely for the purpose of reviewing the Code of Conduct; and
 - (b) at that special meeting, approve any amendments to be made to the Councillors Code of Conduct determined by the Council to be necessary following the review of the Councillor Code of Conduct.
- (3) A Councillor Code of Conduct:
 - (a) must include the internal resolution procedure for dealing with an alleged contravention of the Councillor Code of Conduct by a Councillor;
 - (b) may set out processes for the purpose of resolving an internal dispute between Councillors;
 - (c) must include provisions prescribed for the purpose of this section;
 - (d) must include provisions addressing any matters prescribed for the purpose of this section;
 - (e) may include any matters relating to the conduct of Councillors which the Council considers appropriate.
- (5) A Councillor Code of Conduct must not be inconsistent with any Act or regulation.
- (5A) A Councillor Code of Conduct is inoperative to the extent that it is inconsistent with any Act or regulation.
- (6) A copy of the current Councillor Code of Conduct must be:
 - (a) given to each Councillor;
 - (b) available for inspection by the public at the Council office and any district offices;
 - (c) published on the Council's Internet website maintained under section 82A.

6A Within one month of amendments to a Councillor Code of Conduct being approved in accordance with subsection (2), a Councillor must make a declaration stating that they will abide by the Councillor Code of Conduct.

(6B) A declaration by a Councillor under subsection (6A) must be:

- (a) in writing; and
- (b) witnessed by the Chief Executive Officer.

Section 76D Misuse of position

(1) A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position:

- (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
- (b) to cause, or attempt to cause, detriment to the Council or another person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

(2) For the purpose of this section, circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include:

- (a) making improper use of information acquired as a result of the position he or she held or holds; or
- (b) disclosing information that is confidential information within the meaning of section 77(2); or
- (c) directing or improperly influencing, or seeking to direct or improperly influence, a member or Council staff in contravention of section 76E; or
- (d) exercising or performing, or purporting to exercise or perform a power, duty or function that he or she is not authorised to exercise or perform; or
- (e) using public funds or resources in a manner that is improper or unauthorised; or
- (f) failing to disclose a conflict of interest as required under this Division.

- (3) This section:
- (a) has effect in addition to, and not in derogation from, any Act or law relating to the criminal or civil liability of Councillors or members of special committees; and
 - (b) does not prevent the institution of any criminal or civil proceedings in respect of that liability.

Section 76E Improper direction and improper influence

- (2) A Councillor must not direct, or seek to direct, a member of Council staff:
- (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
 - (b) in the exercise of power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
 - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
 - (d) in relation to advice provided to the Council or special committee including advice in a report to the Council or special committee.

Penalty: 120 penalty units

- (2A) If an application for a Councillor Conduct Panel to make a finding of serious misconduct by a Councillor has been made in respect of conduct in contravention of subsection (2), the Councillor must not be charged with an offence against that subsection in respect of the same conduct unless:
- (a) the Councillor Conduct Panel application is withdrawn; or
 - (b) the Chief Municipal Inspector requires the Councillor Conduct Panel to suspend or stop consideration of the matter under section 81P; or
 - (c) before the Councillor Conduct Panel makes a determination, the Councillor ceases to be a Councillor; or
 - (d) the matter or behaviour that is the subject of an application for a finding of serious misconduct has been referred to another law enforcement agency.
- (2B) If a Councillor is charged with an offence against subsection (2), an application for a Councillor Conduct Panel to make a finding of serious misconduct by the Councillor must not be made for the same conduct in respect of which the Councillor has been charged.
- (1) This section does not apply to a decision of the Council or a special committee that is made within the powers, duties or functions conferred under this or any other Act.

Section 93A Conduct of Council during election period

- (1) Subject to this section, a Council, a special Committee or a person acting under a delegation given by the Council must not make a major policy decision during the election period for a general election.
- (2) If a Council considers that there are extraordinary circumstances which require the making of a major policy decision during the election period, the Council may apply in writing to the Minister for an exemption from the application of this section to the major policy decision specified in the application.
- (3) If the Minister is satisfied that there are extraordinary circumstances, the Minister may grant an exemption from the application of this section to the major policy decision specified in the application subject to any conditions or limitations that the Minister considers appropriate.
- (4) A major policy decision made in contravention of this section is invalid.
- (5) Any person who suffers any loss or damage as a result of acting in good faith on a major policy decision made in contravention of this section is entitled to compensation from the council for that loss or damage.
- (6) In this section, a major policy decision means any decision:
 - (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;
 - (b) to terminate the appointment of a Chief Executive Officer under section 94;
 - (c) to enter into a contract the total value of which exceeds whichever is the greater of:
 - (i) \$100,000 or such higher amount as may be fixed by Order in Council under section 186(1); or
 - (ii) 1% of the Council's revenue from rates and charges levied under section 158 in the preceding financial year;
 - (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.

Section 93B Council to adopt an election period policy

- (1) A Council must prepare, adopt and maintain an election period policy in relation to procedures to be applied by Council during the election period for a general election.
- (2) A Council must prepare and adopt an election period policy as required by subsection (1):
 - (a) by 31 March 2016; and

Greater Dandenong Policy

- (b) following the general election on 22 October 2016, continue to maintain the election period policy by reviewing and, if required, amending the policy not later than 12 months before the commencement of each subsequent general election period.
- (3) An election period policy must include the following:
 - (a) procedures intended 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;
 - (c) procedures to ensure that access to information held by Council is made equally available and accessible to candidates during the election.
- (4) A copy of the election period policy must:
 - (a) be given to each Councillor as soon as practicable after it is adopted; and
 - (b) be available for inspection by the public at the Council office and any district offices; and
 - (c) be published on the Council's Internet website maintained under section 82A.
- (5) In this section, *inappropriate decisions* made by a Council during an election period includes any of the following:
 - (a) decisions that would affect voting in an election;
 - (b) decisions that could reasonably be made after the election.

Section 95 Conduct principles

- (1) Council staff must in the course of their employment:
 - (a) act impartially;
 - (b) act with integrity including avoiding conflicts of interest;
 - (c) accept accountability for results;
 - (d) provide responsive service.
- (2) Nothing in subsection 9(1)(c) affects the granting of an indemnity to a member of Council staff in respect of any liability or limits the effect of-
 - (a) any such indemnity, whether granted before or after the commencement of section 67 of the *Local Government (Democratic Reform) Act 2003*; or
 - (b) any immunity conferred on a member of Council staff by or under any Act, whether before or after that commencement.

10. Appendix 3 – Election Period Certification Procedure for Council (Organisation) Publications

The process

- Please understand and read through Council's Election Period (Caretaker) Policy.
- If you are intending to print, publish or distribute any advertisement, handbill, pamphlet or notice during the election period then read through the document you have produced carefully and check that it does not contain any electoral or electoral related matter.
- The document must also be checked by Governance and certified by the CEO during the election period.
- Please email the objective reference of any publication intended to be distributed during the election period to zzCaretaker@cgd.vic.gov.au so that arrangements for certification can be made. This DOES NOT include operational letters to residents from Council officers that respond to queries, registrations, requests for permits, payments, immunisations, etc. Normal operations of Council continue during a Caretaker Period. However, if you are uncertain, send your publication to the email address above. Governance will read the proposed publication and check that no election material is present.
- Governance will send the proposed publication to the CEO.
- The CEO will approve/not approve and certify in writing to Governance/return the document to Governance.
- Governance will advise the submitter of the outcome of the certification process and what is to be included or changed in the publication.
- Governance will arrange for a copy (alias) of the document to be saved in a specific election period folder within Objective.

Please do not send documents directly to the CEO. Turnaround time (maximum) for having responses back is two working days. We will always ensure that urgent material is prioritised.

Your request to Governance

This could read something like:

This material has been checked and does not contain any electoral or electoral related matter to the best of my knowledge. In accordance with the requirements of section 55D of the Local Government Act 1989, could you please arrange certification in writing that the material is authorised to be printed, published or distributed.

Standard certification for CEO

This document has been certified by the Chief Executive Officer in accordance with section 55D of the *Local Government Act 1989*.