

CM14.4. 2021 Local Government Elections: Caretaker Period, Electoral Matter and the Regulated Period, and Use of Council Resources for election campaign purposes

DATE	15 June 2021	FIL REFERENCE	FIL19/03469
CONFIDENTIAL	No		
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Purpose of Report

The purpose of this report is to:

- Inform Council about the caretaker provisions pursuant to the *Local Government Act 1993* and the *Local Government (General) Regulation 2005*;
- Remind Council of the potential for council publications to be considered 'electoral material' during the 'regulated period'; and
- Remind Council of the obligations of council officials in relating to the use of council resources.

Background

Local government elections for the Albury City Council Local Government Area will be held on Saturday, 4 September 2021. Similar to the federal and state governments, local councils assume a 'caretaker' role during the election period to ensure that major decisions are not made which would limit the actions of an incoming council. The caretaker period for the September 2021 ordinary local government elections is from 12:01am Saturday 7 August 2021 until 6pm Saturday, 4 September 2021.

Council's Code of Conduct and the Councillors Payment of Expenses and Provision of Facilities Policy refer to the use of Council resources during local government elections. The Code of Conduct deems the interest of a councillor in their re-election to public office to be a personal interest.

The regulated period, which affects the publication and distribution of material regarded as 'electoral matter', will commence on 26 July 2021.

Issues

Caretaker period

Clause 393B of the *Local Government (General) Regulations 2005* provides that Council, the Chief Executive Officer or any other delegate of the council (other than a Joint Regional Planning Panel or the Central Sydney Planning Committee) must not exercise the following functions during the four weeks preceding the date of an ordinary election ('caretaker period'):

- Entering a 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 under section 82 of the *Environmental Planning and Assessment Act 1979*, or such a deemed refusal arose before the commencement of the caretaker period. The term 'controversial development application' means a development application under the *Environmental Planning and Assessment Act 1979* (NSW) 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.).

In particular cases, such a function may be exercised with the consent of the Minister.

The regulated period and publication of 'electoral matter'

As per Attachment 1, OLG Circular 21-12 '*Electoral matter and use of council resources prior to local government elections*', Council should also be aware that publications that promote the current elected Council's policies or emphasises the achievements of an elected member or group may potentially fall within the definition of 'electoral matter' and thereby constitute 'electoral material' under clause 356A of the *Local Government (General) Regulation 2005*. 'Electoral material' is subject to certain regulatory requirements during the 40 days preceding the election – that is, from Monday 26 July 2021.

Electoral matter broadly includes any matter that is intended or likely to affect voting in an election. The name and likeness of a candidate also fall within the definition of electoral matter.

In practical terms, council publications that may be affected include websites, newsletters, media releases, published speeches, brochures on services/facilities, advertisements, letters to residents and newspapers.

Use of Council resources during local government elections

The Office of Local Government has advised to ensure transparency and accountability and community confidence in councils during local government elections, it is important that council officials observe their obligations in relation to the use of council resources.

All council officials must use council resources ethically, effectively and carefully in exercising their official functions. Council officials must not use resources for private purposes unless the use is lawfully authorised and proper payment is made where appropriate.

The AlburyCity Code of Conduct requires that council officials, including Councillors, must:

- Be scrupulous in their use of council property, including intellectual property, official services, facilities, technology and electronic devices.

- Not permit the misuse of council property by any other person or body.
- Avoid any action or situation which could create the impression that council property, official services or public facilities are being improperly used for their own or any other person's or body's private benefit or gain.
- Not seek or obtain, either directly or indirectly, any benefit or other improper advantage for themselves, or any other person or body, from the use of council information.
- Not convert any property of the council to their own use unless properly authorised.
- Not use council resources (including council staff), property or facilities for the purpose of assisting their election campaign or the election campaigns of others (unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for the use of the resources, property or facilities).
- Not use council letterhead, council crests, council email or social media or other information that could give the impression it is official council material for the purpose of assisting their election campaign or the campaign of others, or for other non-official purposes.

Council resources must also be used in accordance with council policies such as the Councillors Payment of Expenses and Provision of Facilities policy.

Misuse of council resources may be a breach of the Code of Conduct and may result in disciplinary action. It may also result in action by the NSW Office of Local Government and other regulatory agencies, such as the Independent Commission Against Corruption or the NSW Ombudsman.

Risk

- **Business Risk** – Council officers are planning ahead for any major contracts or projects that do not meet the restrictions outlined in the Regulations to ensure that they are implemented before the caretaker period begins, if required, or are not considered until after the new Council term begins.
- **Corporate Risk** – If Councillors and council staff do not comply with the regulations and requirements relating to the caretaker period and the regulated period, there could be significant legal and reputational risks for AlburyCity.
- **WHS and Public Risk** – No risks identified.
- **Environmental Risk** – No risks identified.
- **Delivery Program Risk** – No risks identified.

Community Engagement

Information and links for further information about the ordinary local government elections on 4 September 2021 are available on the AlburyCity website. The first (in person) candidate information session was held on 10 June 2021, and there is another (online) session scheduled on 13 July 2021. Registration is still open for the online session on 13 July 2021.

Conclusion

The local government election for AlburyCity will take place on Saturday, 4 September 2021. Clause 393 of the *Local Government (General) Regulation 2005* outlines the caretaker provisions that must be

exercised during the four weeks preceding an ordinary election i.e. midnight Friday 6 August 2021 to 6pm Saturday 4 September 2021.

AlburyCity's Code of Conduct and Councillors Payment of Expenses and Provisions of Facilities Policy also refer to the importance of council officials complying with their obligations regarding the use of council resources during local government elections and the caretaker period.

Recommendation

That Council notes the operation of the caretaker period, the regulated period, and the Code of Conduct obligations regarding the use of council resources during the 2021 local government elections.

Attachments

1. OLG Circular 21-12 Electoral matter and use of council resources prior to local government elections (DOC21/136219).