

# Pre-election guide

for councils

---

2021



---

Office of Local Government, Department of Planning, Industry and Environment  
5 O'Keefe Avenue      Locked Bag 3015      Phone 02 4428 4100      [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au)  
NOWRA NSW 2541      NOWRA NSW 2541      TTY 02 4428 4209      [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au)

Special arrangements can be made for our publications to be provided in large print or an alternative media format. If you need this service, please contact Client Services on 02 4428 4100.

#### DISCLAIMER

While every effort has been made to ensure the accuracy of the information in this publication, the Department of Planning, Industry and Environment expressly disclaims any liability to any person in respect of anything done or not done as a result of the contents of the publication or the data provided.

© NSW Department of Planning, Industry and Environment 2021  
Produced by the Department of Planning, Industry and Environment

---

---

## Introduction

This Guide provides guidance to councils on key tasks that need to be completed prior to the council election. The Guide also provides guidance to councils on the rules, restrictions and other considerations that apply to the decisions councils make and the way they exercise their functions in the lead up to the election.

---

## Preparation and confirmation of non-residential electoral rolls

Under the *Local Government Act 1993* (the Act), all non-resident owners, occupiers and ratepaying lessees of rateable land in each local government area are eligible to vote at council elections. These electors are referred to below as 'non-residential electors'.

There are two non-residential rolls:

- the roll of non-resident owners of rateable land, and
- the roll of occupiers and rate-paying lessees.

These are referred to below as the non-residential rolls.

After each election, the non-residential rolls lapse and the general manager must prepare new rolls for the next election and keep them updated.

Councils need to ensure that everyone eligible to vote at their elections, including non-residential electors, can do so.

Councils should provide information, including eligibility criteria and the process for making a

claim for inclusion on the non-residential rolls on their websites.

Councils should also make their customer service staff aware of this so that they can assist any person wishing to make a claim for inclusion on the rolls.

The non-residential rolls must include the names of the persons who:

- have applied, at any time, for the inclusion of their name in the relevant roll, and
- on the closing date (40 days prior to the election) are, in the opinion of the general manager, qualified for inclusion in that roll.

This means that when preparing the non-residential rolls, the general manager must:

- include the names of all persons who have previously applied for enrolment, and
- check that those persons continue to be eligible to be enrolled.

Forty days before election day, general managers must finalise the non-residential rolls.

In the case of council elections administered by the Electoral Commissioner, the general manager must certify each roll as being, in the general manager's opinion, a roll of the persons who on the closing date are qualified for inclusion in the roll. The Commissioner must confirm the non-residential rolls after they are certified by the general manager.

In the case of council elections administered by a provider other than the NSW Electoral Commissioner, the general manager must confirm each roll if, in the general manager's opinion, the roll contains the names of the persons who on the closing date are qualified for inclusion in the roll.

Further information about the preparation of non-residential rolls is available at the NSW Electoral Commission's website at [www.elections.nsw.gov.au](http://www.elections.nsw.gov.au).

---

## Use of council resources, council publications and other activities prior to the elections

Councils and all council officials should be mindful of the need to maintain community confidence in the integrity of the performance of the council's functions and activities in the lead-up to elections.

Councils also need to be mindful of how the community may perceive any of their activities or actions during this time.

### Use of council resources for election purposes

Council resources (including council information) are public resources and must be used ethically, effectively, efficiently and carefully.

The rules governing the use of council resources for election purposes are prescribed under the *Model Code of Conduct for Local Councils in NSW* (the Model Code of Conduct) and councils' codes of conduct. There are two key obligations:

- Cause 8.17: This provides that council resources (including council staff), property or facilities must not be used for the purpose of assisting anyone's election campaign unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.
- Cause 8.18: This provides that council letterhead, council crests, council email or social media or other information that

could give the appearance it is official council material must not be used for the purpose of assisting anyone's election campaign.

Councils and all council officials should consider the following matters to ensure compliance with clauses 8.17 and 8.18:

- council "resources" include council ICT (including phones, social media sites, phone, email addresses), intellectual property, staff and council facilities
- council resources including intellectual property should not be used by candidates in such a way to suggest they are supported or endorsed by the council
- the prohibition on the use of council resources does not only apply to each councillor's election campaign – it also applies to the election campaigns of others including other candidates
- the prohibition on the use of council resources also applies to council staff campaigning for election to another council or council staff supporting the election campaign of other candidates
- it is permissible to use council facilities but on the same terms as all other candidates including the payment of any advertised fee for use
- breaches by councillors and staff are grounds for disciplinary action.

### Staff political activities

There is no outright ban on staff participation in candidates' campaigns under the Model Code of Conduct.

This is in recognition of the implied freedom of political communication under the Australian Constitution. This provides that legislation cannot impermissibly burden political communication (including participation in political activities) other than for a legitimate public purpose and only in a way that is proportionate to that purpose.

However, clause 7.5(b) of the Model Code of Conduct places an obligation on staff to

ensure that any participation in political activities outside the service of the council does not interfere with the performance of their official duties.

Risks to manage in relation to staff participation in political activities include the following:

- staff do not participate in campaigning activities during work time
- staff do not use council resources for campaigning purposes (see clauses 8.17 and 8.18)
- managing interactions between staff and councillors whose campaigns they are supporting
- managing community perceptions arising from council staff participation in councillors' campaigns.

## Council publications during the “regulated period”

To keep elections fair, and ensure voters are not misled, there are strict rules about the information that candidates and their supporters can publish or distribute.

These rules are prescribed under the *Local Government (General) Regulation 2021* (the Regulation) and are enforced by the relevant election manager.

These rules apply during what is known as the “regulated period”. The “regulated period” starts when the electoral rolls close 40 days before election day and ends on election day.

The key requirement is that all “electoral material” published or distributed during the “regulated period” must contain the name and address of the person who authorised the material and the name and address of the printer.

This is an important electoral integrity measure which is designed to ensure electors can verify the bona fides of electoral material that is printed, published, distributed, or publicly

displayed for campaigning purposes during the “regulated period”.

The key definitions are contained in clause 356A of the Regulation.

“Electoral material” is defined very broadly under the Regulation. It means anything, including without limitation a ‘how-to-vote’ card, poster or advertisement, containing “electoral matter” (whether in a tangible or an electronic form).

“Electoral matter” is in turn defined to include:

- any matter that is intended or calculated or likely to affect or is capable of affecting the result of any election held or to be held or that is intended or calculated or likely to influence or is capable of influencing an elector in relation to the casting of his or her vote at any election, or
- the name of a candidate at any election, the name of the party of any such candidate, the name or address of the committee rooms of any such candidate or party, the photograph of any such candidate, and any drawing or printed matter that purports to depict any such candidate or to be a likeness or representation of any such candidate.

Councils need to be aware that their publications may contain “electoral matter” and may therefore be inadvertently captured within the definition of “electoral material”.

Whether a council publication constitutes “electoral material” is an assessment that needs to be made by each council on a case-by-case basis.

A council publication that makes no reference to the mayor or councillors who are candidates and does not carry their images or statements will not constitute “electoral material” if it is not intended or likely to affect voting at the election.

However, council publications that promote the achievements of the council may potentially have this effect and therefore may

constitute “electoral material” even if they do not carry the images or statements of the mayor or councillors.

Affected publications may include:

- the mayoral column where the mayor is a candidate
- any publication or material carrying the name and/or images of the mayor or councillors who are candidates
- the end of term report – because this identifies the activities and achievements of the council over its preceding term, it has the potential to impact on voting at the election (further information on this is provided below).

The requirements that apply to council publications published or distributed during the “regulated period” containing “electoral matter” can be easily satisfied by including in it the name and address of the general manager and the printer of the publication.

However, the perceptions that this may give rise to, including that the council is a participant in the election and that council resources may be seen to have been utilised to support the campaigns of the incumbent mayor and councillors, are not as easily addressed.

Mitigation strategies to address this risk may include:

- publishing the mayoral column in the 40 days preceding the election as a generic council column
- deferring issuing potentially affected publications until after the election.

## Publication of the end of term report

Under the currently applicable (March 2013) *Integrated Planning and Reporting Guidelines for Local Government in NSW*, a report on the progress of implementation of the Community Strategic Plan (the end of term report) must be presented at the final meeting of an outgoing

council.

Because the end of term report identifies the activities and achievements of the council over its preceding term it may potentially constitute “electoral material” for the purposes of the Regulation because of its potential to impact on voting at the election.

The provisions in the Regulation relating to “electoral material” do not prevent the end-of-term report being presented to the council or from being published on a council’s website as part of the business papers of the meeting.

However, councils should be mindful of the requirements of the Regulation relating to “electoral material” when issuing the end of term report as a publication during the “regulated period”.

## Attendance at community events

Mayors and councillors will continue to need to exercise their official functions in the lead up to the election. This is both permissible and appropriate.

Mayors or councillors who are candidates may continue to attend or preside over council-arranged or community events in the lead up to the election in an official capacity.

However, mayors or councillors who are candidates must not use council arranged events that they attend in an official capacity to actively campaign for re-election.

## Media comment

There is nothing to prevent the mayor or councillors who are candidates from offering media comment, provided that comment is not made in an advertisement, newspaper column, or a radio or television broadcast paid for by the council or produced by the council or with council resources.

When making media and any other public comment, mayors and councillors should continue to comply with the council's adopted media policy.

---

## Council decision-making

### Caretaker restrictions

Under the Regulation, councils are required to assume a "caretaker" role in the four weeks preceding the election day (see clause 393B).

The caretaker restrictions are designed to prevent outgoing councils from making major decisions that will bind the new council or limit its actions.

The caretaker period for the 4 December 2021 local government elections commences on Friday 5 November 2021 and ends on Saturday 4 December 2021.

During the caretaker period, councils, general managers and other delegates of councils (other than a joint regional planning panel, a local planning panel or the Central Sydney Planning Committee) must not exercise the following functions:

- enter into any contract or undertaking involving an expenditure or receipt by the council of an amount equal to or greater than \$150,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger)
- determine 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, or
- appoint or reappoint the council's general manager (except for temporary appointments).

"Controversial development application" means a development application for designated development under section 4.10 of the *Environmental Planning and Assessment Act 1979* for which at least 25 persons have made submissions during community consultation.

Councils should plan ahead to avoid the need to make these types of decisions during the caretaker period.

In certain circumstances, these functions may be exercised with the approval of the Minister.

### Timing of the first meeting of the new council following the election

In response to changing postal delivery services, on the advice of the NSW Electoral Commission, the time for the receipt of postal votes has been extended to 13 days after election day.

This change has been made to provide a greater opportunity for valid postal votes to be received and counted.

This change will mean that the council elections held on 4 December 2021 are not likely to be declared before 21 December 2021.

Councils should schedule the timing of their first meetings following the election on this basis.

Councils that elect their mayor must hold a mayoral election within 3 weeks of the declaration of the ordinary election and are required to schedule a meeting for this purpose within 3 weeks of the declaration of the election.

When scheduling the first meeting following the election, councils will also need to factor in the Christmas/New Year period.

## Delegations during the election period

Under the Act, all current councillors and mayors elected by the councillors cease to hold their civic offices on election day 4 December 2021.

This means that councils will be without a governing body from 4 December 2021 until the declaration of the election between 21 and 23 December 2021 at the earliest.

Because the declaration of council elections will coincide with the Christmas/New Year period, it is possible that some councils may not meet for some time after election day.

As noted above, councils that elect their mayor will be required to meet within 3 weeks of the declaration of the ordinary election to hold a mayoral election.

Prior to the election, councils should ensure that appropriate delegations are in place for their general managers so that they can continue to exercise the functions of the council as required in the period between election day and the first meeting of the council following the election.

Councils may wish to consider delegating all delegable functions to the general manager at the last meeting before the election for the period between election day and the first meeting of the council following the election.

Councils that elect their mayors will not have a mayor in the period between election day and the first meeting after the election when the mayoral election is held.

There is nothing to prevent councils from authorising the general manager to exercise the civic and ceremonial functions normally exercised by the mayor during this period in the absence of a mayor.

The Office of Local Government is aware that some councils that elect their mayors have expressed a preference that the outgoing

mayor should continue to exercise the functions of mayor in the period between election day and the holding of the mayoral election after the election.

There is nothing to prevent councils from authorising the outgoing mayor to continue to exercise the civic and ceremonial functions normally exercised by the mayor during this period in the absence of a mayor should they wish to do so, (even though the outgoing mayor will have ceased to hold any civic office in the council as of the day of the election).

Given the possibility that the outgoing mayor may not be re-elected at the election and may therefore cease to be accountable to the council and the community, councils should refrain from making any delegations to the outgoing mayor.



