

11.5. Consideration of Election Protocols for Elected Members

Prepared for: Council
Report No. GOV1844
Activity: Governance Report
Author: Nick Donnelly, General Manager Corporate Services
Endorsed by: Sarah Gardner, Chief Executive
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PURPOSE

- [1] To present Council's *'Protocols for Elected Members in an election year'* for the information and noting of Council.

EXECUTIVE SUMMARY

- [2] The attached *'Protocols for Elected Members in an election year'* (the protocols) were emailed to Councillors in early June. They were discussed during the Finance and Corporate Committee meeting on 12 June 2019. At that meeting it was resolved that the protocols should be tabled at the next Council meeting for further discussion.
- [3] The protocols have been prepared by SOLGM as part of their Code of Good Practice for the Management of Local Authority Elections and Polls that electoral officers and Councils are encouraged to follow and are based on the Office of the Auditor General guidelines. They guide elected members who are seeking re-election in the upcoming Local Authority elections to be held on 12 October 2019.
- [4] They aim to protect elected members and Council from electoral challenge either during or after an election. The most obvious challenge option is via a petition for inquiry available to any candidate or group of electors under S 93 of the Local Electoral Act 2001.
- [5] It is important that incumbent elected members do not, or are not perceived to, gain an unfair advantage during the election period. It is therefore important that campaigning for re-election is clearly separated from the ongoing role as an existing Councillor.
- [6] The protocols offer practical guidance on how to achieve this. The key underlying principle is that these protocols apply primarily to the use of Council resources and clearly states these should only be used for Council purposes and that the use of Council resources for election purposes is unacceptable.
- [7] The protocols do not prevent or restrict elected members from campaigning providing they utilise their own resources just as any other candidate is entitled to do.
- [8] As the protocols are guidelines there is no need for Council to formally adopt them. Further our advice is that in the interests of separation between the setting of these guidelines for current councillors and those standing again, adoption is not appropriate.

RECOMMENDATION

That the Council:

- a) **Receives** this report.
- b) **Notes** the attached Protocols for Elected Members in an election year.

DISCUSSION

- [9] The following is general comment and background to the history of the Elected Member Protocols provided by Council's electoral officer.
- [10] The Elected Member Protocols are an extract from the 'Good Practice for Managing Public Communications by Local Authorities' originally prepared by the Office of the Auditor General in 1996 and last updated by the then Auditor General (Kevin Brady) in 2004.
- [11] The protocols are reviewed by SOLGM for each triennial election and are updated to record the correct pre-election dates. They are then incorporated into the SOLGM 'Code of Good Practice for the Management of Local Authority Elections and Polls' publication that electoral officers and officials nationally are expected to follow. Base templates are provided by SOLGM for councils to add details of their communication policies, social media channels etc before distributing to elected members and staff. Electoral officers adhere to the requirements in that code and the Elected Member Protocols are distributed to elected members nationally prior to triennial elections.
- [12] The protocols are essentially guidelines only and are expected to be applied as a code of good practice to protect the council and elected members from electoral challenge either during or after an election. The most obvious challenge option is via a petition for inquiry available to any candidate or group of electors under S 93 of the Local Electoral Act 2001.
- [13] There is no attempt within the protocols to curb the governance requirements of elected members. The protocols specifically note that elected members are expected to continue to carry out their governance roles but that they and council staff need to be mindful that they do not promote or be perceived to promote the re-election prospects of elected members. That guidance is included to minimise the risk of challenge to any election result.
- [14] Restrictions to media access are included in the protocols to manage the perception that elected members may gain an advantage by having access to a media channel that is only available to them as elected members i.e. it is less about what is being communicated but rather who has the opportunity to broadcast the message.

SPECIFIC QUERIES

- [15] The following are the response from Council's electoral officer to queries raised during the Finance and Corporate Committee on 12 June 2019.

[16] Would councillors who contribute to publications or media presentations that are not council controlled be covered by these protocols and be required to suspend them?

[17] If the elected member was standing for re-election, then potentially yes, but it would depend on whether the media opportunity made available to them arose from their status as an elected member. One test would be; was the media opportunity in place before they were elected to office? Another test would be is the media opportunity expected to continue after the election irrespective of whether the elected member continues in office?

[18] Assuming the media opportunity was **not** made available to them by virtue of their elected member status, then the matter of management of commentary on council related content may need to be considered during the pre-election period. As an initial step, I'd recommend the elected member includes a declaration statement something like:

"The following commentary is provided by Xxxxx Xxxxxx who is a candidate in this year's triennial elections for Xxxxxxx Xxxxxxx Council. The commentary is his/hers and does not reflect a council viewpoint."

[19] It is expected that the member would not conduct any campaigning via that channel.

[20] If the media opportunity was made available to the elected member by virtue of their elected member status and they wanted to continue to use that during the pre-election period then I'd recommend they include a declaration statement something like:

"The following commentary is provided by Xxxxx Xxxxxx who is a candidate in this year's triennial elections for Xxxxxxx Xxxxxxx Council. The commentary is his/hers and does not reflect a council viewpoint. Election rules require this commentary to be treated as an advertisement and authorised by the candidate."

[21] And a closing sentence of:

"Authorised by Xxxxxx Xxxxxxxx [or agent] of XXXXX, XXXXX [or agents physical address]."

[22] The cost of the ad would then need to be accounted for in the candidate's election expense and donations return, either as an expense if paid for themselves or a donation if paid for by someone else.

[23] Are phones, laptops etc that are provided by the elected members subject to these protocols if they are subject to some form of reimbursing allowance?

[24] No. If the asset is owned by the elected member it is their resource and they can be expected to be able to use it for personal use when required.

ATTACHMENTS

1. ORC Election Protocols for Elected Members 2019 [**11.5.1 - 7 pages**]