

Circular Details	21-12 / 11 June 2021 / A755939
Previous Circular	17-12 – “Electoral matter” and use of council resources prior to local government elections
Who should read this	Councillors / General Managers / All council staff
Contact	Council Governance Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Information / Council to Implement

“Electoral matter” and use of council resources prior to local government elections

What’s new or changing

- Council officials must not use council resources, property (including intellectual property), and facilities for the purposes of assisting their election campaign or the election campaign of others unless the use is lawfully authorised and proper payment is made where appropriate.
- In the 40 days preceding the election, councils need to consider whether their publications could amount to an “electoral matter”.

What this will mean for your council

- Council officials must use council resources lawfully, ethically, effectively and carefully keeping in mind the council’s code of conduct and other policies such as the policy on the payment of expenses and the provision of facilities to mayors and councillors.
- “Electoral matter” is defined under clause 356A of the *Local Government (General) Regulation 2005*, and broadly includes any matter that is intended or likely to affect voting in an election. The name, photograph and likeness of a candidate fall within the definition of “electoral matter”.
- Council publications that promote the achievements of the council may also potentially fall within the definition of “electoral matter”.

Key points

- Under the *Model Code of Conduct for Local Councils in NSW*, the following **must not** be used for the purpose of assisting anyone’s election campaign:
 - council resources, property or facilities (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); and
 - council letterhead, council crests and other information that could give the appearance it is official council material.
- Breaches of a council’s code of conduct may result in disciplinary action.
- Councils and 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 should be mindful of how the community may perceive any of their activities or actions during this time.

Where to go for further information

- For further clarification on “electoral matter”, refer to “Frequently Asked Questions” attached to the Circular.
- For further information, contact the Office’s Council Governance Team on 4428 4100.



Luke Walton
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Local Government, Planning and Policy

Frequently Asked Questions

Q. What is “electoral matter”?

“Electoral matter” is defined under clause 356A of the *Local Government (General) Regulation 2005* (the Regulation) and broadly includes any matter that is intended or likely to affect voting in an election. The name, photograph and likeness of a candidate also fall within the definition of electoral matter.

The regulatory requirements that relate to “electoral matter” and “electoral material” under the Regulation apply in the 40 days preceding the election.

Q. Can council publications be “electoral matter”?

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 matter 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 matter” even if they do not carry the images or statements of the Mayor or councillors. This potentially includes end-of-term reports. More information on this is provided below.

Ultimately whether a council publication constitutes “electoral matter” is an assessment that needs to be made by each council on a case-by-case basis. If a council is in doubt, then it should defer issuing the publication until after the election.

Q. Does the Mayoral column constitute “electoral matter”?

Yes. Because the Mayoral column carries the Mayor’s image and name, it will constitute electoral matter if the Mayor is a candidate. Councils should instead consider publishing the Mayoral column in the 40 days preceding the election as a generic council column.

Q. Does the end-of term report constitute “electoral matter”?

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

Q. Can the end of term report be reported to council during caretaker period?

Yes. The end-of-term report *must* be presented to the final meeting of an outgoing council. 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 made available on a council’s website as part of the business papers of the meeting.

However, because the final meeting of the outgoing council will normally fall within the 40 day “regulated period” preceding the election, councils should refrain from publishing the end-of-term report as a separate publication until after the elections on 4 September 2021. The end-of-term report should be appended to that year’s annual report.

Q. Can mayors or councillors who are candidates attend council-arranged or community events?

Nothing in this circular should be interpreted as preventing the Mayor or councillors who are candidates from attending or presiding over council-arranged or community events in the lead up to the election.

Q. Can mayors or councillors who are candidates make “political statements” at council-arranged events?

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. However, nothing under the Model Code of Conduct would serve to preclude a councillor who is a candidate from expressing their political views or making political statements at such events.

Q. Can the mayor or councillors who are candidates make comments in the media?

This circular does not seek 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 and the comment is not inconsistent with the council’s adopted media policy.