

Circular Details	17-12 / 14 June 2017 / A547255
Previous Circular	16-20
Who should read this	Councillors / Administrators / General Managers / All council staff for the 46 councils with elections on 9 September 2017
Contact	Council Governance Team - 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 (including Administrators) 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 (including councils currently under Administration) need to consider whether their publications could amount to an “electoral matter”.

What this will mean for your council

- Council officials (including Administrators) 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” for the purposes of the *Local Government (General) Regulation 2005* 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, 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 (including Administrators) 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 (including those currently under administration) 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.



Tim Hurst
Acting Chief Executive

Frequently Asked Questions

Q. What is “electoral matter”?

“Electoral matter” for the purposes of the *Local Government (General) Regulation 2005* (the Regulation) 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 councillors or Administrators who are candidates and does not carry their images or statements would 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 councillors or Administrators who are candidates. 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. The same consideration applies to Administrators’ columns where the Administrator is a candidate. Councils should instead consider publishing the Mayoral or Administrator’s 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 9 September 2017. The end-of-term report should be appended to that year’s annual report.

The 20 new councils proclaimed in 2016 are not required to prepare an end-of-term report.

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

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

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

Councillors and Administrators 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 would serve to preclude a councillor or an Administrator who is a candidate from expressing their political views or making political statements at such events.

Q. Can councillors and Administrators who are candidates make comments in the media?

This circular does not seek to prevent councillors or Administrators 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.