

Communications in the pre-election period



FOREWORD

This guidance sets out principles and guidelines for local authorities and their members to apply when developing and delivering communications during the pre-election period. It may also assist elected members seeking to distinguish between their campaigning and council responsibilities.

It is important that local authorities be able to continue to operate effectively during the pre-election period, but additional care should be taken during this time. Public interest in, and scrutiny of, communications by councils and their elected members is likely to be greater during this period.

With the development of tools such as social media, guidance can not possibly contemplate every potential situation that may arise. As a result, this guidance is principle based – though there are a number of worked examples (based on real-life issues that have arisen). These serve as a ‘common sense’ basis for the application of good judgement backed by appropriate advice.

There are cases or circumstances that are relatively clear cut. For example, elected members inserting personal statements or photos in the pre-election report is both a legislative breach and a breach of the principles set out in this guidance. For cases that are not as clear cut, the guidance provides some bottom lines to keep in mind when navigating the situation.

We thank those involved in the production of this helpful resource.

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WHAT STATUS DOES THIS GUIDANCE HAVE?

The guidance represents good practice advice prepared by Local Government New Zealand and Taituarā (formerly the Society of Local Government Managers). It has been reviewed by legal advisors and by staff at the Office of the Auditor-General and the Department of Internal Affairs.

Neither Local Government New Zealand nor Taituarā has the authority to receive or investigate allegations around local authority communications made during the pre-election period.

However, the Auditor-General remains interested in the appropriate use of council resources at all times. Use of council resources for personal or political purposes is not appropriate.

The Office of the Auditor-General is not the agency to take complaints about the veracity (or otherwise) of claims made in communications material, but it could choose to investigate where, for example, there are questions as to whether a council-funded communication was made for a proper purpose. In the latter case the Auditor-General may report their conclusions and make recommendations – they cannot direct local authorities to take (or not take) a particular action.¹

Local authorities and their members should also be aware that, in some cases, communications that breach the principles of the *Local Electoral Act 2001* could give rise to an irregularity in the election process. Such an irregularity may be used as grounds to challenge an election outcome under the *Local Electoral Act*.

WHAT IS THE PRE-ELECTION PERIOD?

For the purposes of this guidance, we've aligned the pre-election period to the definition of the 'applicable period' in *section 104* of the *Local Electoral Act 2001*. That is, the pre-election period starts three months from polling day. An election could be a triennial general election, by-election or less frequently, a poll.

WHAT IS A COMMUNICATION?

For the purposes of this guidance, a communication is any presentation of information by the council to its local community, regardless of the form in which the information is presented (e.g. documents, internet, spoken word etc).

Some common examples of a communication include but are not limited to:

- statutory documents such as an annual report (or its summary), long-term or annual plans (or their associated consultation documents)
- information contained on a council website about council plans, policies, bylaws, services, or information about council meetings (such as meeting agendas and minutes)
- newsletters and information releases providing council news and information about council activities
- educational material about issues affecting the community
- promotional material about a particular event, proposal or policy
- council administered social media channels (such as Facebook, YouTube, Twitter and the like)
- representing council in media interviews.

¹ One example where the Auditor-General may make a binding recommendation, is where a loss has occurred under *section 44* of the *Local Government Act 2001*. In those instances a loss may be recovered from those elected members deemed responsible for the loss.

PRINCIPLES

1. *The operation of local authorities continues during the pre-election period. Elected members continue to have the right to govern and make decisions during the pre-election period.*

There is no legal requirement that local authorities avoid making decisions in the pre-election period. Equally, there is no convention such as the so-called 'period of restraint' that applies in central government or the so-called 'purdah' that applies in local government in some jurisdictions in the United Kingdom.

In any case, routine business must continue. Some examples of routine business include the following:

- giving effect to decisions that have already been made. For example, implementing decisions in an already adopted long-term plan or annual plan (the necessary actions and funding have already been committed)
- meeting statutory requirements e.g. reviewing a bylaw that is due to expire or adopting some policy or bylaw where a deadline falls during the pre-election period (though this should be rare)
- preparing, adopting and publicly releasing reports or other documents that are statutory requirements (for example, the pre-election report and annual report)
- releasing other factual information – especially where release regularly occurs during the pre-election period in other years (for example, where information of a monitoring or statistical nature is regularly released in August, September and October).²

Councils can minimise the risks of undue and adverse public scrutiny of decision-making in the pre-election period by ensuring that, where practicable, significant decisions are made before the pre-election period commences or that officers have sufficient direction to continue to work on major projects during the pre-election period. Mechanisms such as providing a rolling programme of policy and bylaw reviews early in the triennium can help manage this and ensure the work gets done.

Sitting members with roles such as a mayor, council chair or council spokesperson on an issue may continue to make public statements on council business as they would outside the pre-election period.

During the pre-election period councils should take particular care to actively identify and manage risks associated with communications that might be used for political purposes (or be seen to be). For example, media interviews often contain elements of the unscripted where it's easy for politicians to slip into campaign mode unintentionally. If the risks can't be managed it may be less risky for the chief executive or communications manager to act as a spokesperson.

2. *During the pre-election period, communities have the same legitimate need for information about their local authority's decisions and activities as at any other time.*

A legitimate provision of information consists of five key elements: timeliness, accuracy, completeness, fairness of expression and neutrality. Information is timely if it is provided either before an event or decision, or as soon as reasonably practicable thereafter. Accuracy means that information should be based on a verifiable fact, and recorded in a manner consistent with those facts.

² Decisions to defer or alter releases of information in the pre-election period can give rise to the same claims of undue politicisation as decisions to communicate such information.

Completeness requires that all of the information necessary for readers to reasonably form a view on a matter is included. Information is fairly expressed if it's presented in an objective, unbiased and equitable way. Neutrality in expression means that the council's collective position is expressed.

The council's 'usual' processes and timeframes for the preparation and release of information should continue to operate 'as normal' in the pre-election period. For example, staff who prepare responses to requests for official information should continue to follow the same timeframes they normally would. Decisions to defer or to expedite a request for information during the pre-election period can leave officers open to claims of bias that are mostly avoidable.

The *Local Government Act 2002* allows councils until 31 October to adopt an annual report. However it is not good practice for an incoming council to adopt a report on the performance of its predecessor. It is good practice to adopt an annual report before the elections – indeed about two-thirds of local authorities did so in the lead-up to the 2019 elections.

3. *Local authorities must not promote, or be perceived to promote, the prospects of any candidate, especially a sitting member. Using council resources for re-election of sitting members is unacceptable and potentially unlawful.*

The Office of the Auditor-General has previously noted that promoting the re-election prospects of a sitting member, whether directly or indirectly, wittingly or unwittingly, is not part of the proper role of a local authority. We can only agree with what should be a statement of the obvious. This includes allowing sitting members to use council resources for election purposes.

While much less likely to arise, it would also be entirely inappropriate for a local authority to, in any way, promote any other candidates for an election. Again, council resources cannot be used for such electioneering purposes.

Council resources include assets and services such as stationery, post, internet, council-provided email/social media accounts or telephones. If in doubt as to whether something is a council-provided resource, a good question to ask is whether the council purchases or funds it. For example, a council-funded radio slot would be regarded as a council resource.

Election activities carried out at council facilities are similarly unacceptable, except where these facilities are open to hire by the general public (for example, community halls) and the candidate is meeting the standard terms for using the facility.

If in doubt, it's usually a good idea to take a precautionary approach. It doesn't mean that elected members can not use a council's resources for normal activities, but care is needed as the boundaries between answering a ratepayer query and campaigning can be difficult to navigate. For example, it's legitimate for an elected member to use a council email to defend a council decision or action, or even to explain their own position on a decision where different from other elected members (provided it's noted clearly as such in the relevant minutes). But doing the latter without slipping into campaign mode can sometimes be difficult during the pre-election period.

CASE STUDIES: THE PRINCIPLES IN ACTION

Example One: Appearances in a council-funded radio slot

Manu is the Mayor of Kiwi District Council. Kiwi District Council pays for a fortnightly radio spot on Eastland FM. The mayor and the Eastland FM director of news talk about issues facing Kiwi District and other issues in the Eastland region.

A month out from the election Manu appears on the radio show 'as usual'. His interview covers a range of topics – including a change to the council's recycling policy, the first instalment of rates for the year, and the council joining in the Eastland economic development CCO. Manu answers these questions drawing on a series of talking points prepared by council staff that reflect the existing council policy.

A fortnight from the election Manu appears again. This time the interview occurs the night after a candidates' debate in which the mayor's opponent (local business leader I B Sharp) described the council's financial management as an "uninterrupted retreat from reality". Among regular questions such as the Prime Minister's visit to Kiwi District and answering ratepayer questions on recycling, the interviewer asks if Manu wants to respond to Ms Sharp's comments.

Manu replies with a comment that, *"rates have gone up an average 10 percent across the district in this term, debt's increased but we've funded the recycling transfer station, and the new Kiwi bypass. We haven't had to lay anyone off unlike Ms Sharp recently did. If I'm re-elected, I'll reduce the council debt by a third in the next term"*.

Ms Sharp releases a statement deploring Manu's regular misuse of a council resource for political purposes.

Is she right?

In the first interview, Manu did nothing more than state and explain the council policy. On the facts presented, Manu has not made any statements that could be seen as anything beyond a spokesperson's role.

Manu's statements during the second interview have elements of campaigning. Manu's statements about the average rates increase, the increase in debt and what the debt was applied to are factual (assuming they were correct). A council spokesperson would normally be required to provide factual information about council performance.

The statement about the council not having to lay off any staff may well be factual, as indeed may the layoffs in Ms Sharp's business. But the latter has little or nothing to do with any council activity. By linking or comparing the two, Manu has, however inadvertently, used a council resource for campaign purposes.

In a similar vein, in using the personal pronoun "I" and referencing his own re-election in his statement about future council debt (*"If I'm re-elected, I'll. . ."*), Manu would almost certainly be seen as making a campaign pledge. Had Manu said something like *"the council's current financial strategy has debt forecast to reduce by a third over the next term"*, he would have been providing a factual statement about the forecast impacts of present policy.

This example, while having fictional elements, provides a good example of challenges that sitting elected members may face when in a role as a council spokesperson during the pre-election period. It illustrates how easily the line between legitimate council communications and campaigning can be crossed, sometimes unintentionally.

These situations usually occur spontaneously and cannot be easily predicted. While normal council business continues during the pre-election period, risks must be actively managed. There may be less risk in Kiwi District's chief executive filling the slot, or perhaps getting an elected member who is not standing again, or has been re-elected unopposed to do the interview.

Example Two: Use of a council vehicle

Lucy is the chair of Eastland Regional Council. Her remuneration package includes the use of a council-provided motor vehicle (assume this is all in accordance with Remuneration Authority guidelines). The car has the Eastland Regional Council logo painted on the front door on each side.

Campaigning has started. One night, Lucy's teenage son returns from a stint handing out campaign collateral and places a 'Re-elect Lucy' sticker on the car's rear bumper. Lucy does not notice the sticker and drives around Eastland Region for the next week before a local journalist sees the car at the council office, takes a cellphone photo of it, and runs it in the newspaper the following day.

On seeing the story the council's electoral officer asks Lucy to remove the sticker.

What should Lucy do?

Lucy should remove the sticker to avoid any appearance of using council resources for her campaign advertising. While there is some element of *de minimis* (the law does not bother with trifles), in the pre-election period it is probably 'better to be safe than sorry'.

It would be up to Lucy to decide whether she might seek to respond to the newspaper story about the sticker. If she were to do so, it would be in the context of her campaign, not in her role as chair.

Example Three: Use of council-owned facilities

Ted is a councillor at Weka District Council and the council's local economy spokesperson. His campaign manager has booked two campaign meetings in two council-owned halls. Both halls are open for any member of the public to book – subject to payment of the applicable fee. The campaign manager booked the venue and paid the fee on 31 August i.e. during the pre-election period.

Ted's opponent, I M Wright, claims Ted is using council resources for campaign purposes. The council's chief executive responds pointing out that Ted's campaign paid the same fee as any other user, and that Wright (and any other candidate) could book the halls. She declines to take further action.

Who is correct?

In this instance the chief executive is correct. While the halls are council-owned, they are open to booking by any person who pays the fee and meets the council's standard terms and conditions. As long as Ted and his campaign have paid the fee and met any relevant conditions in the same way that any other person hiring the venue would need to, this is not considered a council resource for the purpose of this guidance.

Had the council extended use of the halls for free or not made the halls available to other candidates on the same terms as they did for Ted, that would be a potentially serious issue.

Of course, Ted should ensure the payment of the booking fee is properly documented and recorded as a campaign expense for *Local Electoral Act* purposes.

Example Four: Candidate use of social media

Councillor Playne is a member of Kiwi District Council and chair of the Finance Committee. She runs a personal facebook page 'Playne speaking' in which she comments on issues of the day. The council has recently adopted water metering (first invoices have been sent), and the Anti-Privatisation League of Aotearoa (APLA) has endorsed a mayoral candidate and a slate of five anti-metering council candidates.

A week before election day, Cr Playne posts two comments on Facebook. In the first she posts on her own Facebook page to comment on a press release put out by the APLA comparing the council's recent introduction of water metering to a "privatisation by stealth" agenda. Her post includes a link to APLA's Facebook page with a 'thumbs down' emoji and states: *"Speaking for myself, I have better things to do than debate the policy equivalent of the flat earth society when they're so obviously wrong. Get a life APLA!"*

In the second instance, she comments on a post by the council on its Facebook page celebrating the first anniversary of the Upper Creek branch library opening. She 'likes' the post on the council's page and comments: *"Happy anniversary! It was a real battle to convince the other members that Upper Creek needed a library. Re-elect me and I'll get the town a pool."*

Was it OK for Cr Playne to make these two posts?

Cr Playne's post about APLA, while somewhat aggressively worded, is not contrary to these guidelines. She has used a personal social media account and clearly identified that she is not speaking on behalf of the council in response to material on a social media site not associated with council. The rest of the comment is a matter for democratic debate and henceforth for the voters to judge.

The Upper Creek Library post is a little different. Here Cr Playne has commented on a council post on a council social media site (which is a council resource). The last sentence is obviously a campaign pledge and therefore puts this post into the campaigning category. The second sentence also has elements of campaigning in that it suggests a particular service choice might not have been made without Cr Playne's intervention. Council would then be justified in deleting Cr Playne's comment on the post. Council is entitled to edit its own Facebook page to ensure this council resource remains 'neutral', i.e. not supporting/promoting or criticising any election candidate.

But suppose Cr Playne had just 'liked' the post, or 'liked' and said "Happy anniversary". In and of itself, that isn't necessarily campaigning. In other words, an assessment of these cases turns on what the candidate has **actually communicated** in such a post.

What about members (or others) using their personal social media accounts to link to the council's account? Suppose, for the sake of clarity, that Cr Playne had used a personal social media tool such as Twitter to 're-tweet' a Twitter communication from the council regarding the anniversary of the Upper Creek Library, and that Cr Playne made the same campaigning comment described in the above example.

While Cr Playne has linked to a council social media site, she's done so using her own account. The information she has accessed is a general communication about council services available to anyone with a social media account, and therefore can be used by any candidate (and indeed any other member of the public). It does not necessarily amount to the council promoting Cr Playne (or anyone else).

While council resource (such as staff time) has been used to produce the communication, this expenditure has already occurred regardless of whether Cr Playne had re-tweeted or not. In this instance, the information is quite obviously a communication to inform the public of a significant date in the Upper Creek community, and even in the pre-election period, it would be pretty difficult to suggest that it amounts to a promotion of a candidate.

At this point readers may ask what the council might do in this circumstance? If feasible, it may delete any post **on its own social media account** (note it can delete other people's comments on its Facebook page, although cannot typically delete other people's re-tweets). It could ask Cr Playne to delete a communication on or from her own personal social media account, but it cannot enforce such a request (and indeed if she's circulating publicly available information there is probably a larger reputational risk from making such a request).



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