

## LOCAL GOVERNMENT ELECTION AND CARETAKER PROVISIONS

- Intent** To guide the conduct of Councillors and Council Officers during the lead up to local government elections and applies to Council Officers dealing with Councillors and Candidates during the caretaker period.
- Scope** To provide information regarding decisions making during an election period with respect to:
- Appropriate decision making
  - Equity and transparency regarding access to Council resources
  - Effective day to day management of Council activities; and
  - Council resources not being diverted for electoral purposes.

This Policy will commence on the day when public notice of the holding of the election is given. Caretaker period will conclude when the declaration of the poll is published by the Electoral Commission of Queensland for each Local Government.

This Policy has been written in accordance with the *Local Government Act 2009* and *Local Government Electoral Act 2011*.

### PROVISIONS

Legislation places limits during the caretaker period before a local government election. This ensures that there are no significant policy decisions made near the end of a council term that bind future elected councils.

This policy is applicable to all elected representatives, staff and candidates during the election period.

#### The 'caretaker period'

The caretaker period starts on the day when the Electoral Commission of Queensland (ECQ) publishes the public notice about holding the election. The Electoral Commission of Queensland will also advise when the election has ended for each local government.

Caretaker periods do not apply to by-elections.

If the government changes following an election, the caretaker period ends when the incoming government is sworn in.

#### The 'caretaker conventions and practices

The business of Council continues throughout the 'caretaker period'. However, the series of practices known as 'caretaker conventions' aims to ensure that Council's actions do not bind an incoming Council or limit its freedom of action.

In summary, the conventions recommend that caretaker governments avoid:

- making significant appointments
- making or implementing major policy decisions that are likely to commit an incoming local government
- entering into major contracts or undertakings.

There are also established practices associated with the caretaker conventions that are directed at protecting the apolitical nature of the public service and avoiding the use of resources in a manner to advantage a particular political party / group or candidate.

## **DECISIONS DURING THE CARETAKER PERIOD**

As the election date is known, it is expected that Council business that requires a decision or action will happen in advance of the commencement of the caretaker period.

Council will continue to meet during the caretaker period for the purpose of making decisions in the public interest.

### **Major policy decision**

During the caretaker period, Council is prohibited from making decision:

- about the appointment, remuneration or termination of a chief executive officer
- to enter into a contract greater than \$200,000 or 1% (whichever is greater), which for Cairns Regional Council is \$2.97 million of the net rate and utility charges as stated in the 2023/24 audited financial statements included in the most recently adopted annual report
- significant procurement activities, such as establishing preferred supplier arrangements, or establishing exceptions to obtaining quotes or tenders when entering into a contract
- to make, amend or repeal local laws
- to make, amend or repeal a local planning instrument under the Planning Act 2016 (i.e. a planning scheme, a temporary local planning instrument or planning scheme policy).

A prohibited policy decision made during a caretaker period will be invalid unless the Minister's approval has been given prior to making the decision. A person who suffers loss or damage because of the invalidity of a major policy decision during the caretaker period has a right to be compensated by the local government for the loss or damage.

### **Planning instruments and approvals**

During the caretaker period, Council cannot make, amend or repeal local planning instruments.

Council cannot approve development variation requests or change variation approvals that involve:

- varying the category of development or category of assessment of consequential development
- varying the assessment benchmarks or criteria for accepted development that would apply to consequential development
- facilitating development that would result in a greater demand on infrastructure than the demand anticipated in the council's infrastructure plan.

The amended Development Application Rules, summary of changes and accompanying guidance material are now available on the Department of State Development, Infrastructure, Local Government and Planning website at [Planning \(statedevelopment.qld.gov.au\)](https://www.statedevelopment.qld.gov.au).

### **Ministerial approval for decisions in exceptional circumstances**

Council should prepare for the caretaker period by planning to make major policy decisions before or after the election period.

However, unforeseeable events can result in Council having to make major policy decisions during the caretaker period. In exceptional circumstances Council can apply to the Minister for approval if:

- the need for the decision was unforeseeable
- the decision is essential to the functioning of the local government
- the decision cannot wait until the end of the caretaker period
- the decision is in the public interest

The Minister will decide on a case-by-case basis whether the decision meets the exceptional circumstances requirement of the *Local Government Act 2009*. To enable this to happen, all applications should be addressed to the Regional Director (Northern Region) of the Department of State Development, Infrastructure, Local Government and Planning.

### **Discretionary funds**

Councillors cannot allocate money from a councillor discretionary fund to a community organisation for a community purpose after 1 January in the year of the quadrennial local government election. Discretionary funds that were allocated before 1 January in accordance with legislative requirements may be disbursed after this date.

### **CANDIDATES AND COUNCILLORS**

Local government employees may take paid leave (e.g. accrued annual leave) or unpaid leave for up to eight weeks to contest a local government election.

There is no legal requirement under the *Local Government Electoral Act 2011* for either local government employees or elected councillors to take leave during the caretaker period. If successful at the election, you are taken to have resigned as a local government employee the day before you become a councillor which is when the ECQ declares the result of the election.

Council employees must maintain the normal business activities of Council during the caretaker period. Council employees will execute their official duties and responsibilities as a Council employee in accordance with the *Local Government Act 2009*, Council's Code of Conduct and Council's corporate values and take all reasonable steps to avoid any real or perceived conflict when acting in an official capacity.

Council employees may in a personal or private capacity provide support or assistance to a Councillor or a candidate in their own time, providing that any support or assistance provided does not breach legislation or Council's Code of Conduct. The employee must take all reasonable steps to ensure that in providing any support or assistance they are acting as a private individual and not perceived as acting in an official capacity as a Council employee.

Any Council employee proposing to stand as a candidate for the election must complete an Election Management Plan in collaboration with the CEO, so as to ensure compliance with s203 of the *Local Government Electoral Act 2011* and prevent any perceived or actual conflict of interest.

Councillors and council employees must maintain a clear separation between their council role and campaigning activities.

A sitting councillor who is unsuccessful for re-election at the quadrennial election, stops being a councillor immediately when the ECQ announces the result of the election to candidates.

### **Use of Council resources during caretaker period**

Councillors are entitled to use Council resources and facilities as outlined in the Councillor Expenses Reimbursement and Support for Elected Member General Policy and Administrative Support for Staff Guidelines for routine activities in the fulfilment of their roles and responsibilities as Councillors, until their term of office comes to an end.

Councillors and council employees must not use council-provided resources such as vehicles, phones, email accounts or printers for campaigning. This applies at any time, not just during the official election period.

Where a current Councillor has arrangements in place to have mobile offices within their Division this can continue during the caretaker period as long as the Councillor does not utilise their mobile office for campaigning purposes and continues to utilise it for the purpose in which it was approved.

## **Councillor correspondence**

Councillors may continue to correspond with constituents on matters related to Council business during the caretaker period. In responding to such correspondence, the Councillors must not purport to make policy commitments for the incoming Council.

## **REQUESTS FOR INFORMATION**

Council Officers should familiarise themselves with the *Acceptable Requests Guidelines Policy* during caretaker period. Should Council Officers receive requests for information from Candidates or Councillors during the election period they should follow the below protocols and refer the Councillor or Candidate to do the same.

### **By Councillors**

Councillors may only request information necessary to undertake their duty as a Councillor in accordance with the *Acceptable Requests Guidelines Policy*.

### **By Candidates**

Requests for information that are beyond day-to-day operational queries must be directed to CEO. Such queries should state the purpose for requesting the information from the CEO.

The CEO will consider all requests based upon the resources required to fulfil the request and the appropriateness of the disclosure. Where the information is publicly available the candidate will be directed to the location of the information.

There may be times when it is appropriate for the CEO to decline a request for information, in these cases an explanation will be provided as to why the information will not be disclosed and any options they have should they disagree with the decision to release the information, including a Right To Information Request.

Where Candidates also hold an external role to Council that provides them access to Council information which may be confidential, they must disclose in all correspondence in what capacity they are requesting the information and the purpose of the request. Where the CEO considers that there may be a conflict in providing the information to the candidate in their nominal role, the CEO may choose, at their discretion, to make alternative arrangements.

## **COUNCIL ADVERTISING, COMMUNICATION ACTIVITIES AND RELATED MATTERS**

### **Guidelines for advertising and communication activities**

When the caretaker period commences, the following limitations apply:

- Advertising and media releases to those required to maintain the necessary, customary and routine operations
- Individual Councillors will not be featured in any paid advertising
- Media releases will not be attributed to individual Councillors
- Advertising or media releases must not be of a political nature
- All quotes within media releases will be attributed to the CEO or their delegate
- An urgent emerging issue, social education issue (e.g. road safety campaigns, health campaigns, any emergency service information) and communicates business-as-usual information (e.g. recruitment, timetable changes, ticket sales).

Exceptions may apply to extraordinary events including natural disasters.

### **Principles for specific activities**

During the caretaker period, a local government or controlled entity must not publish or distribute election material. Election material is anything that could influence an elector about their vote or affect the election result. For example, fact sheets, newsletters that raise the profile of a councillor are prohibited during the caretaker period.

- *Distribution of publications / pamphlets / eNewsletters*

Council should review arrangements for distribution of material that may be of political benefit prior to the commencement of the caretaker period, and avoid active distribution (for example, bulk mail-out) of any such material during the caretaker period.

- *Civic and community events*

Councillors may continue to represent Council at civic events and community events during the caretaker period, provided the event meets one or more of the following criteria:

- It is a planned event endorsed by the full Council
- It is, or plans to be, routinely held at the same time each year
- It is a commemorative or anniversary event held on or near the anniversary date
- It is an event to be hosted by or on behalf of the Mayor in fulfilling their statutory responsibilities for ceremonial and civic functions, for example citizenship ceremonies or hosting VIP guests in the region.

When invited to partake in events as business as usual, Councillors must maintain a clear separation between their Council role and campaigning activities. This applies at all times. Specifically:

- A Councillor is prohibited from undertaking what could be considered overt campaigning activities (i.e. wearing campaign branded t-shirts, bringing other visual collateral, making campaign pledges during official speeches etc.) during a Council Event.

- *Community engagement*

Community engagement activities, including but not limited to surveys, polls – either formal or informal and, should be avoided during the caretaker period except where the community engagement requires the engagement as part of a program approved prior to the caretaker period or is a legislative requirement.

- *Community grants / sponsorships*

Activities approved under Council's Community Grants Policy prior to the commencement of the caretaker period may continue during the caretaker period in accordance with the policy.

Sponsorship arrangements will be approved under Council's Inbound Sponsorship General Policy. Any sponsorship approved prior to the commencement of the caretaker period may continue in accordance with the relevant policy.

- *Digital communications (websites, social media and other digital engagement tools)*

At the onset of the caretaker period, consideration should be given to including a post or message highlighting the additional restrictions to comments and updates during this time.

- Intranets, bulletin boards and emails – Council Officers should ensure any intranets, electronic bulletin boards and email systems are not used to publish material perceived to be of political benefit.
- Social media and other digital engagement tools – Council Officers must give careful consideration to any content, comments or responses published on digital engagement tools.

## **Media monitoring services**

During the caretaker period, media monitoring services will not be used to provide an advantage to a particular candidate in the campaign. Routine media monitoring regarding the day-to-day operations of Council will continue during the caretaker period.

## SIGNAGE

### During the caretaker period

During the caretaker period, if a sign or notice contains 'election matter' requiring an authorisation statement, in accordance with requirements Under the *Local Government Electoral Act 2011* candidates, groups of candidates and campaigns must adhere to the laws relating to election material during an election period. Some provisions may also apply outside an election period.

Under section 177 of the *Local Government Electoral Act 2011*, any person who prints, publishes or distributes election material, or authorises another person to do so, during an election period must ensure an authorisation is stated on the material. This includes any advertisement, handbill, pamphlet, or notice which is able or intends to influence an elector about voting at an election or affect the result of the election.

### Election Signage

There are regulations relating to the display of election signage next to roads. Candidates should check these requirements prior to displaying any signage near roads. Council has a factsheet this provides guidance and direction to the utilisation of Advertising Devices – Election Signage and can be found on Council's website. Candidates should confirm their council's specific regulations relating to the quantity, placement and the timeframes in which they can be displayed, prior to displaying any election signage.

Council regulates Election signs on private property, Council roadsides, and State Controlled Roads with a speed limit of less than 80km/h. The Department of Transport and Main Roads regulates election advertising on State Controlled Roads with a speed limit of 80km or greater.

## OFFENCES AND PENALTIES

The Electoral Commission Queensland (ECQ) are responsible for administering and enforcing the *Local Government Electoral Act 2011* which includes enforcing penalties that may apply to local government candidates and sitting Councillors who breach their disclosure obligations.

### Councillor Conduct Complaints

Complaints about Councillor conduct made during the caretaker period shall continue to be dealt with and / or referred to external agencies in accordance with the relevant Council policies and the provisions of the *Local Government Act 2009*, the *Local Government Electoral Act 2011*, and the *Electoral Act 1992*.

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**This policy is to remain in force until otherwise determined by Council.**

**Director responsible for Review:**

**Director People & Organisational Development**

**ORIGINALLY ADOPTED:** 25 October 2023

**CURRENT ADOPTION:** 25 October 2023

**DUE FOR REVISION:** 25 October 2027

**REVOKED/SUPERSEDED:** {Enter Date}



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**Mica Martin**  
**CHIEF EXECUTIVE OFFICER**

RELATED FACTSHEETS AND FORMS	
#6175300	Advertising Devices Factsheet – Election Signage
#7255013	Local Government Employees Working at Elections
#7255010	Local Government Employees Contesting Elections