

CARETAKER PERIOD GUIDELINES

INTENT

To inform Councillors and Council staff of their responsibilities during the mandatory caretaker period preceding the 2020 quadrennial Queensland Local Government Elections.

SCOPE

These guidelines apply to all Councillors and Council Staff during the Caretaker Period however it does not extend to by-elections or fresh elections.

DEFINITIONS

TERM	DEFINITION
By-election	Means an election to replace a councillor after the councillor's office becomes vacant.
Caretaker Period	As per section 90A of the Local Government Act 2009: The period during an election for a local government that starts on the day when the public notice of the holding of the election is given and ends at the conclusion of the election.
Councillors	Any elected representative who has held office with Council either current or past.
Council Staff	Any person who has been an employee of Council (permanent, part-time and/or casual), volunteers, work experience, contractors or consultants either current or past.
Election Material	Means anything able to, or intended to, influence an elector about voting at an election or affect the result of an election.
Fresh Election	Means an election of all the councillors of a local government that is not a quadrennial election.
Major Policy Decision	Is defined in the Dictionary of the Local Government Act 2009 and refers to:

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TERM	DEFINITION
	<ul style="list-style-type: none"> (a) about the appointment of a chief executive officer of the local government; or (b) about the remuneration of the chief executive officer of the local government; or (c) to terminate the employment of the chief executive officer of the local government; or (d) to enter into a contract the total value of which is more than the greater of the following— <ul style="list-style-type: none"> (i) \$200,000; (ii) 1% of the local government’s net rate and utility charges as stated in the local government’s audited financial statements included in the local government’s most recently adopted annual report. (e) relating to making or preparing an arrangement, list, plan or register in the way provided under a regulation made under this Act that can be used to establish an exception to obtaining quotes or tenders when entering into a contract; or (f) to make, amend or repeal a local law; or (g) to make, amend or repeal a local planning instrument under the Planning Act; or (h) under the Planning Act, chapter 3, part 3, division 2 on a development application that includes a variation request under that Act if the application proposes to— <ul style="list-style-type: none"> (i) vary the category of development or category of assessment of development; or (ii) vary the assessment benchmarks or criteria for accepted development that would apply to development; or (iii) facilitate development that would result in a greater demand on infrastructure than the demand anticipated in the local government’s local government infrastructure plan; or

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TERM	DEFINITION
	<p>(i) under the Planning Act, chapter 3, part 5, division 2, subdivision 2 on a change application under that Act that includes a change to a variation approval if the application is being assessed under section 82 of that Act and the application proposes to—</p> <p>(i) further vary the category of development or category of assessment of development; or</p> <p>(ii) further vary the assessment benchmarks or criteria for accepted development that would apply to development; or</p> <p>(iii) facilitate development that would result in a greater demand on infrastructure than the demand anticipated in the local government’s local government infrastructure plan.</p> <p><i>Note—</i> <i>Change application assessments for minor changes under the Planning Act, section 81 are not subject to paragraph (i).</i></p>

GUIDELINES STATEMENT

During each quadrennial Queensland Local Government Elections there is a Caretaker Period in which there are certain restrictions that apply to Council, Councillors and Council Staff.

These guidelines will assist Council to fulfil its statutory obligations and provide guidance to Councillors and Council Staff to ensure that the ordinary business of Council continues in a responsible and transparent manner during the Caretaker Period.

The Caretaker Period is determined by the Queensland Electoral Commission and will extend from:

- the date the Returning Officer for the Council Elections publishes the notice of election, calling for nominations, as defined by Section 25 of the *Local Government Electoral Act 2011*; to
- the date of the conclusion of the election as defined by Section 7 of the *Local Government Electoral Act 2011*.

Council reaffirms its commitment during the lead up to the election and particularly during the Caretaker Period to:

- The effective and efficient continuation of all Council’s activities and functions;

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- Transparent actions and decision-making;
- Actions and/or decisions that do not, or cannot be perceived to, bind an incoming Council;
- Adherence to all legislative requirements during the Caretaker Period;
- The neutrality of Council staff; and
- The continuation of the principle that the use of public funds for electoral purposes is unacceptable.

Councillors should take particular care in any campaign activity to ensure that use of Council provided resources and/or facilities, including seeking advice or information from staff, cannot be perceived, real or otherwise, as giving them an electoral advantage.

Legislative Restrictions During Caretaker Period

Chapter 3, Part 5 of the Local Government Act 2009 defines the restrictions placed on Council whilst in the Caretaker Period.

Major Policy Decision

During this period, Council is prohibited from making a major policy decision. A major policy decision is defined as:

- (a) about the appointment of a chief executive officer of the local government; or
- (b) about the remuneration of the chief executive officer of the local government; or
- (c) to terminate the employment of the chief executive officer of the local government; or
- (d) to enter into a contract the total value of which is more than the greater of the following—
 - (i) \$200,000;
 - (ii) 1% of the local government’s net rate and utility charges as stated in the local government’s audited financial statements included in the local government’s most recently adopted annual report.
- (e) relating to making or preparing an arrangement, list, plan or register in the way provided under a regulation made under this Act that can be used to establish an exception to obtaining quotes or tenders when entering into a contract; or
- (f) to make, amend or repeal a local law; or
- (g) to make, amend or repeal a local planning instrument under the Planning Act; or
- (h) under the Planning Act, chapter 3, part 3, division 2 on a development application that includes a variation request under that Act if the application proposes to—
 - (i) vary the category of development or category of assessment of development; or
 - (ii) vary the assessment benchmarks or criteria for accepted development that would apply to development; or

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- (iii) facilitate development that would result in a greater demand on infrastructure than the demand anticipated in the local government’s local government infrastructure plan; or
- (i) under the Planning Act, chapter 3, part 5, division 2, subdivision 2 on a change application under that Act that includes a change to a variation approval if the application is being assessed under section 82 of that Act and the application proposes to—
 - (i) further vary the category of development or category of assessment of development; or
 - (ii) further vary the assessment benchmarks or criteria for accepted development that would apply to development; or
 - (iii) facilitate development that would result in a greater demand on infrastructure than the demand anticipated in the local government’s local government infrastructure plan.

Note—

Change application assessments for minor changes under the Planning Act, section 81 are not subject to paragraph (i).

Should Council reasonably consider that exceptional circumstances, in the public interest, exist on a matter that requires a decision during the Caretaker Period, then Council may apply to the Minister for approval to make this decision. Without Ministerial approval or non-compliance to the conditions of the Minister’s approval, any major policy decision made by Council during this period will be invalid.

A contract is void if it is subject to an invalid major policy decision. Any person who suffers a loss due to the invalidity of the decision has the right to be compensated and may commence court proceedings for damages.

Election Material

During the Caretaker Period Council must not publish or distribute any election material. Election material is defined as anything that is able to or intended to:

- influence an elector about voting at an election; or
- affect the result of an election.

This prohibition on election material does not extend to making a how-to-vote card available under section 179(6) of the *Local Government Electoral Act 2011*.

Other Requirements During Caretaker Period

Although there are some statutory restrictions placed on Council during the Caretaker Period, it is imperative that the ordinary business of Council is maintained during this period. It is important that Councillors differentiate their roles as Councillor or Candidate during this period to ensure that their actions cannot be perceived, either real or otherwise, as obtaining an unfair electoral advantage due to their role as Councillor.

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Similarly, Council staff shall focus on maintaining operational functions during this period and ensure their actions do not adversely impact on the impartiality of the organisation to serve any incoming Council following an election.

Council Meetings

It is a legislative requirement under the *Local Government Act 2009*, that Council is to meet at least once every month. Therefore, Council Meetings will continue during this period subject to restrictions relating to major policy decisions and any other limitations provided within these guidelines.

Use of Council Resources During an Election Period

It is acknowledged that Councillors have access to Council facilities and resources to undertake their duties as an incumbent Councillor and the administration will continue to provide support to enable Councillors undertake routine activities to fulfil their roles.

Councillors are to ensure that there is a clear separation between Council business and electioneering when seeking help, advice or support from Council staff. This includes requests for information that are received through Council’s Acceptable Requests Guidelines.

However, any requests received that are or could be perceived for electioneering purposes and that will provide Councillors with an unfair election advantage, will not be supported. Council staff are encouraged to escalate any concerns for support to their Director or the Chief Executive Officer.

Civic and Community Events

Any civic and community events that are traditionally held during the first three (3) months of the calendar year (January to March) will continue to be held during this period.

Any requests for new civic or community events during this period should seek approval via the normal approval processes, but in doing so recognise the particular political circumstances that prevail during this period. For any new events the following criteria must be met:

- It is a planned event endorsed by Council’s current Operational Plan;
- It is, or plans to be, routinely held at the same time of year;
- It is a commemorative or anniversary event held on or near the anniversary date;
- It demonstrates a clear community benefit, or serves an educational or welfare purpose; and/or
- It contributes to cultural development, social awareness or sense of community identity.

Councillors when participating in these events should refrain from any actions and/or comments that could be perceived to be electioneering.

Community Grants

Activities approved under community grants prior to the commencement of the Caretaker Period may continue during a caretaker period in accordance with the approvals granted.

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However, any funding round for community grants that is open during the Caretaker Period may remain open but applications received during this time will not be determined until after the election.

Sponsorship

No new sponsorship will be approved or entered into during the Caretaker Period. This includes providing sponsorship, in-kind sponsorship, or seeking sponsorship from external entities. Any sponsorship approved prior to the commencement of the Caretaker Period may continue in accordance with the approvals granted.

Sponsorship applications may continue to be received during the Caretaker Period however no decisions on sponsorships will be made until after the election.

Media Releases

Media releases or advertisements prepared by Council during the Caretaker Period will be restricted to those required to maintain the necessary, customary and routine operations of Council and must not be reasonably interpreted as being for political purposes.

During the Caretaker Period, Council will respond to media enquiries that relate to operational matters only. Councillors may respond to media questions in their individual capacity as a candidate and should distinguish their individual opinion and the majority view of the elected Council.

Media events may continue to be held during a Caretaker Period provided the media event relates to core Council business or an ongoing project and is not used for political purposes.

Council's Website

Council's website will continue to be maintained and updated during the Caretaker Period to ensure the community is fully informed of Council's normal operational activities and functions.

Any new material published during this period will be scrutinised to ensure it does not inadvertently promote an individual or group of Councillors.

No response will be made to any political comments posted to any of Council's social media sites and any such comments will be removed.

KEY RESPONSIBILITIES

RESPONSIBLE OFFICER	RESPONSIBILITY
Mayor and Councillors	To ensure they are familiar with their obligations, as per legislation and these guidelines, that pertain to Council Operations during the Caretaker Period.
Council Staff	<ul style="list-style-type: none"> To ensure they are familiar with their obligations, as per legislation and these guidelines, that pertain to Council Operations during the Caretaker Period; and

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RESPONSIBLE OFFICER	RESPONSIBILITY
	<ul style="list-style-type: none"> • To plan procurement activities to ensure that any contracts that are prohibited by the Caretaker Period provisions do not require a Council decision during that time; and • To ensure that effective planning of all Council Operations occurs so that Council Business is not adversely impacted during the Caretaker Period.

REFERENCES, LEGISLATION AND GUIDELINES

Local Government Act 2009

Local Government Regulation 2012

Local Government Electoral Act 2011

Public Sector Ethics Act 1994

RELATED DOCUMENTS

Code of Conduct for Councillors in Queensland

Code of Conduct (Staff)

Councillor Reimbursement and Remuneration Policy

Councillor Staff Interaction Policy

Entertainment and Hospitality Policy

Procurement Policy

IMPLEMENTATION/COMMUNICATION

These guidelines will be communicated to all staff through team meetings and will be available on Council's website and internally through the intranet and Controlled Document Register.

APPROVED BY

Council Resolution

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REVIEW

SPONSOR:	Director Organisational Business Services
OFFICER RESPONSIBLE FOR REVIEW:	Manager Governance and Risk
ADOPTION DATE:	18 December 2019
REVIEW DATE:	June 2023

THESE GUIDELINES ARE TO REMAIN IN FORCE UNTIL OTHERWISE DETERMINED BY COUNCIL

AMENDMENT HISTORY

VERSION	AMENDMENT DETAILS	AMENDMENT DATE	APPROVAL

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