

5.11. CARETAKER PERIOD POLICY

REPORT AUTHOR Juanita Holden, Manager Governance

MANAGER Mark Stoermer, Chief Executive Officer

DEPARTMENT Governance

RECOMMENDATION

That Council:

- 1. Resolve to revoke the Election Caretaker Provisions General Policy.**
 - 2. Resolve to adopt the Caretaker Period Policy as presented.**
-

EXECUTIVE SUMMARY

The Caretaker Period Policy has undergone review and amendments following the recent legislative amendment to the Local Government Act 2009, affecting Council operations during the caretaker period preceding quadrennial elections.

BACKGROUND

Council's Caretaker Period Policy provides guidance that Council conducts its business throughout the pre-election period in a responsible, transparent and legally compliant manner.

COMMENT

Recent amendments to the Local Government Act 2009 have included changes to the provisions relating to caretaker period arrangements leading into quadrennial elections. The changes primarily relate to the prohibition of major policy decisions during the caretaker period and an expansion of the definition of what constitutes a major policy decision.

The primary amendments to the Policy are:

- Definition of Major Policy Decision – the repealed definition has been deleted and reference made to the new expanded definition.
- Prohibition of Major Policy Decision – the new expanded definition has been inserted as it appears in the dictionary schedule of the Local Government Act 2009.
- Amendments made to the Policy to reflect legislative changes to the manner of how complaints about Councillor Conduct are assessed and managed.
- Other changes within the Policy are limited to administrative changes and expanded to assist Councillors and Staff understanding their roles and responsibilities.

PROPOSAL

That Council resolve to revoke the Election Caretaker Period General Policy and resolve to adopt the Caretaker Period Policy as presented.

FINANCIAL/RESOURCE IMPLICATIONS

There are no identified financial implications in relation to this Policy.

RISK MANAGEMENT IMPLICATIONS

Adoption and adherence to Policies and Processes consistent with legislative requirements minimizes the risk of non-compliance decisions and actions of Councils and its officers.

CORPORATE/OPERATIONAL PLAN, POLICY REFERENCE

This report has been prepared in accordance with the following:

Corporate Plan 2019-2024 Initiatives:

Theme 5 - Robust Governance and Efficient Service Delivery

Strong governance and financial management are the foundations of the way in which Council will conduct its business and implement the initiatives of the Corporate Plan.

Goal 1 - We will conduct Council business in an open and transparent manner with strong oversight and open reporting.

Operational Plan 2019-2020 Actions:

5.2.3 - Implement continuous improvement program.

COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following areas outline where Council has a clear responsibility to act:

Advocate	Council makes representation on behalf of the community on important issues, funding opportunities, projects and programs. Council will use its influence to seek the best outcomes for the community.
Facilitator	Council often brings stakeholders together on important issues, projects or for service delivery. In this role, Council can act as a mediator, connector, collaborator or initiator.

CONSULTATION

Internal:	Councillors, CEO and Management Team
External:	Nil

COMMUNITY ENGAGEMENT

Nil

ATTACHMENTS

1. Caretaker Period Policy [5.11.1 - 8 pages]



51. CARETAKER PERIOD POLICY - COUNCIL

Scope

This Policy applies to all Douglas Shire Council Councillors, candidates and Employees.

Purpose

This Policy will assist to ensure that Council conducts its business throughout the Caretaker Period in a responsible, transparent and legally compliant manner. Certain restrictions shall apply to Council, Councillors and Council employees in the period leading up to an election.

Council will enter a Caretaker Period prior to the Local Government Quadrennial Election, at a time as determined by the Electoral Commission Queensland (ECQ).

Policy Content

The *Local Government Act 2009* and the *Local Government Electoral Act 2001* apply a number of restrictions to Council and Councillors during the Caretaker Period, from when nominations are called for the quadrennial election until the declaration of the polls.

Candidates should take particular care in any campaign activity to ensure that there can be no possible perception of use of Council provided resources and/or facilities for the activity that could be perceived as having electoral benefit.

Council reaffirms its commitment during a Caretaker Period to:

- The efficient continuation of Council's day to day business;
- Transparent actions and decision making;
- Actions that do not, or cannot be perceived to, bind an incoming Council in its operational delivery;
- The suspension of major policy decisions;
- The neutrality of Council employees; and
- The continuation of the principle that the use of public funds for electoral purposes is unacceptable.

It is acknowledged that during the Caretaker Period, candidates may make election commitments, which they intend, to honour if they are elected. Such commitments are not subject to this policy.

Council Meetings

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

However, Council will defer making any decisions during the Caretaker Period which:

- Could be perceived to unreasonably bind an incoming Council on its operational delivery; or
- Constitute a major policy decision for which Ministerial approval has not been received.

Timing and Planning

The exact dates of a Caretaker Period are determined by the Electoral Commission Queensland. It will commence on the day when the public notice of the holding of the election is given and will end at the conclusion of the election.

Prohibition on Major Policy Decisions (s90B of the *Local Government Act 2009*)

A major policy decision for a local government defined by the *Local Government Act 2009* includes a decision:

- (a) About the appointment of a Chief Executive Officer of the local government;
- (b) About the remuneration of the Chief Executive Officer of the local government;
- (c) To terminate the employment of the Chief Executive Officer of the local government;
- (d) To enter into a contract the total value of which is more than the greater of the following –
 - a. \$200,000.00;
 - b. 1% of the local government's net rate and utility charges as stated in the local governments audited financial statements included in the local governments 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;
- (f) To make, amend or repeal a local law;
- (g) 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 a planning scheme policy);
- (h) Under the Planning Act, Chapter 3, part 3, division 2 on a development application that includes a variation request under the Act if the application proposes to -
 - a. Varying the category of development or category of assessment of development; or
 - b. Varying the assessment benchmarks or criteria for accepted development that would apply to development; or
 - c. Facilitating 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 applications assessments for minor changes under the Planning Act, section 81 are not subject to paragraph (i)

Council must not make any major policy decision during Caretaker Period. However, if Council considers that, having regard to exceptional circumstances that apply, it is necessary to make a major policy decision in the public interest, Council may apply to the Minister for approval to make the decision, in accordance with section 90B(2) of the *Local Government Act 2009*.

The Minister may give approval if the Minister is satisfied that, having regard to exceptional circumstances that apply, it is necessary for Council to make the major policy decisions in the public interest. The Minister's decision may include conditions with which Council must comply.

Invalidity of Major Policy Decisions in Caretaker Period without Approval (s 90C of the *Local Government Act 2009*)

A major policy decision made by Council during Caretaker Period is invalid if Council does not have the Minister's approval to make the decision. A contract is void if it is the subject of a major policy decision that is invalid.

Prohibition on Election Material (s90D of the *Local Government Act 2009*)

In accordance with s90D of the *Local Government Act 2009*, a local government must not publish or distribute election material that is able to, or intended to influence an elector about voting in an election or affect the result of the election. For example, a fact sheet or newsletter that raises the profile of a councillor.

Use of Council Resources during the Caretaker Period

The use of Council resources by all Councillors will continue during the Caretaker Period for official duties and responsibilities in accordance with the Councillor Remuneration General Policy and the Expenses Reimbursement for Elected Representatives General Policy.

Care is to be taken to ensure that there can be no perception that Council resources are being used to assist Councillors in the election campaign. Councillors may continue to use Council resources for routine activities in the fulfilment of their roles and responsibilities.

Council owned resources, including vehicles shall not be used for election or campaigning purposes. Councillors are not permitted to fix or allow remaining affixed, to Council property any sticker, decal, magnetic or adhesive advice that promotes the Councillor as a candidate or potential candidate in an election.

Advertising

In accordance with Council's Advertising Spending Policy, advertising may continue during a Caretaker Period if it meets one or more of the following criteria:

- It is required for ongoing business and commercial operation of Council;
- It provides essential public information, without which the public would be detrimentally affected;
- It is educational, provides information on core Council services, or can demonstrate a clear community benefit; and
- It has already commenced, or routinely occurs at the same time each year, and meets at least one of the above criteria, or deferring it would have a significant impact on the overall cost and effectiveness of Council operations.

Civic Events

Events will only be held during the Caretaker Period where the event:

- Is of a routine nature;
- Is held to commemorate the anniversary of a significant event;
- Is for the purpose is to host visiting dignitaries.

Community Engagement

Community Engagement should be avoided during the Caretaker Period including but not limited to surveys, blogs and invitations to put forward submissions. Community engagement may continue if it is part of an ongoing project that required the engagement as part of approved programs.

Community Grants and Sponsorship

Activities approved under Community Grants prior to the commencement of the Caretaker Period may continue during a Caretaker Period in accordance with the Grants, Donations and Sponsorship General Policy. Any funding round for Community Grants that is open during the Caretaker Period shall remain open but applications received during this time shall not be determined until after the election.

Council shall not approve Community Grants during the Caretaker Period.

No new sponsorship shall be approved or entered into during the Caretaker Period. This includes where Council gives sponsorship, including In-kind Support. Any sponsorship approved prior to the commencement of the Caretaker Period may continue in accordance with Council's Grants, Donations and Sponsorship General Policy.

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

Electoral Signage

Candidates are required to comply with electoral signage protocols in the lead up to an election. These conditions, including applicable size, placement and approval requirements are stipulated in The Department of Transport and Main Roads Election Signage Fact Sheet -

<https://www.qld.gov.au/transport/safety/signs/election-signs> .

Media

Media releases prepared by the Organisation during the Caretaker Period must be of public interest, relate to the day to day Council business and must not be used in any manner that might favour an individual during Caretaker Period.

During the Caretaker Period, Council will respond to media enquiries that relate to operational matters only. Media events may continue to be held during a Caretaker Period provided the media events relates to core Council businesses or an ongoing project and is not constructed as being for political purposes.

If the Mayor and or a Councillor are at a media event and are asked a political question, the Mayor and/or Councillor if seeking re-election shall respond as an individual. Under no circumstances should a response be attributed to Council.

Council will retain material placed on the website prior to the commencement of the Caretaker Period. However, this material will be reviewed to ensure that no materials promote individual Councillors. Councillor's profiles on the website will be amended to provide name, contact details only.

Update of Council's website will be limited to the following:

- Uploading of essential operational media releases, restricted to administrative or operational information of public interest and of a time-sensitive nature;
- Road work updates or road closure;
- Health and emergency warning;
- Material that is purely factual regarding Council decisions and operations;
- Updates on existing forms;
- Visual changes;
- Fixing broken links or repairing web issues;
- Compliance with legislative requirements.

Social Media Channels

Facebook, Twitter, Instagram and other social media hosted or published by Council will carry a notice to exclude political comment. No response will be made to any political comments posted and any such comments will be removed. Content of a political nature posted to Council's social media sites will be removed, as will posts, which tag Douglas Shire Council or mention the organisation.

Council Officers shall not 're-tweet', 'post' or 'share' political content during the Caretaker Period.

Request for Information

Requests for information or requests for services from Councillors will continue to be processed under the existing administrative arrangements.

During the Caretaker Period, Councillors shall limit information requests to those matters that are either routine, or essential to continue Council operations. Requests for reports on substantive matters shall not be processed during the Caretaker Period unless they involve a matter of public safety or are requested by a resolution of Council.

Councillor Support

Normal service delivery and business activities will be maintained throughout the Caretaker Period and the Councillor Support Officer will continue to provide support for core Council activities, but not election or politically related matters. The Media team will not assist individual Councillors with their media activity.

Mayor and Councillor Correspondence

The Mayor and Councillors may continue to correspond with constituents on matters related to Council business during the Caretaker Period. However, in responding to correspondence, the Mayor and Councillors shall not lay claim to make policy commitments binding the incoming Council.

Council Staff

Council employees shall maintain the normal business activities of Council during the Caretaker Period. Employees shall undertake their duties in an appropriate way and take all steps to avoid any real or perceived partnership in order to protect the organisations ability to impartially serve any incoming Council following an election.

A Council Officer who nominates as a candidate is entitled to a leave of absence from their appointment during the Caretaker Period in accordance with S203 of *the Local Government Electoral Act 2011*.

Prior to the Caretaker Period commencing, the Chief Executive Officer will ensure that all staff are advised of the application of this Policy and ensure that:

- Council staff will not undertake any activity that may affect voting in the election;
- Council staff will not authorise, use or allocate a Council resource for any purpose which may influence voting in the election;
- Council staff will not assist Councillors or a candidate in a way that is or could create a perception that they are being used for electoral purposes;
- Should any member of staff wish to provide support or assistance to a Councillor or a candidate in their own time as a private citizen including on the day of the election they must in no way be seen to be acting as a representative of Council and in these actions, they are acting as a private citizen.

Contact with Council Employees

The Chief Executive Officer is committed to ensuring Councillors are provided with appropriate support to continue to fulfil their official duties and responsibilities during the Caretaker Period.

During the Caretaker Period Councillors may still contact officers in accordance with the Acceptable Request Guidelines Policy and the provisions of the *Local Government Act 2009*.

Any approach to an officer from a candidate for information shall also be referred to their Manager in the first instance.

Complaints about Councillors

Complaints made against Councillors during the Caretaker Period will continue as per the Council Investigation Policy.

Responsibilities and Accountability

As the principal advisor to Council and head of Council Operations, the Chief Executive Officer is authorised to make determinations and issue such directions as necessary to assist with compliance of this procedure. All Council Officers, Council Contractors, Volunteers and Councillors must comply with this policy and any breach is to be reported to the Chief Executive Officer for further investigation.

Grievances

Council confirms that all candidates for the Council election will be treated equally. Any complaints or grievances in relation to this Policy should be referred to the Chief Executive Officer.

Legislation

- *Local Government Act 2009*
- *Local Government Regulations 2012*

- *Local Government Electoral Act 2011*
- *Local Government Electoral Regulation 2012*

Policies

This Policy forms part of, and is to be read in conjunction with the following Douglas Shire Council Policies:

- Acceptable Request Guidelines – Doc # 809967
- Advertising Spending Policy – Doc # 809784
- Councillor Expense Reimbursement Policy – Doc # 810180
- Investigation Policy – Doc # 906942
- Councillor Code of Conduct – Doc # 809871
- Code of Conduct for Douglas Shire Council Employees - Doc # 462781

Definitions

TERM	DEFINITION
Advertising	Is the promotion of an idea, good or services to the public, for which a fee is paid
By-Election	An election to replace a councillor after the councillors office becomes vacant
Caretaker Period	Is prescribed in S90A of the <i>Local Government Act 2009</i> and commences on the day when the public notice of the holding of the election is given and ends at the conclusion of the election
Civic Events	Are public events that are initiated, funded and managed by Council
Conclusion of the Election	Is prescribed in S7 of the <i>Local Government Electoral Act 2011</i> , and is the day on which the last declaration of a poll is displayed in the Returning Officer's public office
Candidate	A person whose nomination for election as a Councillor has been certified by the returning officer under s27 (3) (a) as defined in the Schedule Dictionary of the <i>Local Government Electoral Act 2011</i> .
Contractor	A person or business who provides services under a contract with the local government
Council Resource	Includes Council assets (e.g.: provided mobile phones, other devices, stationary, facilities, property, vehicles and employees, Council services and Council social media
Election Material	Is prescribed in S90D of the <i>Local Government Act 2009</i> and is anything able to, or intended to influence an elector about voting at an election, or affect the result of the election
Fresh Election	An election of all the councillors of a local government that is not a quadrennial election
Electoral Signage	Any freestanding advertising device identifying candidates and/or promoting a political party at local, state or deferral government elections, as defined by the Department of Transport and Main Roads Qld.
Major Policy Decision	Is prescribed in the dictionary of the <i>Local Government Act 2009</i> and involves a decision about: <ul style="list-style-type: none"> • The appointment, remuneration and termination of the Chief Executive Officer; and • Entering into a contract which is more than \$200,000 or 1% of Council's net rates

TERM	DEFINITION
	<ul style="list-style-type: none"> • 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; • To make, amend or repeal a local law; • To make, amend or repeal a local planning instrument under the <i>Planning Act 2016</i> (i.e. a planning scheme, a temporary local planning instrument or a planning scheme policy); • Under the Planning Act, Chapter 3, part 3, division 2 on a development application that includes a variation request under the Act if the application proposes to - <ul style="list-style-type: none"> ○ Varying the category of development or category of assessment of development; or ○ Varying the assessment benchmarks or criteria for accepted development that would apply to development ○ Facilitating development that would result in a greater demand on infrastructure than the demand anticipated in the Local Government’s local government infrastructure plan.
Term of Office	<p>For a Councillor starts on the day after the conclusion of the election (if elected) or the day on which the Councillor is appointed and ends:</p> <ul style="list-style-type: none"> • If elected at a quadrennial or fresh election, at the conclusion of the next quadrennial election • If elected at a fresh election and a declaration is made under regulation, at the conclusion of the next quadrennial election • If elected or appointed to fill a vacancy in the office of another Councillor, at the end of the other Councillor’s term • When the Legislative Assembly ratifies the dissolution of the local government under section 123 of the <i>Local Government Act 2009</i> • When the Councillor’s office otherwise becomes vacant.
Quadrennial Election	Election of Councillors for Local Governments that is held in 2012, and every fourth year after 2012

Policy Review

This policy is to be reviewed if legislation changes, or every 4 years if no changes have been required to be enacted, at the direction of the Chief Executive Officer.

Policy Details

Policy Name	Caretaker Period Policy
Policy Number	51
Policy Version	3
Document Number	To be advised
Endorsed by	Chief Executive Officer
Policy Type	Council
Approval Authority	Council

Date Adopted	Date adopted at Council
Time Period	4 Years
Review Date	November 2023
Policy Department	CEO
Link to Corporate Plan	Robust Governance and Efficient Service Delivery
Revoked/Superseded	Election Caretaker Provisions General Policy

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