



COUNCIL PROCEDURE: CARETAKER PERIOD PROTOCOL

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Related Policies/Local Laws/Legislation:

Local Government Act 2009 (LGA)

Local Government Regulation 2012 (LGR)

Local Government Electoral Act 2011 (LGEA)

Local Government Electoral Regulation 2012

Council Policy: Advertising Spending

Council Policy: Councillor Expenses and Reimbursement

Subordinate Local Law No 1.4 (Installation of Advertising Devices) 2011

INTRODUCTION

Council will enter a caretaker period prior to the March 2016 quadrennial elections. During this time, certain restrictions shall apply to Council, Councillors and Council officers to ensure that the ordinary business of Council continues in a responsible, transparent and legally-compliant manner in the period leading up to an election.

This protocol has been prepared in advance of this election. It will be updated prior to any future quadrennial local government election.

This protocol has been adopted by resolution of Council. Council accordingly considers this protocol to be a "procedure", as prescribed in section 176(4)(a) of the *Local Government Act 2009*.

APPLICABILITY

This protocol applies during Council's quadrennial elections. It does not apply to by-elections or fresh elections.

It applies to all Scenic Rim Regional Council Councillors and to all Council officers, whether permanent, temporary, casual or part-time employees, contractors or volunteers.

The Caretaker Period Protocol is to be read and implemented in conjunction with Council's other relevant policies, strategies and documents.

DEFINITIONS

Advertising - s197(3) in the LGR: is promoting an idea, goods or services to the public for which a fee is paid.

Caretaker period -S90A of the LGA: the period during an election for the Council 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. The exact dates of a caretaker period are determined by the Electoral Commission of Queensland (ECQ) and Returning Officer.

Civic events - public events that Council initiates, manages and has full responsibility for.

Community events - events including but not limited to media launches, promotional events, community engagement, workshops, dinners, receptions, Mayoral events, awards, invitations to make submissions, local fairs.

Conclusion of election - S7 of the LGEA: the day on which the last declaration of a poll conducted in the election is displayed in the local government's public office.

Council resources - includes employees, services, information, equipment, printing, photographs, graphic design, public funds, grants, media services, materials published by Council (e.g. newsletters), hospitality, stationery, property, facilities, website, Council vehicles, administrative tools, telecommunication devices.

Election material - S90D of the LGA: anything able to, or intended to, influence an elector about voting at an election or affects the result of an election

Election period - Schedule Dictionary of the LGEA: the period starting on the day when public notice of the holding of the election is given under s25(1) and ending on the close of the poll for the election.

Fresh election - Schedule Dictionary of the LGEA: an election of all the Councillors of Council that is not a quadrennial election.

Major policy decision - Schedule Dictionary of the LGA: a decision:

- about the appointment of a Chief Executive Officer;
- about the remuneration of the Chief Executive Officer;
- to terminate the employment of the Chief Executive Officer;
- to enter into a contract the total value of which is more than the greater of \$200,000 or 1% of 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.

Term of Office - S159 LGA2009: A councillor's term starts on-

- (a) if the councillor is elected—the day after the conclusion of the councillor's election; or
- (b) if the councillor is appointed—the day on which the councillor is appointed.

S160 LGA 2009: A councillor's term ends—

- (a) if the councillor is elected at a quadrennial election or at a fresh election—at the conclusion of the next quadrennial election; or
- (b) if the councillor is elected at a fresh election and a declaration is also made under a regulation—at the conclusion of the quadrennial election after the next quadrennial election; or

- (c) if the councillor is elected or appointed to fill a vacancy in the office of another councillor—at the end of the other councillor’s term; or
- (d) when the Legislative Assembly ratifies the dissolution of the local government under section 123; or
- (e) when the councillor’s office becomes otherwise vacant.

PROTOCOL STATEMENT

Council reaffirms its commitment during an election 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 officers; and
- the principle that the use of public funds for electoral purposes is unacceptable.

Elected members 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 activity that could be perceived as having some electoral flavour.

It is acknowledged that during an election period, candidates may make election commitments which they intend to honour if they are elected. Such commitments are not subject to this protocol.

KEY PRINCIPLES

1. Council and Council Committees

Council and its Standing Committees 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 in its operational delivery; or
- constitute a major policy decision¹ for which Ministerial approval has not been received (refer Section 3 below)

2. Timing and planning

The exact dates of a caretaker period are determined by the Electoral Commission Queensland (ECQ).

3. Prohibition on major policy decisions

Council must not make a major policy decision² during a caretaker period. However, if Council considers that, having regard to exceptional circumstances that apply, it is necessary to make the major policy decision in the public interest, Council shall apply to the Minister for approval to make the decision.

¹ Refer to page 2 - Definitions - Major Policy Decision

² Refer to page 2 - Definitions - Major Policy Decision

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 decision in the public interest. The Minister's decision may include conditions with which Council must comply.

4. Invalidity of major policy decision in caretaker period without approval

A major policy decision made by Council during a 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.

A person who acts in good faith in relation to a major policy decision of Council, or in relation to a contract that is the subject of a major policy decision, but who suffers loss or damage because of any invalidity of the decision or because the contract is void, has a right to be compensated by Council for the loss or damage. The person may bring a proceeding to recover the compensation in a court of competent jurisdiction.

5. Prohibition on election material

In accordance with s90D of the LGA, Councillors and Council officers shall not publish or distribute election material intending to influence voters using Council resources.

6. Use of Council resources during an election period

Councillors are entitled to use Council resources and facilities in accordance with the Councillor Expenses and Reimbursement Policy, until their term of office comes to an end.

Councillors are not permitted to affix, or allow to remain affixed, to Council facility any sticker, poster, decal or other magnetic or adhesive device that promotes the Councillor as an actual or potential candidate for any election. Further, any telecommunication equipment provided by Council must not be used by a Councillor for the purposes of promoting that Councillor as an actual or potential candidate for any Local Government, State Government or Federal Government election.

7. Advertising restrictions

Advertising may continue during the election 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/or
- 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's operations.

Furthermore, Council will not in a three month period prior to a Local Government election or during the period of a by-election:

- place an advertisement relating to a **major policy decision** unless approved by the Minister pursuant to Section 90B of the *Local Government Act 2009*;

- place an advertisement which seeks to influence, or provide support for particular candidates or groups of candidates;
- feature one or more councillors in any paid Council advertisement

8. Civic and community events

Representation of Council at civic and community events shall continue during an election period provided the event meets one or more of the following criteria:

- 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;
- it contributes to cultural development, social awareness or sense of community identity; and/or
- it is an event to be attended by or on behalf of the Mayor in fulfilling his or her statutory responsibilities for ceremonial and civic functions, including but not limited to, civic receptions, courtesy calls, hosting VIP guests to the Scenic Rim region.

9. Community programs and engagement

Surveys, blogs, invitations to put forward submissions, and other community engagement activities should be avoided during the caretaker period. However community engagement may continue if it is part of an ongoing project that requires the engagement as part of approved programs. Where community engagement has occurred before the caretaker period but the report has not yet proceeded to Council, results of the consultation will not be provided to Council until the caretaker period has concluded.

10. Media

Media releases prepared by the organisation during the caretaker period must be of public interest, relate to day-to-day Council business, and must not be reasonably construed as being for political purposes. In a media release, quotes will be attributed to a Council spokesperson.

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 event relates to core Council business or an ongoing project and is not used for political purposes.

If any Councillor who is a candidate attends a media event and is asked a political question, they may respond in their capacity as a candidate.

Council will not provide speechwriting support or speech notes to any Councillor during the caretaker period.

During the caretaker period, Council officers will not offer advice, assistance or scheduling to any Councillor in relation to their Councillor column. Any general requests for information to assist with columns will be directed through the CEO.

Council will retain material placed on the website prior to the commencement of the caretaker period; however this material must be reviewed to ensure that no materials promote individual Councillors.

Councillor profiles on the website will be amended to satisfy legislative statutory requirements.

Updates 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 closures;
- Health or emergency warnings;
- Material that is purely factually and does not promote Council's decisions;
- Updates to existing forms;
- Aesthetic changes;
- Fixing broken links or repairing web issues; and/or
- Compliance with legislative requirements

11. Electoral signage

Candidates are required to comply with Council's Subordinate Local Law No 1.4 (Installation of Advertising Devices) 2011 in the lead up to any election. Council officers are authorised to remove electoral signage erected in contravention of that Subordinate Local Law and/or take enforcement action in accordance with Local Law No. 1 (Administration) 2011.

12. Requests for information by Councillors

All requests for information or advice from Councillors shall continue to be responded to in accordance with the Acceptable Requests Guidelines.

13. Provision of information to candidates

Requests for information by candidates during the caretaker period will be dealt with as per the process for a member of the public. The process for requesting and providing information will remain the same.

14. 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 purport to make policy commitments binding the incoming Council.

15. Council officers

Council officers shall maintain the normal business activities of Council during the caretaker period. Officers shall undertake their duties in an appropriate way and take all steps to avoid any real or perceived partisanship in order to protect the organisation's ability to impartially serve any incoming Council following an election.

Officers must not engage in any activity that is, or could be perceived to be, considered an electioneering activity for a Scenic Rim Council election unless a leave of absence for the duration of the election campaign is granted in accordance with Council's normal leave processes (refer s203 of LGEA).

Any Council officer proposing to stand as a candidate for the election must be absent on leave from their appointment during the entire election period.

Elected member support officers will continue to provide support for Council endorsed activities and core Council business.

16. Compliance

Failure to comply with this protocol, and with the policies, guidelines, and procedures referred to in this protocol, may constitute inappropriate conduct or misconduct and any complaints will be dealt with in accordance with Chapter 6 Part 2 Division 6 of the LGA.

17. Responsibilities

The CEO is the principal adviser to Council and all Councillors in relation to the application of this protocol. As such, the CEO is the final decision-maker in relation to this protocol.