

## Caretaker Period Policy

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Responsible Officer	CEO	Date Approved:	15/02/2023
Review Officer:	Manager Development and Governance	Review Due:	15/01/2027
Author:	CEO	Commencement:	15/02/2023

### 1. PURPOSE

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To inform Councillors and Council staff of responsibilities during the mandatory **caretaker period** prior to and during Local Government elections.<sup>1</sup>

### 2. SCOPE

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This policy applies during Council's quadrennial elections. It does not apply to by-elections or fresh elections.<sup>2</sup>

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

The *Caretaker Period Policy* is to be read and implemented in conjunction with policies regarding requests by Councillors for information and advice and guidelines for election advertising.

The principles of sections 3.4 and 3.7 also apply to caretaker periods associated with State and Federal Government elections.

The CEO is the final decision-maker in relation to this policy.

### 3. POLICY STATEMENT

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#### 3.1 POLICY PRINCIPLES

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 officers;
- The continuation of the principle that the use of public funds for electoral purposes is unacceptable.

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<sup>1</sup> *Local Government Act 2009* (Qld) ch 3 pt 5.

<sup>2</sup> *Ibid* s 90A(2).

### Exceptions

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 policy.

## **3.2 TIMING AND PLANNING**

The length of the caretaker period will be determined by the date selected by the Returning Officer for publication of the notice of election and the date on which the election concludes as defined under the LGEA.<sup>3</sup>

The timing of local government elections, and any restrictions that apply in the period leading up to an election, should be considered by all managers in forward planning processes.

The CEO, as far as possible, shall ensure that matters of Council business that require major policy decisions are scheduled for Council business before the commencement of the caretaker period or are deferred for consideration by an incoming Council.

## **3.3 PROHIBITION ON MAJOR POLICY DECISIONS**

A local government must not make a *major policy decision* during the caretaker period.<sup>4</sup>

Any contracts made pursuant to an invalid major policy decision are void and Council may be liable to any person who suffers loss or damage as a result of a void contract. Such persons have the right to bring court proceedings against Council.

Official correspondence must not be entered into by any Councillor during caretaker period that makes future policy commitments that could bind an incoming Council.<sup>5</sup>

### Exceptions

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 resolve to apply to the Minister for approval to make the 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.<sup>6</sup>

## **3.4 ELECTION MATERIAL, COUNCIL RESOURCES, MEDIA, EVENTS AND ADVERTISING**

### ***Election material***

Council (or a *controlled entity* of Council) may not publish or distribute election material during a caretaker period.

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<sup>3</sup> See *Local Government Electoral Act 2011* s 25(1) for notice of election and s 7 for election conclusion date. See also *Local Government Act 2009* (Qld) s 90A.

<sup>4</sup> See *Local Government Act 2009* s 90B.

<sup>5</sup> *Ibid* s 90C.

<sup>6</sup> *Ibid* s 90B(2)-(4).

Election material is anything able to, or intended to:

- (a) influence an elector about voting at an election; or
- (b) affect the result of an election.

*Example -*

*A fact sheet or newsletter that raises the profile of a Councillor.<sup>7</sup>*

This prohibition includes:

- the use of Council newsletters, brochures, email and web site for political purposes
- the distribution by Councillors of Council funded promotional material or giveaways
- the use of equipment or information purchased from Council funds to carry out electioneering activities
- the use of any Council provided mobile telephone or handheld device for the purposes of promoting a Councillor as an actual or potential candidate for any election
- Councillors shall not affix, or allow to remain affixed, to Council property any sticker, poster, decal or other magnetic or adhesive device that promotes the Councillor as an actual or potential candidate for any election

### ***Media and public events***

1. If a Councillor is attending a media or public event during the caretaker period and is asked a political question, he/she shall respond in their capacity as a candidate.
2. In a Council media release issued during caretaker period, quotes will be attributed to a Council spokesperson.
3. During the caretaker period, Council will respond to media enquiries that relate to operational matters only.

### **Exceptions**

The following are permitted:

1. advertising on-going business and commercial operations of Council
2. provision of essential public information without which the public would be detrimentally affected
3. provision of information on core Council services or information that has a clear community education benefit
4. activities that have already commenced or routinely occur at the same time each year, the deferral of which would have a significant impact on the cost and effectiveness of Council's operations
5. activities that fulfil the Mayor's ceremonial and civic functions
6. activities that meet Council's previously agreed vision and objectives.

All candidates may advertise election material as per Council's *Guidelines for Political Advertising and Erection of Street Stalls during Elections* which stipulate that:

1. a permit is required to erect political advertising or operate a stall on Council lands (fees and conditions apply)

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<sup>7</sup> Ibid s 90D(2).

2. defamatory material identifying a political party or candidate is prohibited
3. promotional material and activities must comply with relevant State and Federal legislation.

### **3.5 PROHIBITION ON FUNDING FOR COMMUNITY GRANTS**

Decisions regarding community grants are delegated by this policy to the CEO during caretaker period.

1. During the caretaker period, representation to Council to support community funding must be referred to the CEO for approval on the basis that it is part of an on-going or recurrent project or of exceptional benefit to the community or timing is critical.
2. Community grants programs (including sponsorships, scholarships and awards) that are open for submission during the caretaker period may remain open but applications will not be considered until after the election.
3. Invitations to put forward submissions and other community engagement activities should only be approved by the CEO on the basis that they are part of an on-going or recurrent project or of exceptional benefit to the community or essential to Council's operations.

#### Exceptions

Community grants that meet Council's previously agreed vision, objectives and/or resolutions.

### **3.6 REQUESTS FOR INFORMATION**

1. Councillors must not request information or advice from Council staff to assist with political or electioneering activities unless they identify themselves as being in the role of a candidate.
2. Requests for information by candidates (including Councillors in their role as a candidate) will be dealt with as per the process for a request by a member of the public.
3. Requests by candidates for information that is outside the public domain (for example, information that has not been published) will be referred to the appropriate agency.
4. Councillors may continue to request information and advice from Council staff in order to conduct day to day Council business as per the relevant policies. Councillors must therefore ensure that they inform the CEO (or staff member) of the nature of the proposed Council decision or issue when requesting information and advice.

### **3.7 COUNCIL OFFICERS**

1. Council officers shall maintain the normal activities of Council during the caretaker period.
2. Officers shall take all steps to avoid any real or perceived partisanship in order to preserve the organisation's ability to impartially serve any incoming Council following an election.
3. Officers shall not fulfil any request that is, or could be perceived to be, an electioneering activity.
4. Any Council officer proposing to stand as a candidate for the election must be absent on leave from their appointment from the date they formally nominate and become a candidate for the election to the end of the caretaker period.

### **3.8 REQUIREMENT TO DISCLOSE ELECTION GIFTS, LOANS AND EXPENDITURE**

The LGEA requires candidates and groups of candidates to disclose all election **gifts** received during the disclosure period via return submission to the Electoral Commission Queensland, regardless of the election

outcome.<sup>8</sup> Candidates should be aware of the impact of gifts received from third parties enabling expenditure and the disclosure requirements.<sup>9</sup>

The LGEA further requires candidates and groups of candidates to disclose all **loans** received during the disclosure period via return submission to the Electoral Commission Queensland, regardless of the election outcome.<sup>10</sup>

The LGEA prohibits candidates from receiving gifts exceeding \$500.00 in value<sup>11</sup> during the disclosure period.<sup>12</sup>

Candidates, groups of candidates must observe requirements for lodgement of expenditure returns to the Electoral Commission Queensland.<sup>13</sup>

The above requirements are not met by the Councillor's registration of interests and is the responsibility of candidates, not Council.

#### 4. REPORTING

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No additional reporting is required

#### 5. DEFINITIONS

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**Caretaker period** – is defined as the period during an election for the local government that—

- (a) *starts on the day when public notice of the holding of the election is given under the Local Government Electoral Act 2011, section 25(1); and*
- (b) *ends at the conclusion of the election.*<sup>14</sup>

**Control** – means the capacity of an entity to dominate decision-making of another entity, directly or in directly, in order to enable the other entity to operate with the first entity in pursuing the objectives of the first entity.

**Controlled entity of Council** – means an entity subject to the control of either or both of—

- (a) *Council;*
- (b) *Another entity subject to the control of Council.*

**Disclosure Period** – means:

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<sup>8</sup> See *Local Government Electoral Act 2011* (Qld) ss 117-118. Specific real-time disclosure deadlines apply - within 7 days during the disclosure period or where received within 7 days of polling day, 24-hours applies - see *Local Government Electoral Regulation 2012* ss 5-6.

<sup>9</sup> See *Local Government Electoral Act 2011* (Qld) s 118A, s 125A.

<sup>10</sup> See *Local Government Electoral Act 2011* (Qld) s 120. Specific real-time disclosure deadlines apply - within 7 days during the disclosure period or where received within 7 days of polling day, 24-hours applies - see *Local Government Electoral Regulation 2012* s 5, s 8.

<sup>11</sup> See *Local Government Electoral Act 2011* (Qld) s 108.

<sup>12</sup> *Ibid* s 119.

<sup>13</sup> *Ibid* ss 123-125.

<sup>14</sup> *Local Government Act 2009* (Qld) s 90A.

1. *for an election for a **candidate** in the election, is the period that—*
  - (a) *starts—*
    - I. *if the candidate was a candidate in an election held within 5 years before the polling day for the election—30 days after the polling day for the earlier election; or*
    - II. *otherwise—on the day that applies for the candidate under subsection (2); and*
  - (b) *ends 30 days after the polling day for the election.*
2. *For subsection (1)(a)(ii), the day that applies for the candidate for the election is the earlier of the following days—*
  - (a) *the day the person announces or otherwise publicly indicates the person’s intention to be a candidate in the election;*
  - (b) *the day the person nominates as a candidate in the election;*
  - (c) *the day the person otherwise indicates the person’s intention to be a candidate in the election, including, for example, by accepting a gift made for the purpose of the election.*
3. *The disclosure period for an election, for a **group of candidates** for the election or a **third party** to whom section 118A or 125A applies for the election, is the period that—*
  - (a) *starts 30 days after the polling day for the last quadrennial election; and*
  - (b) *ends 30 days after the polling day for the election.*
4. *However, a regulation may prescribe another day on which a disclosure period mentioned in subsection (1) or (3) starts or ends.*

**Major policy decision** - means a decision—

- (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;*
  - 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*
- (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.*<sup>15</sup>

## **6. RELATED DOCUMENTS AND REFERENCES**

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*Local Government Act 2009 (Qld)*

*Local Government Electoral Act 2011 (Qld)*

*Local Government Electoral Regulation 2012 (Qld)*

*Guidelines for Political Advertising and Erection of Street Stalls during Elections (MSC)*

*Councillors Acceptable Requests Policy (Guideline) (MSC)*

## **7. REVIEW**

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It is the responsibility of the Manager Development and Governance to monitor the adequacy of this policy and implement and approve appropriate changes. This policy will be formally reviewed every four (4) years or as required by Council.

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<sup>15</sup> Ibid sch 4 Definitions.