

Policy Title: **Caretaker Period**
 Policy No: 243

Directorate: Governance
 Responsible Officer: Chief Executive Officer

Adopted Date: General Meeting – 19/01/16
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VERSION	MEETING APPROVED	MEETING DATE	HISTORY
1	General Meeting	19/01/16	Biennial Review

Authorities: *Local Government Act 2009*
Local Government Regulation 2012
Local Government Electoral Act 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 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 the 2016 election and will be updated prior to any future elections. This protocol has been adopted by resolution of Council.

APPLICABILITY

This protocol applies during Council’s quadrennial elections. It does not apply to by-elections or fresh elections. It applies to all North Burnett 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 – *s 197(3) of the Local Government Regulation 2012*; is promoting, for the payment of a fee, an idea, goods or services to the public.

Caretaker Period – s 90A of the *Local Government Act 2009*; the period during an election for the local government that –

- (a) starts on the day when the 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.

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

The Local Government Quadrennial Election will be held on Saturday 19 March 2016. The ECQ advises that nominations open on or about 06 February 2016 and therefore in accordance with s 90A of the *Local Government Act 2009* and s 25 of the *Local Government Electoral Act 2011*, the Caretaker Period will commence on 06 February 2016. The Caretaker Period will end at the conclusion of the election.

Civic Events – a public event 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 – s 7 of the *Local Government Electoral Act 2011*; the day on which the last declaration of a poll conducted in the election is displayed at the office of the returning officer under *section 100(2)(a)*.

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, vehicles, administrative tools, telecommunication devices.

Election material – s 90D of the *Local Government Act 2009*; anything able to, or intended to:

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

Election period – Schedule Dictionary of the *Local Government Electoral Act 2009*; the period:

- (a) starting on the day when public notice of the holding of the election is given under s 25(1); and
- (b) ending on the close of the poll for the election.

Fresh Election – Schedule Dictionary of the *Local Government Electoral Act 2011*; an election of all the Councillors of a local government that is not a quadrennial election.

Major Policy Decision – Schedule 4 Dictionary of the *Local Government Act 2009*; for a local government, means 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; 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 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 LGA 2009: 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 continuation of 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 decision for which Ministerial approval has not been received (refer Principle 3 below).

2. Timing and planning

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

The Local Government Quadrennial Election will be held on Saturday 19 March 2016. The ECQ advises that the notice of election will be issued on or about 6 February 2016 and therefore in accordance with *S90A* of the *Local Government Act 2009* and *S25* of the *Local Government Electoral Act 2011*, North Burnett Regional Council will commence the Caretaker Period on 6 February 2016. The Caretaker Period will end at the conclusion of the election.

3. Prohibition on major policy decisions

Council must not make a major policy decision 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.

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 s 90D of the *Local Government Act 2009*, 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 as outlined in the Expenses Reimbursement for Local Government Councillors Policy until their term of office comes to an end.

Use of Council equipment and resources for election purposes is strictly forbidden. This includes use for electoral purposes of Council vehicles, administrative tools and telecommunication devices as outlined in the Expenses Reimbursement for Local Government Councillors Policy.

Councillors are not permitted to 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. Further, any mobile telephone or hand held device 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 election.

7. Advertising restrictions

To meet any advertising restrictions Council may continue to advertise during the election advertising 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 and its operations.

Advertising will be limited during the Election Period. Council's newspaper insert will be produced as usual and will only cover key operational projects and events during this period.

During this period and in particular, Council will restrict its advertising and media releases to those required to maintain the necessary, customary and routine operations of Council and day to day Council business. Individual Councillors will not be featured in any paid advertising and media releases will not be attributed to individual Councillors during the Caretaker Period.

Care will be taken to ensure that advertising or media releases are not construed to be of a political nature. All quotes within media releases will be attributed to the CEO or his/her delegate. During the Caretaker Period, Council News will include interviews with delegated officers.

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. Speeches will not be provided to Councillors during the Caretaker Period and Councillors are not to seek media notes from Council Officers for the purpose of assisting them with their campaign.

8. Civic and community events

Representation of Council at civic and community events shall be able to 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 North Burnett Regional Council.

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 the Mayor and/or a Councillor is at a media event and is asked a political question, the Mayor and/or a Councillor shall respond in their capacity as a candidate. Speechwriting and speech notes will not be provided 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 will 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 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 factual 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.

Council website and Social Media - Facebook, twitter, Instagram, YouTube, blogs 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 North Burnett Regional Council or mention the organisation. Council Officers shall not 're-tweet', 'post' or 'share' political content during the Election Period. Council's website will not feature any articles or events which are not approved by the CEO.

11. Requests for information by Councillors

All requests for information or advice from Councillors shall continue to be responded to in accordance with the Advice and Provision of Information CEO Guidelines.

12. 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.

13. 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.

14. 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 are advised not to engage in any activity that is, or could be perceived to be, an electioneering activity for a North Burnett Regional Council election unless a leave

of absence for the duration of the election campaign is granted in accordance with Council's normal leave processes.

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

15. Compliance

Failure to comply with this protocol, and with the policies, guidelines, and procedures referred to in this protocol, may constitute inappropriate conduct, misconduct, or official misconduct and shall be dealt with as follows:

- official misconduct shall be referred to the Crime and Corruption Commission;
- breaches by officers shall be managed under the Code of Conduct; and
- breaches by Councillors shall be managed under the conduct and performance obligations of the *Local Government Act 2009*.

16. 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.

Attachment A
Fact Sheet – Employees Seeking To Stand For Election To Council



Guidelines

Fact Sheet – Employees seeking to stand for Election to Council

Subject:	Governance
Responsible Officer:	Chief Executive Officer
Authorised by:	North Burnett Regional Council
Adopted Date:	2016
Review Date:	2020
Authorities:	Local Government Act 2009; Local Government Electoral Act 2011.

ARE YOU AN EMPLOYEE INTERESTED IN NOMINATING FOR COUNCIL?

If so, read on. This fact sheet has been written to tell Council employees interested in becoming a candidate for local government elections about the relevant legislation, internal processes and how you can avoid any conflicts of interest that may arise¹. This applies whether you are nominating for the North Burnett Regional Council or another local government.

Council employees are entitled to run for public office, including as a Local Government Councillor if they wish, however they must ensure that no real or perceived conflicts of interest between their role as an employee and their ambition to become a Councillor arise.

LEGISLATION

Section 8 of the *Local Government Electoral Act 2011* provides that the Electoral Commission of Queensland will conduct quadrennial elections and by-elections for local governments.

Section 115 of the *Local Government Electoral Act 2011* provides that a candidate's disclosure period starts when they announce that they are to be a candidate or when they become a candidate.

Section 126 of the *Local Government Electoral Act 2011* provides that candidate must operate a dedicated account for all money received as donations, gifts and loans and all election campaign expenditure in the disclosure period.

¹ This document is a summary of the major issues and not a comprehensive documentation of all matters relating to employees who wish to run as candidates for local government elections. Potential candidates should satisfy themselves of the requirements of the respective Acts and ensure that they avoid creating a conflict of interest between their duties and aspirations to be a Councillor.

Section 203 of the Local Government Electoral Act 2011 provides that a Council employee who nominates as a candidate for an election is entitled to a leave of absence to contest the election. This could be paid or unpaid leave, depending on your accrued leave entitlements.

Section 159 of the Local Government Act 2009 provides that the term as a Councillor commences at the conclusion of the election – when the Returning Officer declares the poll.

Section 167 of the Local Government Act 2009 provides that if a person becomes a councillor while the person is a local government employee, the person is taken to have resigned as a local government employee on the day before the person becomes a councillor.

Information on the conduct of the election can be obtained from the Electoral Commission of Queensland www.ecq.qld.gov.au, phone 1300 881 665, or email ecq@ecq.qld.gov.au.

Intending candidates are advised to become familiar with these Acts as they include important information on the conduct of the election and the roles and obligations of candidates and Councillors. Copies can be obtained from www.legislation.qld.gov.au or the Office of the Queensland Parliamentary Counsel, Level 17 and 18, 111 George Street, Brisbane Qld 4000.

Information and advice on the role of Councillors and participating in elections can be obtained from the Local Government Association of Queensland (LGAQ) and the Department of Local Government, Infrastructure and Planning (DLGIP).

CONFLICT OF INTEREST

Council's Code of Conduct for Employees states:

“Conflict of interest – a conflict of interest involves a conflict between a North Burnett Regional Council employee's work responsibilities and their personal or private interests. A conflict of interest can arise from either gaining a personal advantage or avoiding a personal loss. Conflicts of interest can be real (actual) or perceived (apparent).

- *A real conflict of interest is a conflict between the employee's duties and their private interests.*

- *A perceived conflict of interest is if it seems like an employee's private interests could improperly influence them at work, as judged by a reasonable person.*

Types of interests – interests can be financial, non-financial, personal, private, family or business. A financial interest is when the employee could gain a personal financial benefit including having shares, receiving gifts, benefits or bribes or receiving hospitality or travel.”

DUTY TO AVOID A CONFLICT OF INTEREST

To avoid a conflict of interest, safeguard your personal and professional integrity and ensure that there is no adverse impact on the reputation of the Council, you are expected to take necessary action to ensure that any real or perceived conflict of interest is avoided. In all but extraordinary instances, it is expected that

arrangements will be made to take leave (annual leave, long service leave, unpaid leave and / or leave of absence) from the date of nomination.

If you announce your intention to stand as a candidate prior to nominating, or in circumstances where it is not reasonable for you to take leave, you must at all times perform your duties as an employee professionally, in a way that does not allow your candidature to impact on Council and agree to follow an Election Management Plan.

LEAVE AND ENTITLEMENTS

You will need to formally apply for leave, whether paid or unpaid using the Council's approved leave forms following your formal nomination. Your entitlements (sick leave, annual leave, etc) will continue to accrue if you have taken paid leave, however, where unpaid leave is taken, entitlements do not accrue.

Where the use of a Council vehicle forms part of your remuneration package, its use will be suspended in accordance with the vehicle use agreement.

ELECTION MANAGEMENT PLAN

Where you announce your intention to stand as a candidate prior to nominating, you may continue to work in your position until nomination processes are complete or another suitable position, provided that an Election Management Plan is developed with your Manager to identify the risks to the organisation and ways to manage those risks. Considerations include:

- Access to and use of Council information (improper access to and use of information for campaign purposes is prohibited).
- Access to and use of Council buildings, facilities, plant and systems, including email, telephones, photocopier, noticeboards and similar services (access may be limited, based on individual circumstances and job requirements).
- How public / election statements are made (they should clearly articulate that they are being made as a candidate and not an employee of Council).
- Interaction with Councillors and other candidates.
- Interaction with Council Office Staff including the Executive Team.
- How complaints about the employee's conduct related to the campaign are to be investigated and managed.

The Chief Executive Officer and Deputy Chief Executive Officer may provide advice and guidance in the development of the Election Management Plan, which must be approved by the appropriate General Manager and may be subject to change, depending of circumstances.

Notwithstanding this, the onus rests solely with you to ensure that a conflict of interest does not arise or is managed appropriately. Should the performance of your duties be impacted negatively by your candidature, managerial intervention may occur and may include disciplinary action.

OTHER

You should contact LGSuper with respect to any superannuation issues and the Australian Tax Office regarding taxation matters (e.g. deductible expenses).