

CARETAKER PERIOD POLICY

(COMMUNITY POLICY)

1. Scope

The Caretaker Period Policy (this 'Policy') applies to all Livingstone Shire Council Councillors, candidates and employees, including contractors and volunteers.

2. Purpose

This Policy will assist to ensure that Council conducts its business throughout the pre-election 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 local government quadrennial elections, at a time as determined by the Electoral Commission Queensland (ECQ).

3. References (legislation/related documents)

Legislative reference

Electoral Act 1992
Local Government Act 2009
Local Government Electoral Act 2011
Local Government Electoral Regulation 2023
Local Government Regulation 2012

Related documents

Advertising, Promotions and Publications Policy
 Community Assistance Programmes Policy
 Livingstone Community Grants Procedure
 Councillor Facilities and Expenses Policy
 Councillor Acceptable Requests Guidelines Policy
 Councillor Contact with Lobbyists, Developers and Submitters Policy
 Meeting Procedures Policy
 Department of Transport and Mains Roads – Election Signs
 Livingstone Shire Council – Electoral Signage Fact Sheet

4. Definitions

To assist in interpretation, the following definitions shall apply:

Advertising	Promoting, for the payment of a fee, an idea, goods or services to the public, as defined in section 197(3) of the <i>Local Government Regulation 2012</i> .
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> .

Caretaker period	The period during an election for the local government that starts on the day when public notice of the holding of the election is given and ends at the conclusion of the election, as defined in section 90A(1) of the <i>Local Government Act 2009</i> .
Chief Executive Officer	A person who holds an appointment under section 194 of the <i>Local Government Act 2009</i> . This includes a person acting in this position.
Civic events	A public event that Council initiates, manages and has full responsibility.
Conclusion of election	The day on which the last declaration of a poll conducted in the election is displayed at the office of the returning officer, as defined in section 7(1)(a) of the <i>Local Government Electoral Act 2011</i> .
Council Employee	A Local government employee; (a) The Chief Executive Officer; or A person holding an appointment under section 196 of the <i>Local Government Act 2009</i> .
Council resources	Includes, but not limited to employees, services, information, equipment, printing, photographs, graphic design, public funds, grants, media services, materials published by Council (eg newsletters), hospitality, stationery, property, facilities, websites, vehicles, administrative tools and telecommunication devices.
Election material	Anything able to, or intended to, influence an elector about voting at an election or affect the result of an election, as defined under section 90D(2) of the <i>Local Government Act 2009</i> .
Election period	The period starting on the day when the public notice of the holding of the election is given under section 25(1) and ending on the close of the poll for the election, as defined in the Schedule Dictionary under the <i>Local Government Electoral Act 2011</i> .
Election signage	Any freestanding advertising device identifying candidates and/or promoting a political party at local, state or federal government elections, as defined by the Department of Transport and Main Roads QLD.
Fresh election	An election of all the Councillors of a local government that is not in a quadrennial election, under s105 and as defined in the Schedule Dictionary of the <i>Local Government Electoral Act 2011</i> .
Major policy decision	A major policy decision is defined in s90B and Schedule 4 Dictionary of the <i>Local Government Act 2009</i> : Also refer to section 5.3 of this Policy.
Term of office	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, as defined in the <i>Local Government Act 2009</i> under section 159. A Councillor's term ends: a) if the Councillor is elected at a quadrennial election or at a

	<p>fresh start election – at the conclusion of the next quadrennial election; or</p> <p>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</p> <p>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</p> <p>d) when the Councillor's office becomes otherwise vacant. Note s162.</p> <p>as defined in the <i>Local Government Act 2009</i> under section 160.</p> <p>A Councillor's Term ends:</p> <p>when the Legislative Assembly ratifies to dissolve the local government, as defined in the <i>Local Government Act 2009</i> under section 123</p>
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5. Policy Statement

The *Local Government Act 2009* and the *Local Government Electoral Act 2011* 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 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 employees; and
- the continuation of the principle that the use of public funds for electoral purposes is unacceptable.

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.

Councillors shall not use information gained during the course of the role as Councillors to disparage or discredit Council. Councillors disparaging or discrediting Council may be in breach of the Code of Conduct for Councillors.

5.1 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 in its operational delivery; or
- constitute a major policy decision for which Ministerial approval has not been received (refer to section 5.3).

5.2 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.

5.3 Prohibition on Major Policy Decisions (s 90B *Local Government Act 2009*)

A major policy decision as defined by the *Local Government Act 2009* includes 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; or
- (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
 - (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).

Council must not make any major policy decisions during a 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 decision in the public interest. The Minister's decision may include conditions with which Council must comply.

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

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.

5.5 Prohibition on Election Material (s 90D *Local Government Act 2009*)

In accordance with section 90D of the *Local Government Act 2009*, Councillors and Council employees must not publish or distribute election material that is able to, or intended to, influence an elector about voting at an election or affect the result of an election.

5.6 Use of Council Resources during an Election Period

Councillors may continue to use Council resources and facilities as outlined in the Councillor Facilities and Expenses Policy in fulfillment of their roles and responsibilities until their term of office ends.

Care must be taken to ensure that there can be no perception that Council resources have been utilised to assist Councillors in the election campaign.

Council equipment and resources must not be used for election purposes, including vehicles. Councillors are not permitted to affix, or allowed 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.

In any circumstances where the use of Council resources might be misconstrued as being related to a candidate's election campaign, the incident must be reported to and advice sought from the Chief Executive Officer.

5.7 Advertising Restrictions

In accordance with Council's Advertising Expenditure Policy, advertising may continue during an 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; or
- feature one or more Councillors in any paid Council advertisement.

5.8 Media

The Chief Executive Officer shall be the official spokesperson of Council during the caretaker period.

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 used in any manner that might favour an individual candidate during an election period.

During the caretaker period, Council will respond to media enquiries that relate to operational matters only. No response will be made to any political comments posted and any such comments will be removed.

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 construed 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 a Councillor if seeking re-election shall respond in their capacity as a candidate or if not seeking re-election shall respond as an individual. Under no circumstances should a response be attributed to Council.

Council Employees (including communications officers) shall not provide media advice to Councillors who have nominated as candidates regarding public comment on elections.

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 provide name and contact details only.

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 factual regarding Council's decisions and operations;
- updates to existing forms;
- aesthetic changes;
- fixing broken links or repairing web issues; and/or
- compliance with legislative requirements.

5.9 Attendance at 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 of routine nature and held at the same time each 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 hosted 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 or hosting VIP guests to the Livingstone Shire Council region.

Any event or function during the election period shall relate only to legitimate Council business and shall not be used, or be capable of being construed as being used, in connection with any election activity. Any spokespersons, including Councillors and Council employees, must not use the event to undertake any election activities, whether actual or perceived.

5.10 Community Programs and Engagement

Community programs and engagement should be avoided during the caretaker period including but not limited to surveys, blogs and invitations to put forward submissions. However, community engagement may continue if it is part of an ongoing project that requires the engagement as part of approved programs.

In order to ensure results cannot be used in connection with any election activity, in instances where community engagement has occurred but the associated report has not been provided to Council prior to the commencement of the caretaker period, no action is to be taken until the caretaker period has concluded.

5.11 Community Grants

Activities approved under community grants prior to the commencement of the caretaker period may continue during a caretaker period in accordance with Council's Community Assistance Programme 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.

5.12 Sponsorship

No new sponsorship shall be approved or entered into during the caretaker period. This includes where Council gives sponsorship, including in-kind sponsorship, or seeks sponsorship from external entities. Any sponsorship approved prior to the commencement of the caretaker period may continue in accordance with Council's Community Assistance Programme Policy.

Sponsorship applications may continue to be received during the caretaker period however no decisions on sponsorships shall be made until after the election.

5.13 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 Council's Electoral Signage Fact Sheet or, for State-controlled road corridors, the Department of Transport and Main Roads' Election Signs. Council employees are authorised to remove and dispose of electoral signage erected in contravention of signage protocols.

5.14 Requests for Information by Councillors

Requests for information or advice from Councillors shall continue to be processed in accordance with the Councillor Acceptable Requests Guidelines Policy. However to increase transparency during the caretaker period, any information request from a Councillor must be made by email. Councillors shall not request or receive information or advice from Council employees to support election campaigns, and there shall be transparency in the provision of all information and advice during the election period.

Requests for reports on substantive matters must not be processed during the Caretaker Period unless they involve a matter of public safety or are requested by a resolution of Council.

5.15 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. To increase transparency during the caretaker period, requests for information by candidates during the caretaker period should be made via email. The process for providing or refusing information will remain the same as for a member of the public.

5.16 Councillor Conduct Complaints

Complaints about Councillor conduct made during the caretaker period shall continue to be dealt with and/or referred to the relevant authority in accordance with Council's Meeting Procedures Policy and the provisions of the *Local Government Act 2009*.

5.17 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.

5.18 Council Employees

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 partisanship in order to protect the organisation's ability to impartially serve any incoming Council following an election.

Employees shall not fulfil any request that is, or could be perceived to be, an electioneering activity.

Councillor support employees will continue to provide support for Council endorsed activities and core Council business.

Any Council employee proposing to stand as a candidate for the election must propose an election management plan to their General Manager or Chief Officer.

A Council Employee who nominates as a candidate is entitled to a leave of absence from their appointment during the election period in accordance with section 203 of the *Local Government Electoral Act 2011*.

Council Employees may in a personal or private capacity provide support or assistance to a Councillor or a candidate in their own time, providing that any support or assistance provided does not breach legislation or Council's Code of Conduct for Employees, and that the Council Employee has approval from the CEO for employment outside of Council. A Council Employee must take all reasonable steps to ensure that in providing support or assistance they are acting as a private citizen and not perceived as acting in an official capacity as a Livingstone Shire Council Employee.

Any Council Employee proposing to stand as a candidate for the election must advise the CEO in writing, so as to ensure compliance with s203 of the *Local Government Electoral Act 2011* and prevent any perceived or actual conflict of interest.

As per section 203 of the *Local Government Electoral Act 2011*, a Council Officer who nominates as a candidate is entitled to a leave of absence from their appointment for a period of not more than two (2) months in order to contest the election.

5.19 Compliance

Failure to comply with this Policy, and any policies, guidelines, and procedures referred to or relevant to this Policy, may constitute inappropriate conduct, misconduct, or corrupt conduct and shall be dealt with as follows:

- corrupt conduct shall be referred to the Crime and Corruption Commission;
- breaches by employees 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*.

5.20 Responsibilities

The Chief Executive Officer shall inform the Mayor, Councillors and all Council employees of an impending election period and the restrictions that apply, by no later than two months before the commencement of an election period.

6. Changes to this Policy

This Policy is to remain in force until any of the following occur:

1. The related information is amended/replaced; or
2. Other circumstances as determined from time to time by the Council.

7. Repeals/Amendments

This Policy repeals the Livingstone Shire Council policy titled 'Caretaker Period Policy (v2.0)'.

Version	Date	Action
1	24/11/2015	Adopted
1.1	27/08/2018	Administrative Amendments – reflect organisational restructure and update of Chief Executive Officer
2.0	03/05/2019	Amended Policy Adopted – definition of 'Major Policy Decision' updated, section 5.3, 5.11 and 5.17 amended to reflect legislative updates
3.0	19/09/2023	Adopted – full review undertaken

CALE DENDLE
CHIEF EXECUTIVE OFFICER