

Caretaker period for local government elections

Legislation places limits during the caretaker period before quadrennial local government elections on publishing election material and making major policy decisions. This ensures that there are no significant policy decisions made near the end of a council term that bind future elected councils.

Local government reforms in 2019 have also introduced new limitations to improve accountability and ensure that council resources are not used (or perceived to be used) to promote current councillors standing for re-election.

Timing

The caretaker period starts on the day when the Electoral Commission of Queensland publishes the public notice about holding the election (normally some time in February). The ECQ will also advise when the election has ended for each local government.

Caretaker periods do not apply to by-elections.

Election material

During the caretaker period, a local government or controlled entity must not publish or distribute election material. Election material is anything that could influence an elector about their vote or affect the election result. For example, fact sheets or newsletters that raise the profile of a councillor are prohibited during the caretaker period.

Major policy decisions

During the caretaker period, councillors are prohibited from making decisions:

- ▶ about the appointment, remuneration or termination of a chief executive officer

- ▶ to enter into a contract greater than \$200,000 or 1% (whichever is greater) 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)
- ▶ significant procurement activities, such as establishing preferred supplier arrangements, or establishing exceptions to obtaining quotes or tenders when entering into a contract
- ▶ to make, amend or repeal local laws
- ▶ 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).

A prohibited policy decision made during a caretaker period will be invalid, unless the Minister's approval has been given prior to making the decision (see below). A person who suffers loss or damage because of the invalidity of a major policy decision during the caretaker period has a right to be compensated by the local government for the loss or damage.

Planning instruments and approvals

During the caretaker period, councils cannot make, amend or repeal local planning instruments.

Councils cannot approve development variation requests or change variation approvals that involve:

- ▶ varying the category of development or category of assessment of consequential development
- ▶ varying the assessment benchmarks or criteria for accepted development that would apply to consequential development
- ▶ facilitating development that would result in a greater demand on infrastructure than the demand anticipated in the council's infrastructure plan.

The amended DA Rules, summary of changes and accompanying guidance material are now available on the Department of State Development, Manufacturing, Infrastructure and Planning website at www.planning.dsdmip.qld.gov.au.

Ministerial approval for decisions in exceptional circumstances

Local governments should prepare for the caretaker period by planning to make major policy decisions before or after the election period.

However, unforeseeable events can result in a local government having to make major policy decisions during the caretaker period. In exceptional circumstances local governments can apply to the Minister for approval if:

- ▶ the need for the decision was unforeseeable
- ▶ the decision is essential to the functioning of the local government
- ▶ the decision cannot wait until the end of the caretaker period
- ▶ the decision is in the public interest.

The Minister will decide on a case-by-case basis whether the decision meets the exceptional circumstances requirement of the *Local Government Act 2009* or the *City of Brisbane Act 2010*. To enable this to happen, all applications should be addressed to the Regional Director (Northern Region) or Regional Director (Southern Region) of the Department of Local Government, Racing and Multicultural Affairs.

Each application should include:

- ▶ details of the proposed major policy decision
- ▶ an explanation of why the decision was unforeseeable
- ▶ an explanation of why the decision cannot wait until the end of the caretaker period
- ▶ an explanation of how the decision is in the public interest.

Discretionary funds

Councillors cannot make any new decisions to allocate money from a councillor discretionary fund after 1 January in the year of a quadrennial local government election. However, discretionary funds that were allocated before 1 January in accordance with legislative requirements may be distributed during the caretaker period.

Leave for candidates and councillors

Local government employees may take paid leave (e.g. accrued annual leave) or unpaid leave for up to eight weeks to contest a local government election.

There is no legal requirement under the *Local Government Electoral Act 2011* for either local government employees or elected councillors to take leave during the caretaker period. However, individual councils may have election period policies covering election leave.

More information

Caretaker provisions are outlined in Chapter 3, Part 5 of both the *Local Government Act 2009* and the *City of Brisbane Act 2010*. For more information about the caretaker period or your council's circumstances contact your nearest regional office of the Department of Local Government, Racing and Multicultural Affairs.

Southern office:

Phone: (07) 3452 6762

Email: southern@dlgrma.qld.gov.au

Northern office:

Phone: (07) 4758 3472

Email: northern@dlgrma.qld.gov.au

For further information about major policy decisions related to the *Planning Act 2016*, contact the Department of State Development, Manufacturing, Infrastructure and Planning by email to bestplanning@dsgmip.qld.gov.au or phone 3452 7662.

For information about local government elections, contact the Electoral Commission of Queensland by email to ecq@ecq.qld.gov.au or phone 1300 881 665.

