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Scope

This Policy will assist and ensure that Mackay Regional Council (MRC) conducts its business throughout the pre-election period in a responsible, transparent and legally-compliant manner. Certain restrictions shall apply to MRC, Councillors and Employees in the period leading up to an election.

Objective

To provide guidance to Councillors and Employees on the legal obligations and protocols to be followed during the caretaker period in the lead up to Council elections and also provide guidance to Councillors and Employees to ensure that the ordinary business of Council continues in a responsible and transparent manner during the caretaker period in the lead up to a Council election.

Council elections are conducted by the Electoral Commission of Queensland (ECQ). All election related matters (excluding elections signs) should be directed to the ECQ on website: www.ecq.qld.gov.au or telephone: 1300 881 665 or email: ecq@ecq.qld.gov.au.

Policy Statement

The *Local Government Act 2009* and the *Local Government Electoral Act 2011* apply restrictions to MRC and Councillors during the Caretaker Period, from when nominations are called for the quadrennial election until the declaration of the polls.

Candidates are to take particular care in any campaign activity to ensure that there can be no possible perception of use of MRC provided resources and/or facilities for the activity that could be perceived as having electoral benefit.

MRC confirms its commitment during an election period to:

- the efficient continuation of MRC'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 its Employees; and
- the continuation of the principle that the use of public funds for electoral purposes is unacceptable.

MRC considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

This process to remain in force until otherwise determined
by Mackay Regional Council

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1.0 Principles

1.1 Commencement/Conclusion Of Caretaker Period

Caretaker period commences on the day when a public notice advising of the holding of the election is published by the Electoral Commission of Queensland (ECQ) and the period concludes when the ECQ declares the poll.

The CEO, or delegate, will advise all Councillors and Employees of the commencement and conclusion of the caretaker period in each election year.

The Mayor and Councillors are to acknowledge and be cognisant of the provisions of this Policy in the lead up to the caretaker period, in particular when they have made public announcements of their candidacy to contest the election prior to the caretaker period commencing.

1.2 Major Policy Decisions

In accordance with the *Local Government Act 2009*, the Council must not make a major policy decision during the caretaker period. A major policy decision is a decision defined in the *Local Government Act 2009* as follows:

- about the appointment, remuneration or termination of a CEO
- 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).

For clarification of what is a Major Policy Decision, contact the CEO or Executive Officer.

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

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

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

1.2.1 *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 Development Application Rules, summary of changes and accompanying guidance material are now available on the Department of State Development, Infrastructure, Local Government and Planning website at [Planning \(statedevelopment.qld.gov.au\)](http://Planning.statedevelopment.qld.gov.au)

1.2.2 *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 MRC for the loss or damage. The person may bring a proceeding to recover the compensation in a court of competent jurisdiction.

1.3 Election Material

In accordance with *Local Government Act 2009*, MRC must not, during the caretaker period publish or distribute election material.

Election material is anything able to or intended to influence an elector about voting at an election or affect the result of an election.

1.4 Council Meetings

The *Local Government Act 2009* requires Council to meet at least once a month.

Council business will continue to be conducted at Council meetings as normal during the caretaker period subject to the restrictions involving major policy decisions mentioned above.

1.5 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 a 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, Citizenship Ceremonies or hosting VIP guests to the Mackay 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.

1.6 Brand Media & Communications

All media and communications will continue in accordance with the Council's Policies and Procedures. The following protocol is specifically for the Caretaker Period only:

- Employees will not provide Councillors with any assistance with general media channels in relation to campaign matters, election material or personal publicity.
- All regular columns that appear from elected members in any publications, hard copy or electronic during the caretaker period will be replaced with general corporate/community information.
- The rationale for the above protocol is to remove any opportunity for the general public, electors, candidates or any other person/organisation to claim a sitting Councillor is receiving an unfair advantage as a candidate via an MRC publication.
- MRC's corporate logos, trademarks or branding including MRC owned images are not to be used for electioneering purposes on any hard copy election material or a candidate's social media channels.
- MRC's social media channels will continue to provide regular communication with residents in accordance with MRC's policy and procedures, however no images of Councillors will be posted from the commencement of the caretaker period to the declaration.

1.7 Councillor support, facilities and expenses reimbursement

The Mayor and Councillors are still expected to undertake their duties as elected representatives during the caretaker period, excepting provisions noted above. Therefore, it is recognised that as the incumbent elected Council, the Mayor and Councillors may continue to correspond with constituents on matters relating to council business, and have access to administrative support, facilities and expenses reimbursement to the Mayor and Councillors in accordance with the Expenses Reimbursement policy. This includes continued, business as usual, access to vehicle usage, IT devices, mobile phones, photocopiers, requests for information from Employees, etc in their role as Mayor or Councillor and related activities.

The Councillors must be cognisant of the purpose of utilising these facilities/resources and ensure there is no unintended overflow into potential perceived or real electioneering and/or where there may be a perceived or real conflict. In these cases it is recommended that they not be utilised.

Any activities that related to electioneering or candidate activities, the Mayor & Councillors must use personal/private resources, including contact information.

Any requests or activities that are or could be perceived to be electioneering will not be supported. Councillors will ensure that there is a clear separation between Council business and electioneering when seeking help, advice or support from Employees.

Employees are encouraged to escalate any concerns they may have in dealing with a Councillor request that they perceive may be electioneering to the Executive Officer.

Upon the Declaration of polls, where a Councillor has not been successfully returned to Council, the Councillor must return all MRC provided items, including access readers, etc.

1.8 Employees Seeking Election to Council

If Employees are intending to be a candidate for a Council election they must advise their Executive Manager and Director as soon as possible.

Arrangements will then be made to develop an Election Management Plan (EMP) in conjunction with the Employee's supervisor and Executive Officer to ensure that Council's reputation and integrity is protected during the Employee's campaign.

The EMP may require the Employee having to change work location, take extended leave and other steps deemed necessary to protect MRC's reputation.

1.9 Responding to Councillor and Candidate Requests

Employees are expected to take all steps necessary to avoid any real or perceived bias in dealing with customer service responses from Councillors and candidates alike. If the query is in the normal course of business, respond business as usual. Reference is made to the Acceptable Request Guidelines.

MRC recognises that all election candidates have certain rights to information from MRC subject to the *Information Privacy Act 2009* which may prevent the disclosure of certain information. 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.

However, if in doubt, escalate the query to the Executive Manager, Director or Executive Officer. Candidates do not have automatic access to the information or business of MRC.

1.10 Compliance

Failure to comply with this Policy, and any associated guideline or procedure referred to or relevant 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*.

1.11 Employee Assistance to a Councillor or Candidate

MRC 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 MRC's Code of Conduct. The Employee must take all reasonable steps to ensure that in providing any support or assistance they are acting as a private individual and not perceived as acting in an official capacity as an MRC Employee.

2.0 Definitions

To assist in interpretation the following definitions shall apply:

CEO shall mean the Chief Executive Officer. A person who holds an appointment under section 194 of the *Local Government Act 2009*. This includes a person acting in this position.

Council shall mean all elected representatives of Mackay Regional Council.

Councillor shall mean an individual elected representative of Mackay Regional Council.

Employees shall mean all persons employed at MRC on a permanent, temporary, volunteer or casual basis and may include persons engaged under a contract of service.

Human Rights Complaint shall mean a complaint about an alleged contravention of section 58-1 by a public entity in relation to an act or decision of the public entity.

MRC shall mean Mackay Regional Council.

3.0 Review of Policy

This policy will be reviewed when any of the following occur:

- The related documents are amended or replaced.
- Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than three (3) years.

4.0 Reference

- *Human Rights Act 2019*
- *Information Privacy Act 2009*
- *Local Government Act 2009*
- *Local Government Electoral Act 2011*
- Councillor Code of Conduct
- Media Policy
- Social Media Policy
- Councillors Reimbursement of Expenses & Provisions of Facilities Policy
- Conflict of Interests Policy

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New		Adopted	25/09/2024