

Caretaker period for local government elections

Factsheet

Legislation places limits during the caretaker period before 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 (ECQ) publishes the public notice about holding the election. 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.

The only exemption relates to how-to-vote cards accepted by ECQ which must be made available for free public inspection by the returning officer at:

- the office of the returning officer
- the local government's public office, and
- on the electoral commission's website.

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).

The delegate can only exercise a power that the delegator themselves could exercise. During caretaker period, a local government cannot make a major policy decision, therefore, it cannot delegate a power to a person to make a major policy decision.

A major policy decision immediately prior to a caretaker period is not prohibited but, it is recommended that consideration should be given to whether or not this is necessary due to the incoming local government being required to implement the major policy decision without having had the opportunity to debate or vote on it.

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 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)

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 for example:

- 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 State Development, Infrastructure, Local Government and Planning.

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

- any other relevant information to assist the Minister in determining whether to approve the application.

IMPORTANT NOTE DURING CARETAKER PERIOD 2024

To make an application for approval to make a major policy decision during caretaker 2024, the following process should be followed:

1. Email the Deputy Director General of the Local Government division with your application at DDGLGDMailbox@dsgilgp.qld.gov.au. Please use the template below.
2. An application can seek multiple approvals at one time as long as there is sufficient information in the application for each approval to allow a decision to be made on a case-by-case basis (i.e., a 'general approval' for any/all activities cannot be provided).
3. You will receive a decision about your application as soon as practicable, where possible within 1 business day, by return email.

Application format

There is no specific format required for an email application. However, it is important to ensure that an application includes sufficient information to allow a decision to be made as prescribed in the legislation.

To assist, Council may wish to make its application using the template below.

Please ensure that sufficient information is provided to allow efficient assessment of your request, as a properly made application will lead to a quicker assessment being possible.

TEMPLATE APPLICATION FOR APPROVAL OF MAJOR POLICY DECISIONS/S

<<Insert Council name>>

In accordance with s.90B (2) of the *Local Government Act 2009* and s.92B (2) of the *City of Brisbane Act 2010* concerning Major Policy Decisions in Caretaker Period, Council hereby makes application for Ministerial approval to make a major policy decision/s during the 2024 Caretaker period.

Council will consider the financial implications of these works/contracts as a part of budget review processes and will review and make the appropriate formal amendments against the adopted 2023-24 Budget.

| Submission Date | Proposed major policy decision/s – name of project, contract or works package (include enough detail to specifically describe the works) Please use one row per requested exemption | DRFA related Y/N (if no, why is the decision in the public interest to make during 2024 Caretaker) | Explanation of why council seeks to made decision during caretaker period (Brief only) | Brief Works/Contract description | Financial Value (if known) | Contractor (if known) <i>Note the usual procurement processes continue to apply</i> |
|---|--|---|--|---|--------------------------------|--|
| <<XX February 2024>> [Date the request is submitted, via email, to the department] | <i>Example only</i> Contract name and number. | Y- Christmas Eve SEQ storms | Urgent works required to be undertaken for public safety | Green waste removal to clear council road network | \$500,000 | ABC Tree Removal |
| | <i>Example only</i> Contract name (no contract number yet available) | Y- Tropical Cyclone [Name] | Public safety and amenity require urgent plans for collections | Hard waste collection | Estimate \$600,000 - \$800,000 | Not yet known; tenders/quotes being sought from three local contractors |
| | <i>Example only</i> XYZ Road – Floodway upgrade Contract | Y – SEQ Flooding 6-20 May 2022 | DRFA restoration works must be complete by 30 June 2024. Decisions required to ensure contractors are able to be obtained to complete these works on time. | Works to upgrade XYZ Road floodway | \$350,000 | ABC Contracting |
| | <i>Example only</i> Contract | N- Emergency repair of 'XXXX' bridge following road accident on 4/2/24 to ensure structural safety and reinstate public usage | Public safety requires urgent works be undertaken | Engineering assessment and replacement of guardrail and signage | \$215,000 | XYZ Engineers |

Discretionary funds

During the period starting on 1 January 2024 and ending at the conclusion of each local government election, councillors must not allocate money from a councillor discretionary fund to a community organisation for them to use for a community purpose or provide funds for any other community purpose.

Councillors, can, however, allocate their discretionary funds for capital works of the local government that are for a community purpose in the period starting on 1 January 2024 to the conclusion of the local government election.

Discretionary funds that were allocated before 1 January 2024 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 under section 203 of the *Local Government Electoral Act 2011*.

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 State Development, Infrastructure, Local Government and Planning.

Southern office:

Phone: (07) 3452 6762

Email: southern@dsdilgp.qld.gov.au

Northern office:

Phone: (07) 4758 3472

Email: northernlgs@dsdilgp.qld.gov.au

For further information about major policy decisions related to the *Planning Act 2016*, contact the Department of Housing, Local Government, Planning and Public Works by email to bestplanning@dsdilgp.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.