

ORDINARY COUNCIL

LATE REPORTS

Wednesday 19 May 2021

Ordinary Council Meeting

Wednesday, 19 May 2021

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1 Leadership and Governance

What we are trying to achieve

A community that works together in decision making that is defined as ethically, socially and environmentally responsible.

What the result will be

We will have:

- A community that has the opportunity to be involved in decision making
- Open, easy, meaningful, regular and diverse communication between the community and decision makers
- Partnerships and collaborative projects, that meet the community's expectations, needs and challenges
- Knowledgeable, skilled and connected community leaders
- Strong corporate management that is transparent

How we will get there

- 1.1 Inform and engage with the community about what Council does using varied communication channels
- 1.2 Maintain strong partnerships between all stakeholders - local, state and federal — so that they are effective advocates for the community
- 1.3 Demonstrate leadership
- 1.4 Use innovative, efficient and sustainable practices
- 1.5 Ensure strong corporate and financial management that is transparent and accountable



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Local Government Elections Caretaker Period Policy

1. INTRODUCTION

Council staff and Councillors must observe specific legislative and governance requirements during the period leading up to an election. During this period, the business of Council continues and ordinary matters of administration still need to be attended to. This policy establishes a series of practices, which aim to ensure Council meets legislative requirements and upholds good governance principles during the period.

2. POLICY STATEMENT AND SCOPE

The purpose of this policy is to ensure that:

- Council, community and staff are aware of what can and cannot be done during the election (caretaker) period;
- Council complies with the election (caretaker) period provisions of the *Local Government (General) Regulation 2005 (the Regulation)*; and
- Council continues to provide high standards of service to the community.

This policy also commits Council during the (caretaker) period to:

- Avoid making significant new policies or decisions that could unreasonably bind a future Council; and
- Ensure that public resources, including staff resources, are not used in election campaigning or in a way that may improperly influence the result of an election, or improperly advantage existing Councillors as candidates in the election.

3. THE CARETAKER PERIOD

The caretaker period as defined by the Regulation means the period of 4 weeks preceding the date of an ordinary election.

4. LEGISLATIVE REQUIREMENTS

In accordance with section 393B of the Regulation, a Council is precluded from undertaking certain functions during the caretaker period unless extraordinary circumstances have required the Council to apply to the Minister for an exemption.

Whilst not a requirement of the Regulation, it is considered good governance to prepare, adopt and maintain a caretaker period policy that establishes procedures to be applied by Council during the caretaker period.

The Regulation states that the following functions must not be exercised by Council during a caretaker period:

- Entering a contract or undertaking involving significant expenditure as set out in the Regulation; and/or
- Determining a controversial development application except in certain circumstances as set out in the Regulation; and/or
- The appointment or reappointment of a person as the council's Chief Executive Officer (or the removal of a person from that position), other than in circumstances set out in the Reg.

Again, whilst not a requirement of the Regulation, it is further considered to be good governance for Council to take a position on the following matters as part of the caretaker period policy:

- Procedures intended to prevent the Council from making inappropriate decisions or using resources inappropriately during the caretaker period.
- Limits on public consultation and the scheduling of Council events.
- Procedures to ensure that access to information held by Council is made equally available and accessible to all candidates during the election.

This Policy also provides a framework to prevent Council from publishing or distributing material likely to influence voting at the election during the caretaker period. The Chief Executive Officer must certify publications during this period to ensure that they are not electoral material. Certain statutory documents and normal day-to-day services such as rate notices, parking fines, food premises registrations etc. are exempt from certification.

4. DECISION MAKING

In accordance with section 393B of the Regulation, the following functions of a council must not be exercised by the council, or the Chief Executive Officer or any other delegate of the council, during a caretaker period

- Entering a contract or undertaking involving the expenditure or receipt by the council of an amount equal to or greater than \$150,000 or 1% of the council's revenue from rates in the preceding financial year (whichever is the larger);
- determining a controversial development application, except where—
 - a failure to make such a determination would give rise to a deemed refusal under section 8.2 of the Environmental Planning and Assessment Act 1979, or
 - such a deemed refusal arose before the commencement of the caretaker period;
- the appointment or reappointment of a person as the council's Chief Executive Officer (or the removal of a person from that position), other than:
 - an appointment of a person to act as Chief Executive Officer under section 336(1) of the Act, or;
 - a temporary appointment of a person as Chief Executive Officer under section 351(1) of the Act.

Council's Code of Conduct also states:

8.17 You must not use Council resources (including Council staff), property or facilities for the purpose of assisting your election campaign or the election campaigns of others unless the resources, property or facilities are otherwise available for use or hire by the public and any publicly advertised fee is paid for use of the resources, property or facility.

8.18 You must not use the Council letterhead, Council crests, Council email or social media or other information that could give the appearance it is official Council material:

- a) for the purpose of assisting your election campaign or the election campaign of others, or*
- b) for other non-official purposes.*

Election campaigns for the purpose of the Code of Conduct refer to Council, state and federal election campaigns.

Council makes decisions in the following ways:

- Officers acting under delegated authority from Council.
- Council meeting resolutions.
- Special Committees acting under delegated authority from Council.

This Policy establishes the following procedures to ensure that Council does not make inappropriate decisions during the caretaker period.

4.1 Council meeting or officers acting under delegated authority

Council meetings may be held during the caretaker period however the following decisions will not be made during the caretaker period by Council or an officer acting under delegation:

- Acquisition of land;
- Adoption or amendment of the Port Macquarie-Hastings *Local Environmental Plan 2011 (LEP 2011)*;
- Adoption or amendment of policies, protocols, strategies, master plans or frameworks;
- Adoption or amendment of the Community Strategic Plan or Council's Delivery Program;
- Adoption of a revised budget;
- Allocation of grants or awards to individuals or organisations;
- Appointing representatives to Council committees;
- Endorsing submissions to government or public bodies;
- Entering into a contract or entrepreneurial agreements exceeding the amount specified in the Regulation;
- Entering into agreements deeds or leases;
- Hearing of submissions or deputations from the community;
- Naming or re-naming of roads, reserves or features;
- Reviewing of programs or service provision; and
- Any other decision that the Chief Executive Officer considers may affect voting at the election or is a decision that can be made outside of the caretaker period.

Decisions made prior to the caretaker period by Council or by an officer under delegation can be implemented during the caretaker period.

4.2 Ordinary Council meeting procedures

To ensure Council complies with its legislative and Policy requirements, it is essential that the agenda for any Council meeting to be held during the caretaker period will (as per normal practice) be signed off by the Chief Executive Officer to ensure that no reports are presented to Council that may give rise to a decision that may affect voting or that could have been made outside of the caretaker period.

The standard agenda for Council meetings contains topics that may give rise to the discussion of election issues; therefore, the standard agenda for any Council meeting held during the caretaker period will be modified so that the following agenda items will not be considered by Council:

- Petitions, joint letters and deputations
- Public Forum
- Questions on Notice
- Notices of Motion
- Mayoral Minute
- Reports by Councillor delegates

4.3 Councillor briefings

Councillor Briefings are a forum for information sharing, not decision-making. Councillor briefings may be held during the caretaker period however; Councillor briefing material will relate only to factual matters or to existing Council services, such information will not relate to policy development, new projects or matters that are the subject of public or election debate or that might be perceived to be connected with a candidate's election campaign.

The Chief Executive Officer will have final approval of topics presented at Councillor Briefings during the caretaker period.

Council Meeting Public Forum sessions will not be held during the caretaker period.

5. COUNCIL RESOURCES

Council resources, including offices, support staff; hospitality services, equipment and stationary should be used exclusively for normal Council business during the caretaker period and must not be used in connection with an election.

- Councillors can only make operational requests through Council's Request Management System covering issues such as but limited to roads, footpaths, trees, waste management and general amenity. These requests will be administered as community requests.
- Photocopying for election campaigning purposes by Councillors or staff on Council office machines is not permitted.
- Databases and mailing lists held by Council remain the property of the Council and are subject to the requirements of the Privacy legislation and are therefore not available to members of the public, candidates or to Councillors.
- Council will not prepare or produce any materials associated with a Councillor's individual election campaign.
- Any materials produced by Council in relation to a public poll or referendum that is being conducted with an election must not be used by Councillors, candidates or supporters for the purposes of their own individual election campaign.
- Councillors must not use Council vehicles, Council issued mobile phones, laptops, data services and email addresses for election campaigning purposes.
- The use of Council's internet or intranet sites for any activity to do with election campaigning is not permitted. Council's website will not contain any links to a candidate's private website.
- Council will continue to provide support to Councillors for their normal day-to-day business. Out of pocket expenses paid by Councillors during the caretaker period for necessary costs incurred in the performance of their duties, which do not relate to any election campaign, will be reimbursed as normal.
- No election campaigning material is to be distributed from or displayed in or on Council land, facilities, libraries, community noticeboards, or during Council run or sponsored events and programs.
- Any Council facilities booked for electoral campaigning purposes by Councillors, candidates or supporters or other persons during the caretaker period will be let at the same rate to all hirers
- Standing Councillors who book Council facilities for electoral campaigning purposes during the caretaker period must declare at the commencement of their function to all in attendance, that they have paid the normal hire fee for the Council facility.

6. COMMUNITY CONSULTATION AND/OR ENGAGEMENT

Community consultation and/or engagement involves inviting stakeholders (individuals, groups, organisations or the public generally) to a public consultation/engagement process to receive feedback on a project, issue or policy. Some of the topics of community consultation/engagement may have the potential to be an election issue. For this reason, no community consultation and/or engagement will place during the caretaker period involving election issues, major developments or policy issues unless Council has resolved to conduct a poll or referendum with the election in which event, any community consultation and/or engagement is limited to the poll or referendum issue. This does not apply to consultation required by the *Local Government Act 1993* and the *Environmental Planning and Assessment Act 1979*.

Development Assessment Panel (DAP) meetings can be held during the caretaker period. Therefore, regular planning consultations/engagement involving Council staff, Councillors and interested persons required by legislation can be held. Discussions at these planning meetings must not involve election issues or significant community consultation on major developments, strategy or policy issues. Items referred to Council from DAP during the caretaker period will be held over until the first ordinary meeting of the Council following the elections.

7. EVENTS AND MEETINGS

7.1 Council events and meetings

Events and meetings that are held during the caretaker period can raise election issues that then can involve Councillors in the discussion. For this reason there will be no internally run Council events held during the caretaker period.

Events such as state wide events/festivals that are coordinated on an annual basis that must be held over a specific time period that coincides with the caretaker period can be attended by Councillors and/or people assisting in a candidate's election campaign provided that no electioneering takes place. There will be no Council officer support for administering attendance, preparing briefing notes or speeches for these events.

7.2 External events

From time to time, Councillors may be invited to externally organised events such as business breakfasts, launches, openings and exhibitions. Councillors can attend these externally organised events however; Council officers will not provide Councillors with administering attendance, preparing briefing notes or speeches.

8. PUBLISHING AND COMMUNICATIONS

Subject to Council resolution Council will not print, publish or distribute or cause, permit or authorise to be printed, published or distributed, any advertisement, handbill, pamphlet or notice during the caretaker period unless the advertisement, handbill, pamphlet or notice has been certified in writing by the Chief Executive Officer.

Again, subject to Council resolution, the Chief Executive Officer will have final sign-off on all publications produced and distributed by the Council during the caretaker period. The Chief Executive Officer must certify that the publication does not contain electoral matter.

This should be broadly interpreted to refer to documents that are produced for the purpose of communicating with the community including:

- Council newsletters.
- Advertisements and notices.
- Media releases and response to media enquiries.
- Leaflets, brochures, stickers etc.
- Mail outs to multiple addresses.
- Social media content.
- Mayoral or Deputy Mayoral Columns.

The Policy applies to both hard copy publications and publications on the internet.

Publications that were published prior to the commencement of the caretaker period and publications that are required to be published in accordance with any Act or Regulation do not require certification by the Chief Executive Officer.

8.1 Chief Executive Officer certification process of publications

The Group Manager Governance or their delegate will review all Council publications before they are recommended to the Chief Executive Officer for certification to ensure they are suitable for printing, publishing or distributing during the caretaker period.

Staff will be notified of the outcome of the Chief Executive Officer's decision and a record of all certified publications will be kept.

8.2 Council newsletters

Council newsletters will not be published or distributed during the caretaker period.

8.3 Annual Report and Financial Statements

The *Local Government Act 1993* requires the annual report and financial statements be submitted to the Minister annually. The Act also requires Council to consider the annual report at a Council meeting prior to the submission to the Minister. If the annual report is required to be made publicly available during the caretaker period, information within the report will be restricted to what is required by legislation.

8.4 Council Website

During the caretaker period, Council websites will continue to provide the community with information about the provision of and access to Council services.

Councillor profile pages that appear on Council's website will not include any campaigning material or links to any campaigning material.

Any reference to the election on Council's websites will be restricted to process only.

During the caretaker period, new pages or new content can only be added or updated if the content does not refer to election candidates, including current Councillors, or issues before the voters in an election unless Council has resolved to conduct a community poll or referendum on a specific subject and the information is required to inform the community in an impartial manner.

8.5 Media

The Chief Executive Officer has final sign-off and certification on all media releases and media responses. If a spokesperson is required in relation to an issue, the Chief Executive Officer will appoint the appropriate person.

Media releases and media responses may be issued to inform Council's services and activities but not if the service is likely to be an election issue. Media releases must not refer to Councillors or any candidate.

During the caretaker period, public comment on behalf of the organisation will be provided by the Chief Executive Officer or a Council officer appointed by the Chief Executive Officer.

Councillors must not use their position as an elected representative to gain media attention specifically in support of their election campaign.

8.6 Social Media

Council has a number of social media sites. During the caretaker period Council social media sites must not be used for election campaigning. Any publication of comments or new content on social media sites will generally require certification by the Chief Executive Officer during the caretaker period.

If a spokesperson is required in relation to any issue for one of Council's social media sites, the Chief Executive Officer will appoint the appropriate person.

9. COUNCIL INFORMATION

Councillors will continue to receive information necessary to fulfil their existing roles as Councillor during the caretaker period.

Councillors and candidates will not receive information or advice from Council staff that might be perceived to support election campaigns.

When carrying out their duties, Council staff must not offer comment to members of the public about any Councillors or candidates, except to provide contact details for current Councillors.

No other information other than what would normally be made available to any member of the general public on request will be provided to a Councillor or a Candidate.

Information Requests

All candidate requests for information relating to electoral matters and non-routine requests will be processed by Governance. Governance will maintain a record of requests. A copy of the request and the response will be made available to all candidates.

NOTE:

No candidate will be given preferential treatment over any other candidate or member of the public. It may be necessary for some information requests to be dealt with under GIPA based on the complexity, quantity of information or resources required to compile the information which may result in the requested information not being provided prior to the election

10. RESPONSIBILITIES AND AUTHORITIES

The Group Manager Governance is the Council officer responsible for the implementation of this Policy. The Chief Executive Officer may also provide support and advice on this Policy.

The Group Manager Governance will:

- undertake a review of this in the lead up to every local government election. The review will incorporate changes in relevant legislation, documentation released from relevant state agencies and best practice guidelines; and;
- investigate breaches of this Policy and refer matters to the Chief Executive Officer as appropriate.

All Councillors and staff are responsible and accountable for complying with this Policy.

11. REFERENCES

Council's Code of Conduct
Environmental Planning and Assessment Act 1979
Local Government Act 1993
Local Government (General) Regulation 2005

12. DEFINITIONS

Caretaker Period: the period of 4 weeks preceding the date of an ordinary election

Councillor: An elected member of Council

Chief Executive Officer: 1st tier management position and titled as such

Council officer: A member of Council staff

13. PROCESS OWNER

Group Manager Governance

14. AMENDMENTS

NA