

Moreton Bay Regional Council

Local Law No. 8 (Election Signs) 2019

Explanatory Note

Background

Subsection 28(1) of the *Local Government Act 2009* (Qld) (**LGA**) gives local governments the power to make and enforce local laws that are necessary or convenient for the good rule and local government of a local government area.

Section 36 of the LGA, however, qualifies that power with respect to electoral advertising. It provides:

- (1) A local government must not make a local law that—
 - (a) prohibits or regulates the distribution of how-to-vote cards; or
 - (b) prohibits the placement of election signs or posters.
- (2) A "*how-to-vote card*" includes a how-to-vote card under the *Electoral Act*.
- (3) An "*election sign or poster*" is a sign or poster that is able, or is intended, to—
 - (a) influence a person about voting at any government election; or
 - (b) affect the result of any government election.
- (4) A "*government election*" is an election for a local, State or Commonwealth government.
- (5) A local law, to the extent that it is contrary to this section, has no effect.

Under these provisions, the Moreton Bay Regional Council (**Council**) has power to regulate, but not prohibit, election signs and posters in its local government area. That power is, of course, subject to the requirements of the Australian Constitution.

Freedom of political communications is an implied, 'indispensable incident' of the system of representative and responsible government prescribed by the Australian Constitution.¹ As such, it is protected against undue or unjustified burdens.² The High Court has emphasised, however, that the implied freedom is not absolute but can be regulated in appropriate cases.³

¹ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 at 559-560.

² See *McCloy v New South Wales* (2015) 257 CLR 178 at [68] (French CJ, Kiefel, Bell and Keane JJ) (on the requirement for restrictions of the freedom to be justified).

³ See, for example, *McCloy v New South Wales* (2015) 257 CLR 178 (upholding laws that prohibited property developers from donating, and that imposed limits on electoral donations).

Policy objectives and the reasons for them

Council recognises the importance of political communication in a free and democratic society and to our constitutional arrangements. Election signs are means of candidates communicating with voters. The content of election signs is ordinarily limited to the name of the candidate with the colours and logo of his or her political party, a photograph of the candidate and or the leader of the candidate's party and occasionally a short slogan.

The nature and intensity of election signage at and around the time of elections give rise to genuine issues of public concern, which justify regulation. These issues include a reduction in visual and public amenity and risks to traffic as a result of distraction. Both these issues have been consistently raised as concerns by members of the community in extensive public consultations about the regulation of election signage. As members of the public have noted, when signs are displayed in public spaces or in view of public spaces, they do not choose to receive those communications.

Bearing in mind the matters noted above, the principal objectives of this Local Law are to:

1. Permit candidates for election to communicate to voters or potential voters by way of election signs.
2. Permit political communication by way of election signs in relation to other electoral events, namely state and federal referenda.
3. To treat candidates for election equally as between each other.
4. To protect the visual and public amenity of the local area.
5. To minimise risks to public safety.
6. To respect the views of the community obtained through consultation.

The Local Law balances these objectives by:

1. Permitting election signs to be displayed on a self-assessable basis for six weeks before a government election and one week after a government election.
2. Providing limits as to the number, size and location of election signs.
3. Permitting candidates and others to apply to display election signs in a manner which does not comply with the Local Law requirements in exceptional circumstances only.

Council will augment the Local Law with initiatives designed to facilitate political debate during election periods, encourage sustainable use of election sign materials and enhance enforcement of the local law.

These matters are explained in more detail below.

Achievement of policy objectives

(1) *Period during which signs can be displayed*

In Council's view, to permit electoral signs and posters to be displayed at any time, regardless of how long before a polling day, would give no weight to the public interest in amenity. To permit such displays without a restriction as to time, moreover, would give little weight to the interest in minimising the distracting effect of signs on drivers on the roads.

Accordingly, both amenity and safety suggest that it is important to set a time limit beyond which self-assessable signs will not be permitted.

There is support for the 42-day period in the traffic safety report commissioned by Council in relation to the regulation of electoral signs and posters.⁴ The same period is also supported by the great majority of public submissions received as part of the consultation on the proposed Local Law.

While there may be debate about the exact period, Council considers that 42 days strikes an appropriate balance between the competing interests involved.

The period of one week after an election or other electoral events such as a referendum also strikes the Council as appropriate.

Council uses the term "polling day" in the Local Law and the time for which election signs can be displayed depends on when that polling day is. For a local government election, the "polling day" will generally be the day on which a quadrennial election is due to be held as set out in the *Local Government Electoral Act 2011* (i.e. the last Saturday of March in, and every fourth year after, 2020). However, the "polling day" may also be the date on which a by-election, or another election mentioned in that Act, will be held.

Similarly, for a State government election the polling day will generally be the "normal polling day" under the *Constitution of Queensland 2001 (Qld)* (i.e. the last Saturday of October in, and every fourth year after, 2020) but it may also be the "postponed polling day" if the normal polling day is postponed.

For a Federal government election, the polling day will generally be the date fixed for the polling of an election under the *Commonwealth Electoral Act 1918*.

(2) *Limits on the number, size and location of signs*

(a) *Summary*

Council considers that there should be a cap on the total number of fixed electoral signs that can be displayed on public and private property, and limits on the size of those signs. These features of the Local Law are designed to protect amenity.

⁴ Road Safety Review, 31 July 2018, sections 3.4, 4.1.13.

Further, electoral signs also should not be permitted within certain distances from the edge of a road and within certain distances of ‘driver decision areas’. These prohibitions are primarily designed to protect the public, particularly drivers on the roads, from distractions caused by signs.

(b) Cap on total number of signs

The visual amenity report commissioned by the Council recommended that there should be a cap on the total number of fixed electoral signs that can be displayed on private property for each candidate in the local government area.⁵ It did not suggest that, in general, there should be a limit on the number of signs that could be displayed on public land.

Council respects the report but considers that visual amenity would be better protected by having a cap on the total number of electoral signs for each candidate that can be displayed on private and public land.

Retaining the number caps which Council had in its previous local law is supported by the great majority of public submissions received as part of the consultation on the proposed Local Law. Those number caps are as follows:

Candidates by election type	Cap (maximum number of signs) per candidate
Candidates for State election	120
Candidates for a federal election	200
Candidates for Divisions 1-10 of local government election	60
Candidates for Divisions 11-12 of a local government election	120
Candidates for mayor of a local government election	300

In general terms, the caps on the number of permitted signs are lower for electorates which are smaller in size and conversely, the caps are higher for electorates which are larger in size.

For example, divisions 11 and 12 for local government elections have an area which is at least double that of divisions 1-10. Council considers that it is appropriate for candidates in these larger areas to be permitted to display more election signs to obtain sufficient coverage of their electorate.

Similarly, Council considers that a higher cap is appropriate for mayoral candidates (and signs promoting an outcome in a referendum) because those signs may be distributed to obtain coverage throughout the entire Region as opposed to a single electorate.

Council also considers that a higher cap is appropriate for federal election candidates (as compared to state election candidates) because the size of federal electorates is larger than state electorates. The higher cap allows for better coverage of these larger electorates.

⁵ Moreton Bay Region – Election Signs, August 2018, section 5.2.2.

(c) *Size of signs*

Council considers that there should be a size limit of 0.6m² for election signs on public land. On private land, the size of election signs should either be 0.6m² or 1.08m² (approximately twice the size of a standard corflute).

The visual amenity report commissioned by Council confirms that these are standard sizes for corflute signs.⁶

Larger signs will be less intrusive from a visual amenity perspective if they are displayed on private land (as opposed to public land) given that private land is set back further from areas where the signs are visible.⁷ Accordingly, Council will permit larger signs to be displayed on private land (as opposed to public land).

“Visual clutter” can be minimised by the consistency of signage size.⁸ Council wants to reduce visual clutter and considers that this can be achieved by specifying the dimensions of signs that are permitted for display (e.g. 900mm x 1200mm are the dimensions of a sign that will be 1.08m² in area). By specifying the height and width that signs can be (as opposed to a maximum face area) Council is aiming to reduce the various dimensions of sign that can be displayed to limit the visual clutter caused by inconsistent sign sizes.

Council has also specified that signs must be “rectangular” with the lowest-edge of the sign being parallel to the ground. This is to avoid candidates displaying a rhomboid-shaped sign (for example) so that their sign “stands out”. Whilst Council is happy for candidates to “stand out” by being creative with the *content* of their election signs, Council does not consider that candidates should be able to stand out being creative with the *shape* of their election sign because this would, in Council’s view, add to the visual clutter and discordance that Council aims to minimise. Accordingly, only rectangular signs with the dimensions 600mm(h) x 900mm(l), or, 600mm(l) x 900mm(h) can be displayed on public land and only rectangular signs with those same dimensions or the dimensions 900mm(h) x 1200mm(l), or, 900mm(l) x 1200mm(h) can be displayed on private land.

The visual amenity report suggests that larger signs could be permitted (e.g. a 1.5m² sign on public land and a 2.5m² sign on private land). However, Council considers that signs of 0.6m² are the most popularly-used signage size and understands that signs of this size are adequate to convey information which candidates often display.⁹ Accordingly, Council does not consider it necessary to permit signs larger than 0.6m² to be displayed on public land. The visual amenity report also suggests that election signs which are approximately 1.08m² in size will be legible from 20-100 metres away.¹⁰ Accordingly, Council does not consider it necessary to permit signs larger than 1.08m² to be displayed on private land.

Election signs on private land will be less visually dominant if they are not displayed more than 2.5-metres above the ground.¹¹ Also, signs on public land should be within 1-metre of ground level to reduce visual clutter and allow motorists’ lines of sight over the top of

⁶ Moreton Bay Region – Election Signs, August 2018, section 2.7.

⁷ See Moreton Bay Region – Election Signs, August 2018, section 5.2.3.

⁸ Moreton Bay Region – Election Signs, August 2018, section 2.8.

⁹ See for example, Moreton Bay Region – Election Signs, August 2018, section 2.7.

¹⁰ Moreton Bay Region – Election Signs, August 2018, section 2.7.

¹¹ Moreton Bay Region – Election Signs, August 2018, section 5.2.3.

signs.¹² Accordingly, Council will specify maximum heights above ground-level at which election signs can be displayed.

To avoid creating the impression of a ‘wall’, a fixed sign on private land must be separated from another sign by no less than twice the sign width (and so Council considers that a distance of at least 2-metres between the signs is appropriate).¹³ For the same reason, Council considers that specifying a similar minimum distance between signs on public land is also desirable.

(d) Minimum distances from driver decision areas

The traffic safety report commissioned by Council identified certain areas where it was particularly important that drivers concentrate. These areas, or ‘driver decision areas’, were as follows:¹⁴

- a. Roundabouts;
- b. Cross intersections;
- c. School zones;
- d. Railway level crossings;
- e. ‘T’ intersection/major accesses;
- f. Mid-block pedestrian facility;
- g. Traffic sign with ‘important’ messages (i.e. signs that require a driver response);
- h. Bus stops.

The traffic safety report recommended that election signs not be permitted within certain distances of such areas.¹⁵ The precise distance, however, would vary depending on the speed limit applying to the driver decision area in question. For example, if the speed limit was up to 50 km/h, electoral signs should not be permitted within 45 metres of the driver decision area; if the speed limit was 60km/h, distance would be 65m; and if the speed limit was 80km/h, the distance would be 110m.

In Council’s view, there is merit in the concept of ‘driver decision areas’. However, it may be practically difficult for members of the public and Council officers to determine how far from driver decision areas signs are permitted to be displayed. Council is working on a means of making this calculation as easy as possible to perform but this is likely to take some time.¹⁶

In the meantime, Council has decided that, rather than a graduated scale as proposed by the traffic safety report, the permissible distances should be reduced to 20-metres away from a driver decision area. This will allow for greater certainty for both Council officers and candidates.

¹² Moreton Bay Region – Election Signs, August 2018, section 5.2.3.

¹³ See Moreton Bay Region – Election Signs, August 2018, section 5.2.3.

¹⁴ Road Safety Review, 31 July 2018, section 3.3.

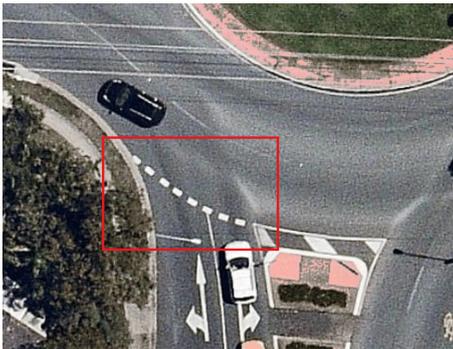
¹⁵ Road Safety Review, 31 July 2018, section 3.3. Distances would be generally measured from the intersecting line-marking, or a feature or edge of traffic line-marking.

¹⁶ For example, Council is considering using geographical information systems to “plot” the driver decision areas on a publicly available map so that candidates can easily locate areas where they can, or cannot, display election signs.

Council acknowledges that candidates should be able to measure this 20-metre “device restriction area” safely on the ground if they are wanting to display signs on public land. Council does not expect candidates to walk to the centre of a roundabout and then measure 20-metres back from that point, for example.

Council expects that the 20-metre device restriction area will be calculated in the following way for each of the following driver decision areas:

- a. **Roundabouts** - the device restriction area for roundabouts should be measured from the point where one road ends and the other road begins. This is often a dotted-line where cars stop before entering a roundabout (see inside the red rectangle below):



The device restriction area should be measured from that part of the line which is the closest to the nature strip or footpath (so that candidates can safely access that point to carry out their measuring). For example, the device restriction area around this part of the roundabout would be as follows:



In other words, an election sign could not be displayed in any area of public or private land which falls within the blue circle above (because that area is within 20-metres of the device restriction area).

It follows that election signs could not be displayed in any of the areas included in blue circles below (but election signs could be displayed on the public land in the red rectangle, for example¹⁷).



In the above diagram, there is also nothing preventing persons from erecting election signs on the private land outside of the blue circles (e.g. signs on the boundary fences of those private properties, or on pickets in the front gardens of those private properties).

- b. **Cross or “T” intersections** - the device restriction area for cross-intersections and t-intersections should be measured from the point where cars have to stop at the intersection (see inside the red rectangle below):



¹⁷ This area is setback at least 3-metres from the kerbside. The blue lines depicting the signs are all at least 3-metres apart and are all within a 9-metre radius).

The device restriction area should be measured from that part of the line which is the closest to the nature strip or footpath (so that candidates can safely access that point to carry out their measuring). For example, the device restriction area around this part of the intersection would be as follows:



It follows that election signs could not be displayed in any of the areas included in blue circles below (but election signs could be displayed on the public land in the red rectangle, for example¹⁸):

¹⁸ This area is setback at least 3-metres from the kerbside. The blue lines depicting the signs are all at least 3-metres apart and are all within a 9-metre radius).



- c. **School zones** - a “school zone” generally refers to a length of road between a school zone sign and an end school zone sign, or a speed limit sign with a different number on the sign,¹⁹ but only during the times when a lower speed limit applies to a driver in that school zone (as compared to the speed limit that applies to a driver on the length of road immediately outside that school zone).

By way of example, the length of road between the signs depicted in the two following images would constitute a “school zone” between 7-9am and 2-4pm on school days:



¹⁹ Although a school zone may also be that length of road between a school zone sign and a dead end (e.g. if the school zone is in a cul-de-sac).

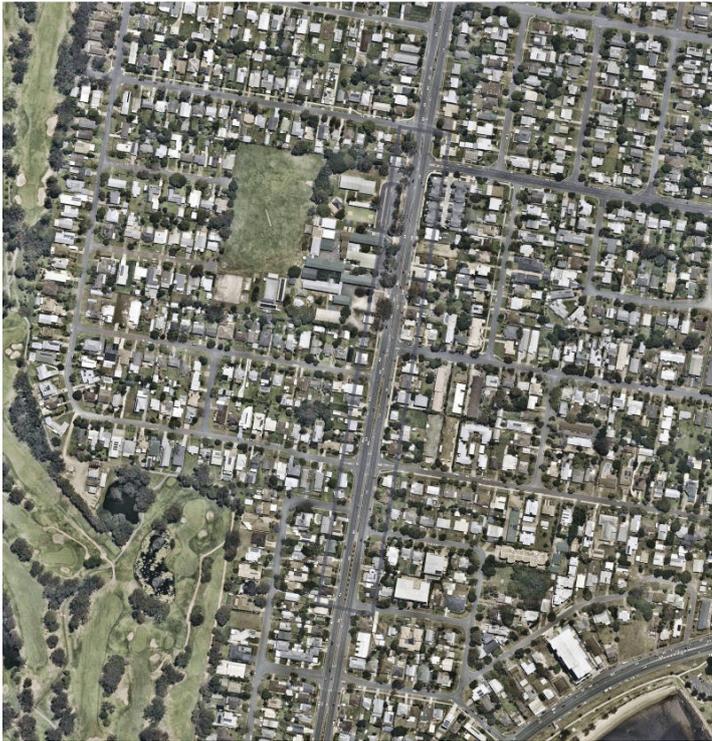


This school zone would include the length of road depicted in the red rectangle below:

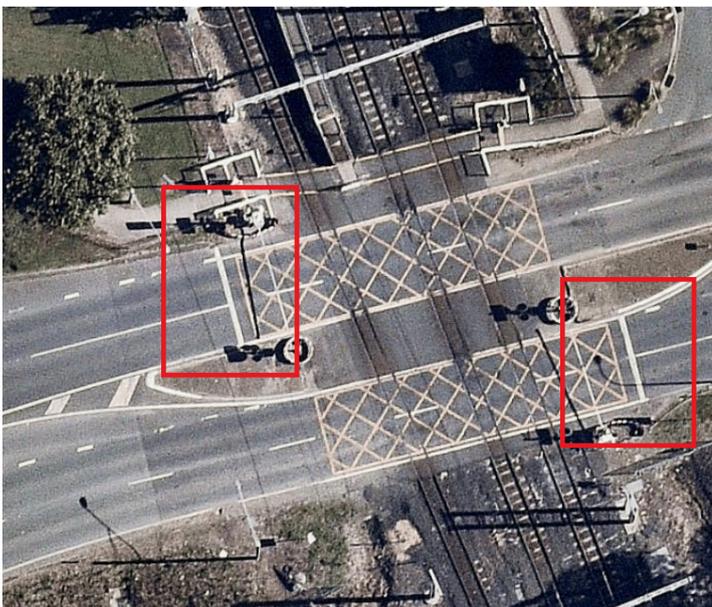


The device restriction area around this school zone should be measured from any part of the kerb or roadside which is adjacent to the school zone.

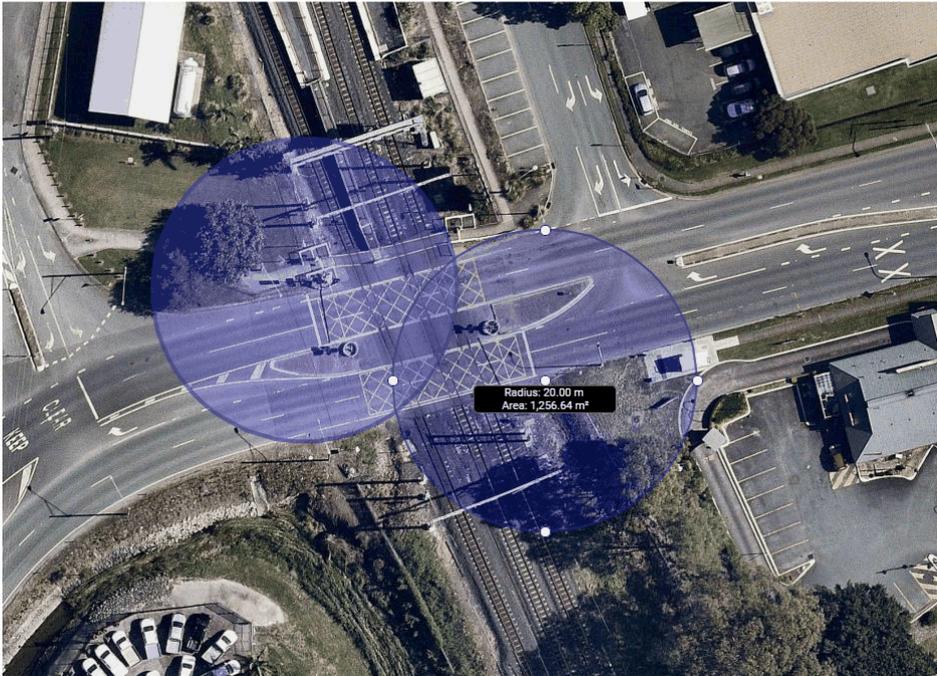
For example, the device restriction area around this school zone would include any area inside the blue rectangle below:



- d. **Railway level crossings** - the device restriction area for railway crossings should be measured from the point where cars are required to stop at the railway crossing (see inside the red rectangle below):



The device restriction area should be measured from that part of the line which is the closest to the nature strip or footpath (so that candidates can safely access that point to carry out their measuring). For example, the device restriction area around this railway level crossing would be the area within the following blue circles:



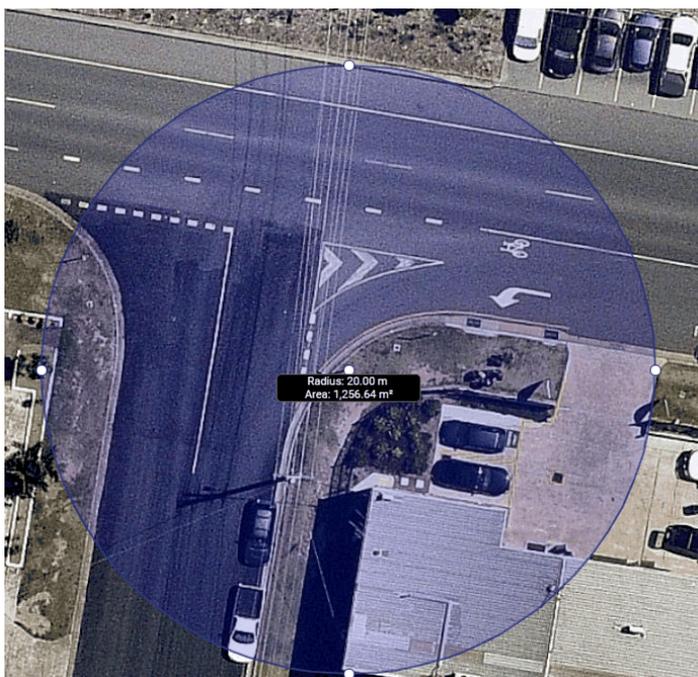
- e. **Pedestrian crossing** - A pedestrian crossing refers to an area of road marked or signed in a way which indicates that pedestrians may cross there.

The device restriction area around a pedestrian crossing should be measured from any part of the kerb which is adjacent to the pedestrian crossing (in the same way the device restriction area is measured for school zones).

- f. **Traffic signs which require a driver to stop, give way, change speed, change direction or change lane** - the following image contains an example of a sign requiring a driver to give way:



The device restriction area for these signs should be measured from the sign location. For example, the device restriction area around this give way sign would be the area within the blue circle:



- g. **Bus stops** - bus stops are indicated by signs on a footpath or nature strip. The device restriction area for bus stops should be measured from these signs in the same way as driver decision areas are calculated for the traffic signs referred to above.

Council also accepts that signs should also be a minimum distance from the road edge, in the interests of safety.²⁰ In order to provide greater guidance for the public and for Council officers, however, it has decided that the distances should be 3m where the speed limit is under 80km/h and 6m where the speed limit is over 80km/h.

(e) *Supervision of signs on public land where people gather*

Council recognises that people gather to advertise candidates and electoral parties or to campaign for a particular result in a referendum. Council's previous local laws referred to such a gathering as a 'public information booth'.²¹ A series of restrictions were imposed on election signs displayed in the presence of such booths. Relevant restrictions included:

- there must not be more than 6 election signs within a 20m radius of the political information booth;
- the signs must be placed on one side of the road only; and
- signs must be attended by a person over the age of 17 years at all times.

The Local Law would keep some of these restrictions but would change others. Within the 42 days preceding an electoral event, candidates and others who are gathered could display up to 3 x 0.6m² confluence signs on public land if the signs are at least 3m apart, are within a radius of 9m² and are supervised by a person who is at least 17 years old. Further, signs must be at least 3m from the road edge and be displayed perpendicular to the road. It will not be

²⁰ Road Safety Review, 31 July 2018, section 3.2.

²¹ See for example, *Moreton Bay Regional Council Interim Local Law No. 2 (Advertising Devices) 2018*, s 11, 'political information booth'.

necessary, however, for signs to be on only one side of the road. Nor would it be a requirement to have only one gathering per 500m.

Council considers that such restrictions would serve the end of protecting the amenity of the area and (through the requirement of supervision and a minimum distance from the road edge) the safety of the public, while still enabling candidates and others to communicate political messages.

(3) Displaying election signs at polling booths

Council recognises the importance of members of the community being able to readily identify their local polling booths and pre-polling booths.

Council acknowledges that election signs may enable the community to locate local polling and pre-polling booths more easily. Council also acknowledges that “the carnival atmosphere of election booths is less likely to cause community concern regarding visual pollution, compared to the proliferation of election signs along roadways throughout the election period”.²²

Accordingly, Council considers it appropriate to slightly relax the election sign display requirements near polling and pre-polling booths whilst ensuring that all candidates are given equal opportunity to display signs at these booths.

These requirements remain subject to electoral laws such as the *Electoral Act 1992 (Qld)* (which prohibits sign placement within 6-metres of polling booth entrances, for example).

Council acknowledges that candidates will wish to promote themselves via election signs to persons who enter polling booths from each gate or entrance to that polling booth. Council also acknowledges that there may be multiple gates or entrances to a polling booth. Accordingly, on nature strips adjacent to polling booths, the Local Law will specify that up to 3 election signs supporting a particular candidate can be displayed per frontage of a polling booth, or, per entrance to a polling booth (if there are multiple entrances along one frontage). This is intended to ensure that candidates can promote themselves via election signs at each gate or entrance to a polling booth, regardless of how many gates or entrances there may be.

(4) Applications to display electoral signs in exceptional circumstances

The Local Law will provide that candidates and political parties can apply to display an electoral sign outside of the Local Law requirements in exceptional circumstances. Before granting any such approval, Council will need to be satisfied that an exceptional circumstance exists that justifies the display of an election sign outside of the Local Law requirements.

Such a circumstance may include one where a prospective political candidate, or incumbent politician, has organised a meeting to discuss political matters with members of the community (more than 42-days before the polling date for an election) and election signs will signpost the meeting location.

²² Moreton Bay Region – Election Signs, August 2018, section 2.6.

The requirement that Council must be satisfied of exceptional circumstances is justified by the nature of the Local Law. As stated above, that Law balances several objectives, including ensuring that candidates are treated equally. That being so, it is appropriate that a person who seeks to display electoral signs, without the conditions otherwise placed by the Law, should demonstrate exceptional circumstances before obtaining approval to display those signs.

Version History: this “version 1” of the explanatory note was adopted by resolution of Council on 5 March 2019.