



AGENDA FOR THE ORDINARY MEETING

24 December 2021

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1 LEAVE OF ABSENCE

**2 DECLARATIONS OF PECUNIARY INTEREST OR NON-
PECUNIARY CONFLICT OF INTEREST**

3 GOVERNANCE AND ADMINISTRATION MATTERS

The following items are submitted for consideration -

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ITEM 3.1 **Oath or Affirmation of Office by Councillors**

AUTHOR **Office of General Manager**

PURPOSE AND BACKGROUND

Section 233A (1) of the Local Government Act 1993 requires the Mayor and Councillors to take an oath or make an affirmation of office prior to the first meeting of council, after the councillor is elected to council.

ISSUE

In accordance with section 233A (2) of the Act the oath or affirmation of office must be taken or made before the General Manager, prior to the first meeting of Council.

Prior to this meeting of Council, each of the elected councillors took an oath or made an affirmation before the General Manager.

RECOMMENDATION

That the report be noted.

ATTACHMENTS

Nil

POLICY IMPACT

The requirements of the Local Government Act 1993 have been met.

FINANCIAL IMPACT

There is no financial impact.

COMMUNITY IMPACT

There is no community impact.

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ITEM 3.2 **Mayoral Election - December 2021 to September 2023**

AUTHOR **Office of General Manager**

Pursuant to the Local Government Act 1993 and Council's Code of Meeting Practice, this meeting has been scheduled for the Councillors to elect Council's Mayor.

Councillors should note that:

- Mayors elected by councillors normally hold their office for two years (section 230(1) of the Local Government Act 1993), unless a casual vacancy occurs. Due to the postponement of the ordinary council elections to 4 December 2021, mayors elected by councillors during the next term will have a shorter term than the usual two years. Councils that elect their mayors are required under the Act to hold mid-term mayoral elections in the month of September 2023 (section 290(1)(b) of the Act).
- This means that the term of office for the Mayor elected at this meeting will be for the period December 2021 to September 2023.
- Council's General Manager, as the Returning Officer, is required to conduct the election in accordance with Schedule 7 of the Local Government (General) Regulation 2021 (Attachment A); and
- In accordance with Schedule 7, Council will be required to resolve the method of voting to determine the Mayor, in the event that more than one (1) Councillor is nominated.

In determining the matter, Council will need to resolve the method of voting, should there be more than one nomination.

RECOMMENDATION - That

1. In accordance with Schedule 7 of the Local Government (General) Regulation 2021 the General Manager, as the Returning Officer, conduct the Election of the Mayor.
2. In the event that there be more than one (1) nomination, Council determine the method of voting.

ATTACHMENTS

- A. Procedure for Mayoral Elections

ATTACHMENT -A**Local Government (General) Regulation 2021**

Schedule 7 Election of Mayor by councillors

(Clause 394)

Part 1 Preliminary**1 Returning officer**

The general manager (or a person appointed by the general manager) is the returning officer.

2 Nomination

- (1) A councillor may be nominated without notice for election as Mayor or Deputy Mayor.
- (2) The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

3 Election

- (1) If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the council meeting at which the council resolves on the method of voting.
- (4) In this clause:

ballot has its normal meaning of secret ballot.

open voting means voting by a show of hands or similar means.

Part 2 Ordinary ballot or open voting**4 Application of Part**

This Part applies if the election proceeds by ordinary ballot or by open voting.

5 Marking of ballot-papers

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.
- (2) The formality of a ballot-paper under this Part must be determined in accordance with clause 345 (1) (b) and (c) and (6) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

6 Count—2 candidates

- (1) If there are only 2 candidates, the candidate with the higher number of votes is elected.
- (2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

7 Count—3 or more candidates

- (1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- (2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.
- (3) If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- (6) If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

Part 3 Preferential ballot

8 Application of Part

This Part applies if the election proceeds by preferential ballot.

9 Ballot-papers and voting

- (1) The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.
- (2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (3) An informal ballot-paper must be rejected at the count.

10 Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
- (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter’s preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.
- (4) In this clause, ***absolute majority***, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

11 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

Part 4 General

12 Choosing by lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the returning officer, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

13 Result

The result of the election (including the name of the candidate elected as Mayor or deputy Mayor) is:

- (a) to be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Director-General and to the Secretary of the Local Government and Shires Associations of New South Wales.

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ITEM 3.3 Election of Deputy Mayor

AUTHOR Office of General Manager

Pursuant to Section 231(1) of the Local Government Act (Act), Council may elect a person from among their number to be the Deputy Mayor.

The Deputy Mayor may exercise any function of the Mayor at the request of the Mayor, or if the Mayor is prevented by illness, absence or otherwise from exercising the functions of the Mayor.

In making its decision, Councillors should note:

- In accordance with Section 231(2) of the Act, a Councillor may be elected to be the Deputy Mayor for the period of the mayoral term or a shorter term.
- Section 249 (5) of the Act provides that the Council may pay the Deputy Mayor (if there is one) a fee to be determined by Council for such time as the Deputy Mayor acts in the office of the Mayor.
- Any fee paid to the Deputy Mayor must be deducted from the Mayor's annual fee. By way of background, a number of other councils base the payment on a set percentage of the estimated time that the Deputy Mayor will act in the role as the Mayor throughout the term. The percentage applied by other councils varies between 10%-20%.

In considering the matter, Councillors will need to determine/resolve as to:

1. Whether to elect a person from among their number to be the Deputy Mayor and for what term;
2. Determine the fee to be paid to the Deputy Mayor while he or she acts in the office of the Mayor;
3. Subject to the above and in the event that there be more than one (1) nomination, Council determine the method of voting for the election; and
4. Council request that the General Manager, as Returning Officer, conduct the Election of Deputy Mayor, in accordance with Schedule 7 of the Local Government (General) Regulation 2021, as required.

Accordingly, the matter is submitted for Council's consideration.

RECOMMENDATION

That the information be considered by Council.

ATTACHMENTS

Nil

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ITEM 3.4 **2021 Local Government Election - Casual Vacancy in Civic Office - Countback Option**

AUTHOR **Office of General Manager**

PURPOSE AND BACKGROUND

In accordance with section 291A(1)(b) of the Local Government Act 1993, Councils that wish to fill casual vacancies that occur in civic office within 18 months of the 2021 Council election by a countback of votes cast at the election, must resolve to do so at the first meeting of the new Council.

Councils that do not wish to fill casual vacancies using a countback of votes can fill vacancies using a by-election (section 291 of the Act).

ISSUE

To determine the method of filling any casual vacancies that may occur in civic office in the first 18 months of the new Council.

RECOMMENDATION

That Council considers and determines the method of filling casual vacancies in civic office that occur in the first 18 months of the new Council.

ATTACHMENTS

Nil

POLICY IMPACT

The adoption of the recommendations will ensure Council's meets its legislative requirements regarding the filling of any casual vacancies that occur in civic office in the first 18 months following the ordinary election of Councillors.

FINANCIAL IMPACT

The estimated financial impact associated with either method of filling a casual vacancy is as follows:

- By-election process
 - Council's 2021 Local Government Election is estimated to cost around \$2.3M.
 - Whilst the cost of a by-election will need to be determined by the NSW Electoral Commission, it is expected/estimated that the cost per Ward would be in the vicinity of \$600K - \$700K.
 - This is based on an average cost per Ward of conducting the entire local government election - adjusted slightly for certain direct/fixed costs such as the Returning Officer and other administrative costs.
- Countback
 - Naturally, adopting the countback method will result in a significantly lower cost for Council – estimated between \$30K - \$40K.
 - This is largely given that the process is administrative in nature, in that it relies on data from ballot papers and the same proportional representation method used in the original election.
 - The process effectively re-runs the election making the vacating councillor ineligible and distributing each of their ballot papers to the next preference on the ballot paper for those candidates who accept to be considered as part of the election process.

COMMUNITY IMPACT

As Councillors would expect, the need to fill a casual vacancy is essential in appropriately representing constituents and our community, whilst also ensuring that the method applied reflects the community's sentiments.

DETAILED INFORMATION

Background

Following the 2021 local government elections, councils will, for the first time, have the option of using a countback of votes cast at the 2021 ordinary election to fill casual vacancies occurring in civic office in the first 18 months after the election.

Required Consideration

Should Council determine to use the countback method, it must do so by resolution. The Office of Local Government has provided the following wording for such a resolution.

Pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act), Council declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for the Council on 4 December 2021 are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act and directs the General Manager to notify the NSW Electoral Commission of the Council's decision within 7 days of the decision.

Where Council resolves to fill casual vacancies using a countback, the General Manager is required under Section 393C of the *Local Government (General) Regulation 2021* to notify the NSW Electoral Commission within 7 days of the Council's decision.

If Council does not resolve to implement the countback method, any casual vacancies that occur in civic office in the first 18 months of the Council term would be filled through a by-election.