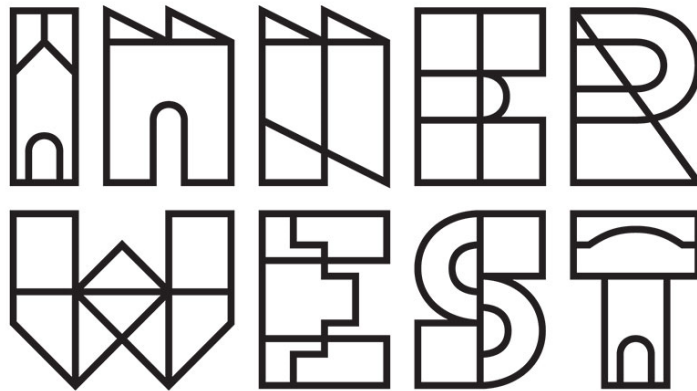


AGENDA



COUNCIL MEETING

TUESDAY 8 OCTOBER 2024

6:30 PM

Live Streaming of Council Meeting

In the spirit of open, accessible and transparent government, this meeting of the Inner West Council is being streamed live on Council's website. By speaking at a Council meeting, members of the public agree to being recorded and must ensure their speech to the Council is respectful and use appropriate language. A person who uses defamatory, discriminatory or offensive language may be exposed to liability for which Council takes no responsibility. Any part of this meeting that is held in closed session will not be recorded.

Council meetings are streamed live on [Council's website](#). This allows our community greater access to Council proceedings, decisions and debate.

Pre-Registration to Speak at Council Meetings

Members of the public must register by 2pm of the day of the Meeting to speak at Council Meetings. If you wish to register to speak please fill in a [Register to Speak Form](#), available from the Inner West Council website, including:

- your name;
- contact details;
- item on the Agenda you wish to speak to; and
- whether you are for or against the recommendation in the agenda.
- whether you are speaking in person or online

Are there any rules for speaking at a Council Meeting?

The following rules apply when addressing a Council meeting:

- keep your address to the point, the time allowed for each speaker is limited to three minutes. This time limit applies, no matter how many items are addressed by the speaker;
- when addressing the Meeting you must speak to the Chairperson;
- the Chairperson may curtail public participation where the information being presented is considered repetitive or irrelevant; and
- only 3 speakers for and against an Agenda Item are allowed.

What happens after I submit the form?

You will be contacted by Governance Staff to confirm your registration. If you indicated that you will speak online, you will be provided with a link to the online meeting. Your request will then be added to a list that is shown to the Chairperson on the night of the meeting.

Where Items are deferred, Council reserves the right to defer speakers until that Item is heard on the next occasion.

Accessibility

Inner West Council is committed to ensuring people with a disability have equal opportunity to take part in Council and Committee Meetings. At the Council Chambers at Ashfield, there is a hearing loop service available to assist persons with a hearing impairment. If you have any other access or disability related participation needs and wish to know more, call 9392 5536.

Persons in the public gallery are advised that under the Local Government Act 1993, a person may NOT record a Council meeting without the permission of Council.

Any persons found recording without authority will be expelled from the meeting.

"Record" includes the use of any form of audio, video and still camera equipment or mobile phone capable of recording speech.

An audio recording of this meeting will be taken for the purpose of verifying the accuracy of the minutes.

Statement of Ethical Obligations

The Mayor and Councillors are bound by the Oath/ Affirmation of Office made at the start of the Council term to undertake their civic duties in the best interests of the people of the Inner West Council and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act or any other Act, to the best of their skill and judgement.

It is also a requirement that the Mayor and Councillors disclose conflicts of interest in relation to items listed for consideration on the Agenda or which are considered at this meeting in accordance with Council's Code of Conduct and Code of Meeting Practice.

AGENDA

- 1 Acknowledgement of Country
- 2 Apologies and Request for Remote Attendance
- 3 Notice of Webcasting
- 4 Statement of Ethical Obligations
- 5 Disclosures of Interest (Part 4 (Pecuniary Interests) and Part 5 (non-pecuniary conflicts of interest) of Council's Code of Conduct)
- 6 Moment of Quiet Contemplation
- 7 Public Forum – Hearing from All Registered Speakers
- 8 Reports for Council Decision

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C1024(1) Item 1 Oath Or Affirmation of Office for Councillors	5
C1024(1) Item 2 Election of Mayor and Deputy Mayor	7
C1024(1) Item 3 Countback to fill any casual vacancy on Council	23

9 Reports for Noting

Nil at the time of printing.

Item No: C1024(1) Item 1
Subject: OATH OR AFFIRMATION OF OFFICE FOR COUNCILLORS
Prepared By: Julian Sakarai - Acting Senior Manager Governance and Risk
Authorised By: Beau-Jane De Costa - Acting Director Corporate

RECOMMENDATION

That Council note the taking of the Oath or making of the Affirmation of office undertaken by each Councillor.

STRATEGIC OBJECTIVE

This report supports the following strategic directions contained within Council's Community Strategic Plan:

5: Progressive, responsive and effective civic leadership

EXECUTIVE SUMMARY

This report outlines the requirement under the *Local Government Act 1993 (Act)* for each Councillor to take an oath of office or make an affirmation of office at or before the first meeting of Council after the Councillor is elected.

BACKGROUND

In accordance with the section 233A of the *Act*, a Councillor must take an oath of office or make an affirmation of office at or before the first meeting of Council after the Councillor is elected.

DISCUSSION

A Councillor needs to be physically present before the General Manager, a legal practitioner or a justice of the peace when taking their oath or making their affirmation of office.

A Councillor who fails, without a reasonable excuse, to take the oath of office or make an affirmation of office is not entitled to attend a meeting as a Councillor (other than the first meeting of Council after the Councillor is elected to the office or a meeting at which the Councillor takes the oath or makes the affirmation) until that Councillor has taken the oath or made the affirmation.

The General Manager must then ensure that a record is kept of the taking of an oath or the making of an affirmation (whether in the minutes of the Council meeting or otherwise).

Fulfilling the requirements of the Oath or Affirmation of Office

To ensure compliance with section 233A of the *Local Government Act 1993*, it is recommended that each Councillor take the oath of office or make an affirmation of office during the meeting, held on 8 October 2024. The taking of oaths, or making of affirmations, by Councillors will be recorded in the minutes of the meeting to meet the requirements of the Act. In respect of any Councillors unable to attend the 8 October 2024 Council meeting in person, the General Manager will make arrangements for that Councillor to take the oath/make the affirmation of office before the Council meeting. The taking of the oath or making an affirmation of office outside the Council meeting will then be notified to Council and recorded in the minutes of the meeting.

A copy of the wording for the Oath or Affirmation is detailed below:

Oath

I [name of Councillor] swear that I will undertake the duties of the office of Councillor in the best interests of the people of Inner West and the Inner West Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

Affirmation

I [name of Councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the people of Inner West and the Inner West Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the implementation of the proposed recommendations outlined in the report.

ATTACHMENTS

Nil.

Item No: C1024(1) Item 2
Subject: ELECTION OF MAYOR AND DEPUTY MAYOR
Prepared By: Julian Sakarai - Acting Senior Manager Governance and Risk
Authorised By: Beau-Jane De Costa - Acting Director Corporate Acting Director Corporate

Item 2

RECOMMENDATION

1. That Council determine the method of voting for the election of the Mayor and Deputy Mayor (*if more than one nomination is received*).
2. That Council conduct the election of the Mayor for a period serving from 8 October 2024 until September 2026, in accordance with the *Local Government Act 1993*, and the result be declared by the Returning Officer (*General Manager*).
3. That Council determine to elect a Deputy Mayor, and if so:
 - a) The length of term for the Deputy Mayor (*traditional until September the following year*); and
 - b) Determine the method of voting for the election of the Deputy Mayor (*if more than one nomination is received*).
4. That Council conduct the election of the Deputy Mayor for a period from 8 October 2024, until as determined, in accordance with Clause 3a above.

STRATEGIC OBJECTIVE

This report supports the following strategic directions contained within Council’s Community Strategic Plan:

- 5: Progressive, responsive and effective civic leadership

EXECUTIVE SUMMARY

This report has been prepared to conduct the election of Mayor and Deputy Mayor (if Council determines to appoint a Deputy Mayor) from 8 October 2024 until September 2026 (or as determined for the Deputy Mayor). The decision to have a Deputy Mayor is a decision for the Council and is recommended in this report based on the current practice of Council.

The method of voting used at Mayoral elections must be determined at the meeting at which the election is being held. The options open to Council are open voting, ordinary ballot, and preferential ballot. Traditionally, Council conducts elections for the Mayor and Deputy Mayor by open voting. It is the most transparent and least bureaucratic method of voting, and reflects normal Council voting methods. It is also the method of voting that can most easily accommodate Councillors attending remotely. If Council resolves to conduct the election by preferential or ordinary ballot, this will require all Councillors, whether in person or attending remotely, to use an online voting system that will ensure secrecy. However, this is not recommended as Council has not used the system before, and there is a risk of technical issues.

BACKGROUND

It is a requirement of the Act that each local government area has a mayor elected in accordance with the provisions of the Act. The Act provides that the councillors of a local government area may elect a person from among their number to be the deputy mayor.

DISCUSSION

In accordance with section 230 of the *Local Government Act 1993* (the Act), a mayor elected by the councillors holds the office of mayor for 2 years. The deputy mayor may be elected for the mayoral term or a shorter term. Council’s historical practice in respect of the Deputy Mayoral term has been to set it for one year, which in this case would be until September 2025.

The decision to have a Deputy Mayor is a decision for the Council. It is recommended in this report based on the historical practice of Council, and to ensure Council has sufficient capacity in the event the Mayor is otherwise unable to exercise the Mayoral functions. If Council resolves to appoint a Deputy Mayor, Council has previously resolved to pay the Deputy Mayor a fee of \$10,000 per annum. The legislation requires that any fee set for the Deputy Mayor is taken from the annual fee payable to the Mayor. It is at Council’s discretion to determine the fee payable to the Deputy Mayor, if any.

Under section 231(3) of the Act, the Deputy Mayor may exercise any function of the Mayor for any of the following reasons:

1. At the request of the Mayor;
2. If the Mayor is prevented by illness, absence or otherwise from exercising the function; and
3. If there is a casual vacancy in the office of the Mayor.

If Councillors do not proceed with the election of a Deputy Mayor for the ensuing year, they may elect a Deputy Mayor at another time if the Mayor is prevented by illness, absence or otherwise prevented from exercising their role. In the event that the Deputy Mayor is prevented by illness, absence or otherwise from exercising their role, the Councillors may elect another Councillor to act as the Deputy Mayor.

Under section 3(3) of Schedule 7 of the *Regulation*, the method of voting used at mayoral elections must be determined at the meeting at which the election is being held. The options open to Council are open voting, ordinary ballot, and preferential ballot. Traditionally, Council conducts elections for the Mayor and Deputy Mayor by open voting. It is the most transparent and least bureaucratic method of voting, and reflects normal Council voting methods. It is also the method of voting that can most easily accommodate Councillors attending remotely. If Council resolves to conduct the election by preferential or ordinary ballot, this will require all Councillors, whether in person or attending remotely, to use an online voting system that will ensure secrecy. However, this is not recommended as Council has not used the system before, and there is a risk of technical issues.

Nomination Process

The General Manager is designated as the Returning Officer for the election of the Mayor and Deputy Mayor.

Nominations for the position of Mayor and Deputy Mayor must be in writing and signed by two or more Councillors, one of whom may be the nominee.

A standard nomination form has been prepared for this purpose and provided to all Councillors (*Attachment 2*).

Each nominee must confirm their consent to the nomination in writing.

Nominations are to be provided to the Returning Officer before or at the meeting of Council at which the election is scheduled to be conducted. The Returning Officer will announce details of the nominations at that meeting. If there is only one nominee, they are to be declared elected.

If there is more than one nominee, Council is to determine the preferred method of voting and proceed accordingly.

Procedures for Mayoral Election

1. The General Manager will announce the item of business being the election of the Mayor. The General Manager being also the Returning Officer for the election of the Mayor and Deputy Mayor will proceed to conduct the election.
2. The Returning Officer reads out the names of the nominees and seeks confirmation that the nominee has accepted the nomination. If only one Councillor has been nominated for the position of the Mayor, the nominee is elected.
3. If more than one candidate has been nominated, Council must determine by resolution the method of voting to be used for the election of the Mayor by way of one of the following methods:
 - a) Open voting – i.e. by show of hands.
 - b) Ordinary ballot – i.e. a secret ballot (place an “X” against the candidate of their choice);
 - c) Preferential ballot – i.e. place 1, 2, 3 etc. against each candidate;
4. The Returning Officer must ask for a motion to be put to the meeting by one of the Councillors on the preferred method of voting for the election of a Mayor.

Method of Voting – Open voting

1. Each Councillor is entitled to vote for only one candidate in each round of voting. Nominations will be recorded on the tally sheet in the order in which they were received.

2. When all candidates' names have been written on a tally sheet, the Returning Officer announces the names of the candidates, and starts the voting for each candidate and asks Councillors to raise their hands for the candidate they are voting for.
3. The Returning Officer announces the number of votes received for each candidate. The minute taker also records the vote for each Councillor.
4. The Returning Officer checks with the minute taker that each Councillor has voted. If a Councillor has not voted it should be confirmed that they are abstaining (an informal vote).
5. If there are only two candidates for the position of Mayor and the voting is higher for one candidate than another (number of formal votes recorded on the tally sheet), the Returning Officer then announces the result. In the event of a tied vote, in accordance with section 12 of Schedule 7 of the *Local Government (General) Regulation 2021*, the Returning Officer will write the names of the candidates on similar slips of paper, fold them and place them in a hat to be chosen by lot and request a staff member to shake the hat. The Returning Officer will then draw a name out of the hat. The candidate whose name is drawn out will be declared Mayor.
6. If there are three or more candidates, the candidate with the lowest number of votes for the position of Mayor is excluded. The voting continues as above until there are only two candidates remaining. In the event that the lowest number of votes are tied, in accordance with section 12 of Schedule 7 of the *Local Government (General) Regulation 2021*, the Returning Officer will write the names of the candidates on similar slips of paper, fold them and place them in a hat to be chosen by lot and request a staff member to shake the hat. The Returning Officer will then draw a name out of the hat. The candidate whose name is drawn out will be excluded.

Method of Voting – Ordinary ballot

1. The Returning Officer announces the names of the candidates and records the nominations on the ballot paper in the order in which the nominations were received.
2. The Returning Officer writes the names on one set of the ballot papers and initials the front of each ballot paper. A staff member distributes the ballot papers and collects them when completed and gives it to the Returning Officer who counts the votes and records them on the tally sheet. The Returning Officer announces the results.
3. In the event that the lowest number of votes are tied, in accordance with section 12 of Schedule 7 of the *Local Government (General) Regulation 2021*, the Returning Officer will write the names of the candidates on similar slips of paper, fold them and place them in a hat to be chosen by lot and request a staff member to shake the hat. The Returning Officer will then draw a name out of the hat. The candidate whose name is drawn out will be excluded.
4. The Returning Officer writes the names of the remaining candidates on a further set of the ballot papers and initials the front of each ballot paper. The staff member distributes ballot papers listing the remaining candidates and collects them when completed and gives it to the Returning Officer who again counts the votes and records them on the tally sheet and announces the results. The process continues until two candidates remain, where a final vote takes place.
5. In the event of a tied vote between the two remaining candidates, in accordance with section 12 of Schedule 7 of the *Local Government (General) Regulation 2021*, the Returning Officer will write the names of the candidates on similar slips of paper, fold them

and place them in a hat to be chosen by lot and requests a staff member to shake the hat. The Returning Officer will then draw a name out of the hat. The candidate whose name is drawn out will be declared as Mayor.

Method of Voting – Preferential ballot

1. The Returning Officer announces the names of the candidates and records the nominations on the ballot paper in the order in which the nominations were received.
2. The Returning Officer writes the names of candidates on the ballot papers and initials the front of each ballot paper. This method of voting requires only one set of ballot papers. A staff member distributes the ballot papers and collects them when completed and gives them to the Returning Officer who counts the first preference votes and records them on the tally sheet. If a candidate has an absolute majority of first preference votes (more than half), the Returning Officer declares the outcome.
3. If no candidate has the absolute majority of first preference votes, the Returning Officer excludes the candidate with the lowest number of first preference votes. The preferences from the excluded candidate are distributed. This process continues until one candidate has received an absolute majority of votes, at which time the Returning Officer announces the result.
4. In the event of a tied vote where there are only two candidates remaining in the election, in accordance with section 12 of Schedule 7 of the *Local Government (General) Regulation 2021*, the Returning Officer will write the names of the candidates on similar slips of paper, fold them and place them in a hat to be chosen by lot and request a staff member to shake the hat. The Returning Officer will then draw a name out of the hat. The candidate whose name is drawn out will be declared as Mayor.

Procedures for Deputy Mayoral Election

If Council determines to elect a Deputy Mayor, the election process set out above will be followed for the Deputy Mayoral election.

Results

The results of the election (including the name of the candidate elected as Mayor and Deputy Mayor) will be declared to the Councillors at the Council meeting at which the election is held by the Returning Officer (General Manager) and will be provided to the Secretary and the Chief Executive Officer of Local Government NSW.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the implementation of the proposed recommendations outlined in the report other than the provision of the Mayoral allowance, and if appointed, Deputy Mayoral allowance, which Council has already adopted in the annual budget.

ATTACHMENTS

1. [Local Government \(General\) Regulation 2021 \(NSW\) Schedule 7 Election of mayor by councillors](#)
2. [Mayor and Deputy Mayor nomination form](#)
3. [OLG Fact Sheet - Election of Mayor and Deputy Mayor by Councillors](#)

Schedule 7 Election of mayor by councillors

(Section 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 section—
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 section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (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 subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 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 subsection (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 section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (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 section, *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 Secretary and the Chief Executive Officer of Local Government NSW.



NOMINATION FOR POSITION OF MAYOR

We the undersigned Councillors nominate

Councillor _____

for the position of **MAYOR** for the period commencing 8 October 2024 until September 2026.

PROPOSERS/NOMINATING COUNCILLORS:

_____ NAME IN BLOCK LETTERS	_____ SIGNATURE	_____ DATE
_____ NAME IN BLOCK LETTERS	_____ SIGNATURE	_____ DATE
_____ NAME IN BLOCK LETTERS	_____ SIGNATURE	_____ DATE

NOMINEE CONSENT TO NOMINATION

I, the above nominated Councillor _____ accept nomination for the position of **MAYOR**.

SIGNATURE

IMPORTANT NOTE:

The nomination will be declared invalid if it is not signed by at least two (2) Councillors as proposers, one of which can be the nominated person. The nominee must also sign as accepting the nomination.



NOMINATION FORM
POSITION OF DEPUTY MAYOR

Item 2

We the undersigned Councillors nominate

Councillor _____

for the position of **DEPUTY MAYOR** for the period commencing 8 October 2024 until September 2025 (pending Council confirmation of Deputy Mayor’s length of term).

PROPOSERS/NOMINATING COUNCILLORS:

_____ NAME IN BLOCK LETTERS	_____ SIGNATURE	_____ DATE
_____ NAME IN BLOCK LETTERS	_____ SIGNATURE	_____ DATE
_____ NAME IN BLOCK LETTERS	_____ SIGNATURE	_____ DATE

NOMINEE CONSENT TO NOMINATION

I, the above nominated Councillor _____ accept nomination for the position of **DEPUTY MAYOR**.

SIGNATURE

IMPORTANT NOTE:
The nomination will be declared invalid if it is not signed by at least two (2) Councillors as proposers, one of which can be the nominated person. The nominee must also sign as accepting the nomination.

Attachment 2

Fact Sheet ELECTION OF MAYOR AND DEPUTY MAYOR BY COUNCILLORS



Summary

Councillors must elect a mayor from among their number every two years unless they have a popularly elected mayor.

Councillors may also elect a deputy mayor. The deputy mayor may be elected for the mayoral term or a shorter term.

The election of the mayor and the deputy mayor must be conducted in accordance with section 394 and Schedule 7 of the *Local Government (General) Regulation 2021* (the Regulation).

The purpose of this document is to assist councils to conduct mayoral and deputy mayoral elections in accordance with these requirements. It includes scripts for key activities to help returning officers exercise their functions. These scripts are provided in the text boxes inserted in the relevant parts of this document.

How can councils use this document?

Electing a mayor is an important activity. It is vital that the process is smooth, open and easy to follow and not rushed or confusing. Where necessary, it may be appropriate to stop and provide clarification for the benefit of councillors, staff or the gallery.

Returning officers can circulate this document prior to the meeting to help councillors understand the election process.

Election of a mayor after an ordinary election of councillors

An election for mayor must be held within three weeks of the declaration of the ordinary election at a meeting of the council.

The returning officer is to be the general manager or a person appointed by the general manager.

As no mayor or deputy mayor will be present at the start of the meeting, the first business of the meeting should be the election of a chairperson to preside at the meeting. Alternatively, the returning officer may assume the chair for the purpose of conducting the election.

Mid-term election of a mayor

A mayor elected by councillors holds office for two years. A mid-term mayoral election must be held in the September two years after the ordinary election of councillors or the first election of a new council following its establishment.

Procedures

Prior to the meeting

Before the council meeting at which the election is to be conducted, the returning officer will give notice of the election to the councillors.

The notice is to set out how a person may be nominated as a candidate for election as chairperson.

As returning officer, I now invite nominations for the position of mayor/deputy mayor for [name of council] for a two year period.

In accordance with the Local Government (General) Regulation 2021, two or more councillors may nominate a councillor (one of whom may be the nominee) for the position of mayor/deputy mayor. Nominations must be in writing and the nominee must consent to their nomination in writing.

A councillor may be nominated without notice for election as mayor or deputy mayor. The nomination is to be made in writing by two 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.

The returning officer checks the nomination forms and writes the nominees' names on a candidates' sheet.

At the meeting

At the start of the first meeting after an ordinary election, in the absence of a chairperson, the returning officer assumes the chair and announces that the first item of business is to be the election of a mayor.

If a chairperson is present, they announce that the first item of business is the election of the mayor then vacates the chair for the returning officer who will then conduct the election.

The returning officer reads out the names of the nominees and seeks confirmation that the nominee has accepted the nomination.

If only one councillor has been nominated for the position of mayor/deputy mayor, the nominee is elected.

As there is only one nominee for the role of mayor/deputy mayor, I declare that [name of successful candidate] is elected as mayor/deputy mayor for the ensuing two years.

If more than one candidate has been nominated, the council must determine by resolution, the method of voting for the position of mayor/deputy mayor, by way of one of the following methods:

- Open voting – i.e. by show of hands
- Ordinary ballot – i.e. a secret ballot (place an "X" against the candidate of their choice)
- Preferential ballot – i.e. place 1, 2, 3 etc. against each candidate.

The returning officer must ask for a motion to be put to the meeting by one of the councillors on the preferred method of voting for the election of a chairperson. This must then be seconded and voted on by the councillors.

Note: In the event of a tie, if there is a chairperson, they may use their casting vote. If there is a tie and no chairperson, an election for the role of chairperson should be conducted. Then the election for mayor resumes.

Open voting (show of hands)

Open voting is the most transparent method of voting. It is also the least bureaucratic method and reflects normal council voting methods.

The returning officer will advise the meeting of the method of voting and explains the process.

It has been resolved that the method of voting for the position of mayor/deputy mayor will be by show of hands.

Each councillor is entitled to vote for only one candidate in each round of voting.

I will now write each candidate's name on a slip of paper and deposit it in a barrel. The first name out of the barrel will be written first on the tally sheet, with second name out being written second on the tally sheet, etc.

When all candidates' names have been written on the tally sheet, the returning officer announces the names of the candidates and, commencing with the first candidate, states the following:

Would those councillors voting for [name of candidate] please raise your hand.

The returning officer records the number of votes for each successive candidate on the tally sheet and announces the number of votes received for each candidate.

The minute taker records the vote of each councillor.

The returning officer should check with the minute taker that each councillor has voted. If a councillor has not voted it should be confirmed that they are abstaining (an informal vote).

Two candidates

If there are only two candidates for the position of mayor/deputy mayor and the voting is higher for one candidate than another (number of formal votes recorded on the tally sheet), the returning officer then announces the result.

[Name of candidate] has the higher number of formal votes and as a result I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote**, the returning officer will advise the meeting of the following process.

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the

names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Three or more candidates

If there are three or more candidates, the candidate with the lowest number of votes for the position of mayor/deputy mayor is excluded.

[Name of candidate], having the lowest number of votes, is excluded.

The voting continues as above until there are only two candidates remaining (see voting for **two candidates** above).

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

I declare that [name of candidate] is excluded.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Ordinary ballot – (secret ballot)

The returning officer advises the meeting of the method of voting and explains the process.

It has been resolved that the method for voting for the position of mayor/deputy mayor will be by ordinary ballot, in other words by placing an "X" against the candidate of the councillor's choice.

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

It will be necessary to have a number of blank papers as this process may require more than one round of voting.

The returning officer writes the names on one set of the ballot papers and initials the front of each ballot paper.

A staff member distributes the ballot papers and collects them into the ballot box when completed and gives it to the returning officer who counts the votes and records them on the tally sheet.

The returning officer announces the results.

[Name of candidate], having the lowest number of votes, is excluded.

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

I declare that [name of candidate] is excluded.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

The returning officer writes the names of the remaining candidates on a further set of the ballot papers and initials the front of each ballot paper.

The staff member distributes ballot papers listing the remaining candidates and collects them into the ballot box when completed and gives it to the returning officer who again counts the votes and records them on the tally sheet and announces the results.

The process continues until two candidates remain, where a final vote takes place.

[Name of candidate] has the higher number of votes and I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote** between the two remaining candidates, the returning officer makes the following statement and announces the process.

The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel.

Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Preferential ballot

The returning officer explains the process.

It has been resolved that the method for voting for the position of mayor/deputy mayor will be by preferential ballot, i.e. placing 1, 2 and so on against the candidate of the councillor's choice in order of preference for all candidates.

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each candidate's name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

The returning officer writes the names on the ballot papers and initials the front of each ballot paper. This method of voting requires only one set of ballot papers.

A staff member distributes the ballot papers and collects them when completed and gives them to the returning officer who counts the first preference votes and records them on the tally sheet.

If a candidate has an absolute majority of first preference votes (more than half), the returning officer declares the outcome.

[Name of candidate], having an absolute majority of first preference votes, is elected as mayor/deputy mayor for the ensuing two years.

If no candidate has the absolute majority of first preference votes, the returning officer excludes the candidate with the lowest number of first preference votes.

[Name of candidate], having the lowest number of first preference votes, is excluded.

The preferences from the excluded candidate are distributed. This process continues until one candidate has received an absolute majority of votes, at which time the returning officer announces the result.

[Name of candidate], having an absolute majority of votes, is elected as mayor/deputy mayor for the ensuing two years.

In the event of a **tied vote** where there are only two candidates remaining in the election, the returning officer explains the process.

The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel. The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

In the event that the **lowest number of votes are tied** and where there are three or more candidates remaining in the election, the returning officer advises the meeting of the process.

In accordance with section 12 of Schedule 7 of the Local Government (General) Regulation 2021, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded and their preferences distributed.

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

I declare that [name of candidate] is excluded and any votes cast for them will be distributed by preference.

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

Schedule 7 - Election of Mayor by Councillors

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 section:

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 section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (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 subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 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 subsection (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 section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (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 section, “**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 Secretary and to the Chief Executive of Local Government NSW.

Item No: C1024(1) Item 3
Subject: COUNTBACK TO FILL ANY CASUAL VACANCY ON COUNCIL
Prepared By: Julian Sakarai - Acting Senior Manager Governance and Risk
Authorised By: Beau-Jane De Costa - Acting Director Corporate

Item 3

RECOMMENDATION

1. That Council pursuant to section 291A(1)(b) of the *Local Government Act 1993* (the Act), declare that casual vacancies occurring in the office of a Councillor within 18 months after the last ordinary election of Councillors for the Council on 14 September 2024, are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act.
2. That if Council determines to fill any casual vacancies by a countback election pursuant to section 291A of the *Local Government Act 1993*, that Council directs the General Manager to notify the New South Wales Electoral Commission of the Council’s decision within 7 days of the decision, as required by section 393C of the *Local Government (General) Regulation 2021*.

STRATEGIC OBJECTIVE

This report supports the following strategic directions contained within Council’s Community Strategic Plan:

- 5: Progressive, responsive and effective civic leadership

EXECUTIVE SUMMARY

This report presents to Council for determination the option of using a countback of votes cast at the last ordinary election to fill casual vacancies occurring in the offices of Councillors in the first 18 months after the election.

If Council does not resolve this at the first meeting after the election, they will be required to fill casual vacancies (should they arise) through a by-election.

BACKGROUND

A countback option for councils was introduced for the first time following the 2021 local government elections, giving Councils the option of avoiding the cost of by-elections in the first 18 months of councils’ terms by filling vacancies via countback.

DISCUSSION

Following the 2024 local government election, councils can determine that a countback election will be held to fill any casual vacancy that occurs within 18 months after the date of that ordinary election. This allows councils who opt in to use a countback to fill casual vacancies at a significantly lower cost than the cost of holding a by-election.

In a countback election, the Returning Officer:

- uses preference data from ballot papers from the previous local government ordinary election
- uses the same proportional representation method used in the original election

- 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
- if a non-eligible candidate would be elected, the election is re-run with that candidate's ballot papers also distributed to their next preference on the ballot paper
- re-runs the countback until an eligible candidate is elected.

The Returning Officer contacts all unelected candidates from the local government ordinary election who may still qualify to be elected to the office of Councillor. Where the candidate is interested, they must submit a formal application to the Returning Officer. All candidates who submit and do not withdraw their application become eligible candidates. If there is only one eligible candidate, that candidate is elected. If there are multiple eligible candidates, a countback election is conducted.

A countback election is used to elect a councillor to fill a single vacancy, where the vacating councillor was elected under the proportional representation method (that is, where two or more candidates were elected at a local government ordinary election). If there are multiple vacancies, a separate countback election is held for each vacancy. 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* (the Regulation) to notify the Council's election manager within 7 days of the resolution. Inner West Council's election manager is the NSW Electoral Commission.

If Council does not resolve to allow a countback at the first meeting after the election, or if there are no eligible candidates, Council will be required to fill casual vacancies through a by-election. In addition, countbacks are not available to fill casual vacancies in the office of a Councillor where:

- the Councillor who vacated office was elected at an election using the optional preferential voting system (i.e., elections where only one civic office is required to be filled such as the election of popularly elected Mayors), or
- the Councillor was elected at an uncontested election.

A by-election must be used to fill these types of vacancies.

Council can still opt to conduct a by-election even if it resolves to utilise the countback method at its first meeting in the event of a casual vacancy within 18 months of the election. Council could do this by rescinding its earlier resolution. Council cannot, however, utilise the countback method where it has not resolved to do so at its first meeting of the Council term.

The recommendation in the report has been taken from the suggested wording in the Office of Local Government Post-Election Guide.

FINANCIAL IMPLICATIONS

The cost of a by-election in one ward may cost up to \$350,000. The cost can be alleviated by utilising the countback method. A small cost is associated with the appointment of a Returning Officer to conduct the countback process, estimated to be approximately \$10,000.

ATTACHMENTS

1. [Local Government \(General\) Regulation 2021 - Schedule 9A Countback elections](#)

Local Government (General) Regulation 2021

Schedule 9A Countback elections

(Section 393C(1))

Part 1 Preliminary

1 Definitions

In this Schedule—
ballot-paper includes a vote record.

close of applications—see section 3(3) of this Schedule.

eligible candidate, in a countback election, means a person who has been declared by the returning officer under section 4(a) of this Schedule to have duly applied to be a candidate in the countback election.

non-participating candidate means a person who was a candidate at the original election and is neither an eligible candidate nor a previously elected councillor.

original election, in relation to a vacancy, means the ordinary election of councillors in respect of which the vacancy has occurred at which the vacating councillor was elected or in a case where the vacating councillor was elected under this Schedule, the councillor who was the predecessor (whether immediate, intermediate, or original) of that councillor, was elected.

previously elected councillor means a person who—

- (a) was elected as a councillor at the original election, or
- (b) was declared elected as a councillor under this Schedule after the original election.

returning officer means the person conducting the countback election in accordance with section 291A(4) of the Act.

vacating councillor means the person whose departure created the casual vacancy (even if that person never became a councillor).

Note—

If a candidate who is nominated for election to a civic office in respect of a ward or area dies after the day when the poll at a contested election closes, but before the declaration of the election, the candidate is a “vacating councillor” even if that person never became a councillor by operation of section 233(2)(a) of the Act.

2 Notice of casual vacancy

Note—

Section 285 of this Regulation requires the general manager of a council of the area to give notice of a casual vacancy to the Electoral Commissioner within 7 days of its occurrence.

- (1A) After a casual vacancy occurs that is to be filled by a countback election, the general manager of the council concerned must, in relation to an election administered by an electoral services provider, give notice of the vacancy to the electoral services provider within 7 days.
- (1) After a casual vacancy occurs that is to be filled by a countback election, the electoral services provider concerned (in relation to an election administered by an electoral services provider) or the

Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) must—

- (a) give notice of the vacancy to the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected or, if it is not possible for the returning officer to conduct the countback election, the substitute returning officer at that earlier election, or
 - (b) if not possible for that returning officer or that substitute returning officer to conduct the countback election, appoint a returning officer in accordance with the Act.
- (2) The notice under subsection (1) must be given or appointment made—
- (a) in relation to an election administered by an electoral services provider—within 14 days of the electoral services provider being notified of the casual vacancy under subsection (1A), or
 - (b) in relation to an election administered by the Electoral Commissioner—within 14 days of the Electoral Commissioner being notified of the casual vacancy under section 285 of this Regulation.
- (3) Within 14 days of being given notice or being appointed, the returning officer who is to conduct the countback election must—
- (a) arrange for the publication of a notice of the casual vacancy as follows—
 - (i) in relation to an election administered by an electoral services provider—on both the council’s website and the electoral services provider’s website,
 - (ii) in relation to an election administered by the Electoral Commissioner—on the websites of the Electoral Commission and the relevant council, and
 - (b) give notice in accordance with this section to each person (at the person’s last known address or by email to an email address specified by the person for the giving of notice of this kind) who, in the opinion of the returning officer, may be entitled to make an application under this Schedule in relation to the vacancy.
- (4) The notice under subsection (3) must—
- (a) declare that a casual vacancy in the office of a specified councillor exists that is to be filled by a countback election, and
 - (b) advise that a person may apply to be a candidate in accordance with this Schedule, and
 - (c) specify the date and time that applications close, and
 - (d) specify the date, time and place for the conduct of the countback election, and
 - (e) advise that an eligible candidate is entitled to appoint scrutineers for the countback election, and
 - (f) give the contact details of the returning officer.
- (5) The date for the conduct of the countback election must be the date which in the opinion of the returning officer is the earliest practicable date to conduct the countback election, but is—
- (a) at least 14 days after the date of the publication of the notice of the relevant council’s website, and
 - (b) not more than 49 days after the date of the casual vacancy occurring.

3 Candidates for casual vacancy

- (1) A person may apply to be a candidate in the countback election if the person—
 - (a) was a candidate at the original election, and
 - (b) did not withdraw the person’s nomination from, and was not elected at, that election, and
 - (c) is still eligible to be elected as a councillor at the close of applications.
- (1A) A person elected to the office of councillor or mayor at the original election, or at a countback election under this Schedule, who subsequently vacates the office by resignation or disqualification may not apply to be a candidate in a subsequent countback election.

- (2) An application under this section is to be made in the way approved by the election manager and must contain—
 - (a) a statement by the applicant that he or she consents to be a councillor if elected, and
 - (b) a declaration that the applicant is still eligible to become a councillor.
- (3) An application must be lodged with the returning officer before noon on the 10th day after the day on which public notice of the vacancy was given under this Schedule (the *close of applications*).
- (4) An applicant may withdraw his or her application by giving the returning officer written notice of withdrawal in the way approved by the election manager before applications close.
- (5) An application or a withdrawal of an application under this section may be made by electronic means approved by the election manager.

4 Publication of candidates' details

If one or more persons have applied to be a candidate in accordance with this Schedule, the returning officer must, as soon as practicable after the close of applications—

- (a) publicly produce all the applications and declare each person who has duly applied to be a candidate (the *eligible candidates*), and
- (b) arrange for a notice containing particulars relating to each candidate to be published on the website of the relevant council.

5 Determination of candidate to fill casual vacancy

- (1) If there is only one eligible candidate in relation to a casual vacancy, the returning officer must declare the candidate elected.
- (2) If there are no candidates in relation to a casual vacancy—
 - (a) the returning officer is to declare that there are no candidates and inform the general manager of the relevant council accordingly, and
 - (b) the countback election fails.

Note—

Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.

- (3) If there is more than one eligible candidate in relation to a casual vacancy, a countback election must be conducted in accordance with Part 2.

6 Filling of multiple casual vacancies

- (1) If there is more than one casual vacancy to be filled at any time, the casual vacancy that occurred first is to be filled first.
- (2) If, in the opinion of the returning officer, it is impossible to determine which vacancy occurred first, the vacating councillor who was elected first (either at the same election or in point of time) is deemed to have left office before the other vacating councillor or councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subsection (2), the returning officer must determine which casual vacancy is to be filled first by an approved method of random selection (including by electronic means).
- (5) The returning officer may comply with section 5 of this Schedule in respect of a casual vacancy even while the returning officer or another returning officer is complying with that section in respect of another casual vacancy.

Part 2 Countback procedures

7 Casual vacancy to be filled by recount

- (1) The countback election is to be conducted by a recount of the votes on the ballot-papers used in the counting of votes at the original election and the result is to be ascertained in accordance with Schedule 5.
- (2) On the recount under subsection (1) a preference indicated on a ballot-paper for a previously elected councillor whose seat has become vacant is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (3) If on the recount under subsection (1) a non-participating candidate is elected that election has no effect and the returning officer is to terminate that recount and repeat the procedure of recounting the votes on the ballot-papers until an eligible candidate is elected.
- (4) On a recount under subsection (3) a preference indicated on a ballot-paper for—
 - (a) a previously elected councillor whose seat has become vacant, or
 - (b) a non-participating candidate who has been elected on the recount under subsection (1) or on a previous recount under subsection (3),
 is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (4A) If, on any recount under this Schedule, more than one candidate would be elected, the following applies instead—
 - (a) only one candidate is taken to be elected, being the candidate who has the highest number of votes,
 - (b) if 2 or more candidates have an equal number of votes—
 - (i) if the number of votes at the last count or transfer was unequal—the candidate who had the highest number of votes at the last count or transfer at which the candidates had an unequal number of votes is taken to be elected, or
 - (ii) otherwise—the elected candidate is to be determined by a method of random selection, including by electronic means, approved by the election manager.
- (5) A recount under this Schedule does not affect the election of a previously elected councillor and where a previously elected councillor is elected or excluded during a recount that election or exclusion has effect for the purposes of the continuation of the recount and for those purposes only.
- (6) If no recount under subsection (1) or (3) results in the election of an eligible candidate—
 - (a) the returning officer is to declare that the countback election has failed, and
 - (b) inform the general manager of the relevant council accordingly.

Note—

Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.

8 Declaration of result

- (1) As soon as possible after the conclusion of the countback election, the returning officer must—
 - (a) inform the persons present of the result, and
 - (b) immediately notify the election manager of the result, and
 - (c) inform the participating eligible candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained—
 - (i) of the result of the countback, and
 - (ii) when the returning officer's declaration under this section will be available for inspection at the office of the relevant council, and

- (iii) that the information contained in a notice under subsection (5) is to be published on the election manager’s website for at least one month.

Note—

Section 353 (Recount) of this Regulation does not apply to a countback election.

- (2) The election manager is to approve of the returning officer’s declaring of the countback election in writing as soon as practicable after the notification of the result.
- (3) The declaration is to be signed by the returning officer and is to state the number of votes recorded for each candidate and the names of the candidate declared elected.
- (4) After the election is declared—
 - (a) the election manager must deliver or send a copy of the written declaration to—
 - (i) the Secretary, and
 - (ii) the Chief Executive Officer of Local Government NSW, and
 - (iii) the relevant general manager, and
 - (iv) for an election administered by an electoral services provider—the Electoral Commissioner, and
 - (b) the general manager of the council must display the written declaration in a conspicuous position at the office of the relevant council.
- (5) The election manager must cause the information in the declaration to be published on the election manager’s website for at least one month.

10 Application of other provisions

- (1) The following provisions of this Regulation apply to a countback election with all necessary modifications—
 - (a) section 337 (Scrutineers),
 - (a1) section 346 (Persons present at scrutiny and count),
 - (b) section 365 (Obstruction of election officials),
 - (c) section 368 (Persons present in polling place),
 - (d) section 369 (Misconduct by scrutineers),
 - (e) section 370 (Misconduct at polling place or pre-poll voting office).

Note—

Section 329 (Can the holder of a civic office be dismissed?) of the Act applies to a person holding civic office who has been elected at a countback election.

- (2) For the avoidance of doubt, sections 353 (Recount), 354 (Who pays for the recount?) and 355 (Result of recount) of this Regulation do not apply to a countback election.