



CUMBERLAND
CITY COUNCIL

Extraordinary Council Meeting

*Wednesday, 12 January 2022 at
6:00pm*

Cumberland City Council Chambers

Merrylands Service Centre, 16 Memorial Avenue, Merrylands

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ORDER OF BUSINESS

- 1 Opening Prayer / Acknowledgement of Country / National Anthem**
- 2 Notice of Live Streaming of Council meeting**
- 3 Apologies / Requests for Leave of Absence**
- 4 Declarations of Pecuniary & Non Pecuniary Conflicts of Interest**
- 5 Reports to Council**

General Manager

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Item No: EC01/22-1

COMMENCEMENT OF COUNCIL TERM - COUNCILLOR OATH OF OFFICE

Responsible Division: General Manager
Officer: Executive Manager General Manager's Unit
File Number: 9200755
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

This item of business relates to Councillors undertaking the Oath of Office prior to considering any Council business at the commencement of the Council term.

RECOMMENDATION

That all Councillors yet to formally undertake the Oath or Affirmation of Office now do so at the commencement of the meeting, in accordance with Section 233A of the *Local Government Act 1993*.

REPORT

This item of business relates to Councillors undertaking the Oath or Affirmation of Office prior to considering any Council business at the commencement of the Council term.

Section 233A of the Local Government Act 1993 states that:

(1) A councillor must take an oath of office or make an affirmation of office at or before the first meeting of the council after the councillor is elected.

(2) The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner or a justice of the peace and is to be in the following form--

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 Cumberland Council and the Cumberland 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 Cumberland Council and the Cumberland 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.

(3) A councillor who fails, without a reasonable excuse, to take the oath of office or make an affirmation of office in accordance with this section is not entitled to attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected to the office or a meeting at which the councillor takes the oath or makes the affirmation) until the councillor has taken the oath or made the affirmation.

(4) Any absence of a councillor from an ordinary meeting of the council that the councillor is not entitled to attend because of this section is taken to be an absence without prior leave of the council.

(5) Failure to take an oath of office or make an affirmation of office does not affect the validity of anything done by a councillor in the exercise of the councillor's functions.

(6) The general manager must ensure that a record is to be kept of the taking of an oath or the making of an affirmation (whether in the minutes of the council meeting or otherwise).

The General Manager will announce at the meeting any Councillors who have undertaken their Oath or Affirmation prior to the first Council meeting and this will be noted in the Minutes along with a copy of all Councillors signed Oath or Affirmation of Office.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

Council must now proceed to undertake their Oath of Office to ensure they are compliant with the Local Government Act.

ATTACHMENTS

1. Councillor Oath/Affirmation [↓](#)

DOCUMENTS
ASSOCIATED WITH
REPORT EC01/22-1

Attachment 1
Councillor Oath/Affirmation



Councillor Oath of Office

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 Cumberland and the Cumberland 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.



Councillor Oath of Office

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 Cumberland and the Cumberland 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.

Item No: EC01/22-2

ELECTION OF MAYOR AND DEPUTY MAYOR

Responsible Division: General Manager
Officer: Executive Manager General Manager's Unit
File Number: 9200756
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

This report outlines the procedures for the election of the Mayor and Deputy Mayor (if determined as required), and recommends that Council conduct an election process to accord with the requirements of the *Local Government Act 1993*.

RECOMMENDATION

That Council:

- 1. Determine if a Deputy Mayor will be elected and, determine the term of the Deputy Mayor (if required).**
- 2. Determine the method of voting for the Election of the Mayor and Deputy Mayor (if required).**
- 3. Elect a Mayor for the ensuing term to no later than midnight 30 September 2023.**
- 4. Elect a Deputy Mayor for the ensuing term for the period as determined by Council (if required).**

REPORT

Council is required to conduct a Mayoral election within 3 weeks of the Declaration of Polls of the Ordinary Council election, in accordance with Section 290 (1)(a) of the *Local Government Act 1993*.

Given the shortened Council term due to the previous postponement and subsequent deferral of the Local Government Elections due to the Covid-19 pandemic, Council is now required to elect a Mayor for a period to September 2023.

Deputy Mayors hold their office for the Mayoral term or a shorter term as specified by the Council's resolution. It should be noted however, that councils are not required to have a Deputy Mayor. Council has since September 2017, had a Deputy Mayor elected.

Effectively, the Mayor elected will hold office until Council conducts a Mayoral election at a Council meeting in September 2023 as required under Section 290 of the Local

Government Act. The Deputy Mayor will hold office for a period in accordance with Council's resolution, which cannot be longer than the Mayoral term but can be shorter if Council desires.

Nominations

Under the *Local Government Act 1993*, Councillors may be nominated without notice for election as Mayor or Deputy Mayor. The nomination must be in writing by two or more Councillors (one of whom may be the nominee) and is not valid unless the nominee has indicated consent to the nomination in writing. The nomination forms can be delivered to the Returning Officer any time up to and including the calling of nominations for each election. A copy of the Nomination forms are attached to this report.

Procedures for Mayoral Election

The Mayoral Election will be conducted in accordance with the attached *Office of Local Government – Mayoral Election Procedures* and Schedule 7 of the *Local Government (General) Regulation 2021*. Attachment 1 to this report outlines the Office of Local Government – Mayoral Election Fact Sheet. The General Manager is the nominated Returning Officer for the election of Mayor and Deputy Mayor. The Executive Manager General Manager's Unit will assist the Returning Officer with the election process.

The Returning Officer will indicate that the election will be conducted in accordance with the Local Government Act and Regulations. Council is to determine the method of voting to be used for the election of Mayor and Deputy Mayor.

If only one Councillor is nominated, that Councillor is duly elected. If more than one Councillor is nominated, Council is to proceed to determine the method of voting via one of the following options:

- 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;

Open voting is the most transparent method of voting at Council meetings. It allows the community to see and understand the voting that has occurred. It is also the voting method which reflects normal Council voting methods. If Council decided to conduct the election by preferential or ordinary ballot, then the General Manager will conduct the election as outlined in the Regulations and as per the attached Office of Local Government – Mayoral Election Procedures.

Once the Mayor is declared by the Returning Officer, the Mayor takes up his or her seat. The Mayor will then ask the General Manager to conduct the election of Deputy Mayor (if required).

The Returning Officer (General Manager) then conducts the voting for Deputy Mayor in the same method as above.

Committee Representation

Following the Mayoral election, in the event of a change in Office, any Committees where the Mayor is Council's representative will be notified accordingly.

COMMUNITY ENGAGEMENT

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.

Council will clearly publicise and communicate the results of the election as required.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

Council must elect a Mayor at this meeting as scheduled in accordance with the *Local Government Act 1993*. If Council fails to elect a Mayor in accordance with the *Local Government Act 1993*, the Governor may appoint one of the Councillors as Council's Mayor in accordance with Section 290 (2) of the Act.

FINANCIAL IMPLICATIONS

There are no financial implications for Council associated with this report.

CONCLUSION

The Election of the Mayor and Deputy Mayor (if required) must be undertaken in accordance with the *Local Government Act 1993* and the Schedule 7 of the *Local Government (General) Regulation 2021* at this meeting.

ATTACHMENTS

1. OLG Fact Sheet - Mayoral Election Process [↓](#)
2. Nomination Forms [↓](#)

DOCUMENTS
ASSOCIATED WITH
REPORT EC01/22-2

Attachment 1

OLG Fact Sheet - Mayoral
Election Process

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 clause 394 and Schedule 7 of the *Local Government (General) Regulation 2005* (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 2005, 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 clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, 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 clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, 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 clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, 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 clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, 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 clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, 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 clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, 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 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. That candidate 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 councillors at the council meeting at which the election is held by the returning officer, and
- b) to be delivered or sent to the Departmental Chief Executive and to the Chief Executive of Local Government New South Wales.

DOCUMENTS
ASSOCIATED WITH
REPORT EC01/22-2

Attachment 2
Nomination Forms



ELECTION OF MAYOR

EXTRAORDINARY COUNCIL MEETING

12 January 2022

NOMINATION PAPER

We hereby nominate Councillor

as a candidate for election of *MAYOR* for the ensuing Term.

Signature:.....

Signature:.....

I hereby consent to the nomination for Election of Mayor.

Signature:.....

NOTE:

A nomination is invalid unless signed by the Councillor being nominated.



ELECTION OF DEPUTY MAYOR

EXTRAORDINARY COUNCIL MEETING
12 January 2022

NOMINATION PAPER

We hereby nominate Councillor

as a candidate for election of *DEPUTY MAYOR* for the ensuing Term.

Signature:.....

Signature:.....

I hereby consent to the nomination for Election of Deputy Mayor.

Signature:.....

NOTE:

A nomination is invalid unless signed by the Councillor being nominated.

Item No: EC01/22-3

DECISION ON COUNCIL OPT IN FOR COUNTBACK ELECTIONS

Responsible Division: General Manager
Officer: Executive Manager General Manager's Unit
File Number: 9200754
Community Strategic Plan Goal: *Transparent and accountable leadership*

SUMMARY

This report presents to Council for determination the ability to determine any vacancy in office in the first 18 months of this Council term by way of countback, in accordance with Section 291A of the *Local Government Act 1993*.

RECOMMENDATION

That pursuant to Section 291A(1)(b) of the Local Government Act 1993 (the Act), Cumberland 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.

REPORT

Following the 2021 local government elections, Councils have 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.

This allows councils who opt in to use a countback to fill vacancies at a significantly lower cost than the cost of holding a by-election. To exercise the option of using a countback to fill casual vacancies occurring in the first 18 months following the election, councils must resolve, at their first meeting after the election, to use a countback to fill casual vacancies. If councils do not resolve this at the first meeting after the election, they will be required to fill casual vacancies through a by-election.

Where councils resolve to fill casual vacancies using a countback in the first 18 months of their terms, the general manager is required under the *Local Government (General) Regulation 2021* (the Regulation) to notify the election manager of the council's ordinary election of the council's resolution within 7 days of the resolution. For all councils other than Fairfield and Penrith City Councils, the election manager is the NSW Electoral Commissioner.

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 vacancies.

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 (i.e. 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.

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. Given Council's 2021 ordinary election was conducted by the NSW Electoral Commission, the Returning Officer must be appointed by the NSW Electoral Commission.

Section 291A of the *Local Government Act 1993* outlines the legal framework for Council and it states:

Countback to be held instead of by-election in certain circumstances

291A Countback to be held instead of by-election in certain circumstances

(1) This section applies to a casual vacancy in the office of a councillor if--

(a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the area, and

(b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.

(2) This section does not apply to a casual vacancy in the office of a councillor if the councillor who vacated office was elected--

(a) in an election using the optional preferential voting system (including the election of a mayor elected by the electors of an area), or

Note: See section 285 (Voting system for election of councillors).

(b) in an election without a poll being required to be held.

Note: See section 311 (Uncontested elections).

(3) A casual vacancy to which this section applies is to be filled by a countback election conducted in accordance with the regulations.

(4) A countback election to fill a casual vacancy to which this section applies must be conducted--

(a) if the election at which the person whose departure created the casual vacancy was elected was administered by the Electoral Commissioner--by a returning officer appointed by the Electoral Commissioner, or

(b) if the election at which the person whose departure created the casual vacancy was elected was administered by a returning officer appointed by an electoral services provider engaged by the council--by a returning officer appointed by the electoral services provider.

(5) If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election--

(a) the returning officer must notify the general manager of the council concerned, and

(b) a by-election in accordance with this Part must be held to fill the casual vacancy.

(5A) If an electoral services provider engaged by the council is unable to appoint a returning officer for the purposes of subsection (4)(b), a by-election in accordance with this Part must be held to fill the casual vacancy.

(6) This section does not apply to a casual vacancy in the office of a councillor if the vacancy occurs before the day prescribed for the purposes of this section by the regulations.

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

The recommended resolution has been taken from the Office of Local Government – Council Post Election Guide.

Countback Timeline

The timeline for a countback election is:

1. The Electoral Commissioner is notified of a casual vacancy, within seven days of it occurring.
2. A returning officer is appointed within 14 days of the notification of the vacancy.
3. Casual vacancy notices are issued 2 to 14 days from the appointment of the returning officer.
4. Where a candidate is interested, they must submit a formal application to the returning officer. The application period closes after 10 days of the notices being issued.
5. The countback is conducted within 14 days of the vacancy notices being issued.
6. It may take up to a month for the results to be declared.

A countback election must be completed within 49 days, and applications for candidates to participate is open for 10 days.

If there are no eligible candidates, an attendance by-election must be held. If there is only one eligible candidate, that candidate is elected. If there are multiple eligible candidates, a countback election is conducted. 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.

Eligible candidates and the council are then notified of the result.

If a casual vacancy occurs in office within 18 months of an ordinary election date, then Council can apply to the Minister to seek to dispense the requirement of a by-election in accordance with S.294 of the *Local Government Act 1993*, as undertaken in the previous term of Council.

It is now recommended that Council determine whether or not it will opt in to the use of countback for the 18 months post the 4 December 2021 election.

COMMUNITY ENGAGEMENT

There are no consultation processes for Council associated with this report.

POLICY IMPLICATIONS

There are no policy implications for Council associated with this report.

RISK IMPLICATIONS

There are no risk implications for Council associated with this report.

FINANCIAL IMPLICATIONS

The cost of a by-election in one ward can be upwards of \$300,000 – \$350,000 in cost. This cost can be alleviated by Council utilising the countback method. A small cost is associated with the appointment and payment of a Returning Officer to conduct the count back process, estimated by staff at approximately 5% of the by-election cost.

CONCLUSION

It is now recommended that Council proceed to determine this matter.

ATTACHMENTS

1. OLG Circular - Countback and Post Election Activities [↓](#)

DOCUMENTS
ASSOCIATED WITH
REPORT EC01/22-3

Attachment 1

OLG Circular - Countback and
Post Election Activities



Office of
Local Government

Circular to Councils

Circular Details	21-31 / 5 October 2021 / A775482
Previous Circular	21-20 Postponement of the local government elections to 4 December 2021
Who should read this	Councillors / General Managers / All council staff
Contact	Council Governance Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Council to Implement

Post-Election Guide on key decisions and activities for councils, county councils and joint organisations following the local government elections

What's new or changing

- There are several key decisions and activities that need to occur at the first meetings of councils, county councils and joint organisations following the elections and in the 12 months that follow.
- The Office of Local Government (OLG) has prepared a *Post-Election Guide for Councils, County Councils and Joint Organisations* to assist them to comply with these requirements.

What this will mean for your council

- Councils' elections held on **4 December 2021** are likely to be declared between **21 and 23 December 2021**. Councils, county councils and joint organisations should schedule their first meetings following the elections on this basis.
- Among other things, **at the first meeting after the election**:
 - all councillors and members of county councils must take an oath or make an affirmation of office - councillors are not permitted to participate in meetings until they have done so (section 233A of the *Local Government Act 1993* (the Act))
 - councils must, by resolution, declare that casual vacancies occurring in the office of a councillor within 18 months of the election are to be filled by a countback of votes cast at the election if councils want to fill vacancies by these means – councils that do not resolve to fill vacancies using a countback at their first meeting after the election will be required to fill vacancies using a by-election (section 291A of the Act)
 - councils that elect their mayors must hold a mayoral election (section 290 of the Act) and an election for deputy mayor where they have one
 - joint organisations must elect a new chairperson (clause 1 of Schedule 7A of the *Local Government (General) Regulation 2005* (the Regulation))
 - county councils must elect a new chairperson (clause 1 of Schedule 8 of the Regulation).
- **Within 3 months of the election**:
 - all councillors, members of county councils and voting representatives of the boards of joint organisations must lodge a written return of interests with the general manager (or the executive officer in the case of joint organisations) unless they have submitted a return within the previous three months (clause 4.21(a) of the *Model Code of Conduct for Local Councils in NSW*).

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- **In the first 6 months following the election:**
 - councils and county councils must provide induction training for newly elected mayors and councillors and refresher training for returning mayors and councillors (clauses 183 and 184 of the Regulation) – councils are required to report on the mayor's and councillors' participation in induction or refresher training in their annual reports (clause 186 of the Regulation).
- **Before 30 June 2022:**
 - councils must have reviewed the community strategic plan – the draft community strategic plan must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by the council before the plan is endorsed by it (section 402 of the Act).
 - councils must establish a new delivery program to cover the principal activities of the council for the 4-year period commencing on 1 July 2022 - the draft delivery program must be placed on public exhibition for a period of at least 28 days and submissions received by the council must be considered by the council before the delivery program is adopted (section 404 of the Act).
- **In the first 12 months following the election:**
 - councils' and county councils' local approvals and local orders policies are automatically revoked unless readopted after the ordinary election (section 165 of the Act)
 - councils, county councils and joint organisations must adopt an expenses and facilities policy following public exhibition and the consideration of submissions (section 252(1) of the Act)
 - councils, county councils and joint organisations must review and may re-determine their organisation structure (section 333 of the Act)
 - councils, county councils and joint organisations must adopt a code of meeting practice that incorporates the mandatory provisions of the *Model Code of Meeting Practice for Local Councils in NSW* following public exhibition and the consideration of submissions – councils' adopted codes may also incorporate the non-mandatory provisions and other provisions (section 360(3) of the Act)
 - councils and county councils must review their delegations (section 380 of the Act)
 - councils, county councils and joint organisations must review their code of conduct (section 440(7) of the Act)
 - joint organisations must, in consultation with their member councils, adopt a statement of strategic regional priorities setting out the priorities for the joint organisation area and the strategies and plans for delivering them (clause 397H) of the Regulation).

Where to go for further information

- Further guidance on each of these requirements is provided in the *Post-Election Guide for Councils, County Councils and Joint Organisations*. The Guide is available on the 2021 Local Government Elections webpage on OLG's website [here](#).
- For further information, contact the Council Governance Team on 4428 4100 or olg@olg.nsw.gov.au.



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