

ITEM 3 COUNTBACK PROVISIONS - CASUAL VACANCIES WITHIN THE FIRST 18 MONTHS

The Local Government Act 1993 (the Act) provides Council with 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. The intended benefit is to allow council to use a countback to fill vacancies at a lower cost than that of holding a by-election.

RECOMMENDATION

That Pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act) Wollongong City Council declares that casual vacancies occurring in the office of a Councillor within 18 months after the last ordinary election of Councillors held 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 and directs the General Manager to notify the NSW Electoral Commissioner of the Council's decision within 7 days of the decision.

REPORT AUTHORISATIONS

Report of: Todd Hopwood, Manager Customer and Business Integrity
Authorised by: Renee Campbell, Director Corporate Services - Connected + Engaged City

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

Council has the option of using a countback of votes cast at the last ordinary election to fill any casual vacancies that may occur in the office of councillor in the first 18 months after the election.

Section 291A of the Act relates to the process of utilising a countback process and is shown below:

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)*

If resolved by Council, a countback can therefore be held to fill a casual vacancy for councillors if the vacancy occurs within 18 months after the election, with the exception of a vacancy in the role of Lord Mayor which must be filled via a by-election.

PROPOSAL

To exercise the option of using a countback to fill casual vacancies occurring in the first 18 months following the election, Council must resolve, at the first meeting after the election, to use a countback to fill casual vacancies. If council does not resolve this at the first meeting after the election, all casual vacancies will need to be filled via a by-election.

If Council resolves to fill casual vacancies using a countback in the first 18 months of the term, the General Manager is required under the *Local Government (General) Regulation 2021* to notify the NSW Electoral Commissioner of Council's resolution within 7 days of the resolution being made.

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.

Council may 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 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.

FINANCIAL IMPLICATIONS

There are a number of fixed costs for elections that aren't affected by the number of wards involved in the election, as such the indicative cost of a single ward by-election for Wollongong City Council would be around 35%-40% of the cost of the recent ordinary election. Therefore, the cost of a by-election in one ward may cost Council in the order of \$575,000 to \$600,000.

The utilisation of a countback process will incur a much smaller cost estimated to be approximately five (5) per cent of the by-election cost (\$25k - \$30k). This cost is associated with the appointment of a Returning Officer to conduct the countback process.

CONCLUSION

Council may elect to use the countback process to fill casual vacancies occurring in the first 18 months following the election if Council resolves to do so at the first meeting after the election.