

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

Following the 2021 local government elections, councils will, for the first time, 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.

RECOMMENDATION

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 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 Commissioner of the Council's decision within 7 days of the decision.

REPORT AUTHORISATIONS

Report of: Michelle Martin, Manager Governance + Customer Service (Acting)
Authorised by: Todd Hopwood, Director Corporate Services - Connected + Engaged City (Acting)

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

Following the 2021 local government elections, Council, for the first time, 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 LG 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)*

PROPOSAL

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 NSW Electoral Commissioner of the council's ordinary election of the council's resolution within 7 days of the resolution.

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.

It is recommended that Council resolve to use a countback to fill any relevant vacancies in the office of Councillor that may occur in the first 18 months of the Council term, as the countback process will be at a considerably lower cost than the cost of holding a by-election.

CONCLUSION

Council can use the countback process to fill casual vacancies occurring in the first 18 months following the election if Council resolve to do so at their first meeting after the election.
