



BUSINESS PAPER

EXTRAORDINARY MEETING OF COUNCIL

To be held at 5:00 PM on

Monday 14 October 2024

Council Chambers, Level 10,
Council Administration Building, 41 Burelli Street, Wollongong

(Note: In accordance with the Code of Meeting Practice, Councillors will be able to attend and participate in this meeting via audio-visual link)

Order of Business

- 1 Opening Meeting
- 2 Acknowledgement of Traditional Custodians
- 3 Civic Prayer
- 4 Apologies and Applications for Leave of Absence by Councillors
- 5 Conflicts of Interest
- 6 Public Access Forum
- 7 Call of the Agenda
- 8 Lord Mayoral Minute
- 9 Reports to Council
- 10 Notices of Motion(s)
- 11 Notice of Recission motion
- 12 Urgent Items
- 13 Confidential Business
- 14 Conclusion of meeting

Members

Lord Mayor –
Councillor Tania Brown
Councillor Andrew Anthony
Councillor Ann Martin
Councillor Dan Hayes
Councillor David Brown
Councillor Deidre Stuart
Councillor Jess Whittaker
Councillor Kit Docker
Councillor Linda Campbell
Councillor Richard Martin
Councillor Ryan Morris
Councillor Thomas Quinn
Councillor Tiana Myers

QUORUM – 7 MEMBERS TO BE PRESENT

Statement of Ethical Obligations

In accordance with clause 3.23 of the Model Code of Meeting Practice, released by the NSW Office of Local Government, Councillors are reminded of their Oath or Affirmation of Office made under section 233A of the Act and their obligations under Council's Code of Conduct to disclose and appropriately manage conflicts of interest

OATH OR AFFIRMATION OF OFFICE

The Oath or Affirmation is taken by each Councillor whereby they swear or declare to undertake the duties of the office of councillor in the best interests of the people of Wollongong and Wollongong City Council and that they will faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the *Local Government Act 1993* or any other Act to the best of their ability and judgment.

CONFLICTS OF INTEREST

All Councillors must declare and manage any conflicts of interest they may have in matters being considered at Council meetings in accordance with the Council's Code of Conduct. All declarations of conflicts of interest and how the conflict of interest was managed will be recorded in the minutes of the meeting at which the declaration was made.

Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with Council's Code of Conduct. Where a councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting will be suspended or terminated for the time during which the matter is being considered or discussed by Council, or at any time during which Council is voting on the matter.

Councillors should ensure that they are familiar with Parts 4 and 5 of the Wollongong City Council **Code of Conduct for Councillors** in relation to their obligations to declare and manage conflicts of interests.

Staff should also be mindful of their obligations under the Wollongong City Council **Code of Conduct for Staff** when preparing reports and answering questions during meetings of Council.

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ITEM 1 OATH OR AFFIRMATION OF OFFICE

The *Local Government Act 1993* requires newly-elected Councillors to take an Oath or Affirmation of Office at or before the first Council meeting.

RECOMMENDATION

- 1 Councillors elect to either take the Oath of Office, or Affirmation of Office, in accordance with the *Local Government Act 1993*.
- 2 The Oath of Office, or Affirmation of Office, be individually undertaken and conducted by the General Manager.

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

Under the *Local Government Act 1993*, the Lord Mayor and Councillors are required to take an Oath or Affirmation of Office at or before the first Council meeting. Section 233A of the *Local Government Act* states –

- (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 [name of council area] and the [name of 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 [name of council area] and the [name of 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)."*

PROPOSAL

It is proposed that the Oath of Office, or Affirmation of Office, be undertaken individually and conducted by the General Manager.

CONCLUSION

Section 233A of the Local Government Act requires that the Lord Mayor and Councillors take an Oath or Affirmation of Office, at or before their first Council meeting. Councillors should take the Oath or Affirmation of Office in accordance with the Act.

ITEM 2 ELECTION OF DEPUTY LORD MAYOR

Council may elect a Deputy Lord Mayor who would assume all the duties and powers of the Lord Mayor in their absence. The *Local Government (General) Regulation 2021* outlines the process for electing a Deputy Lord Mayor which is outlined in this report.

RECOMMENDATION

- 1 Council elect a Deputy Lord Mayor for a term determined by the Council.
- 2 Council determine whether the method of election for the Deputy Lord Mayor is by open voting, ordinary ballot or preferential ballot.
- 3 Council proceed to conduct the election of Deputy Lord Mayor in accordance with the determined method and the requirements of the *Local Government (General) Regulation 2021*.

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

A Deputy Lord Mayor assumes all the duties and powers of the Lord Mayor at the request of the Lord Mayor, or if the Lord Mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the Office of Lord Mayor.

Section 231 of the *Local Government Act 1993* (the Act) provides for Councillors to elect a person from among their number to be the Deputy Lord Mayor. The person may be elected for a maximum period that is equal to the term of the Lord Mayor or a shorter term as resolved by Council. Council is not required to have a Deputy Lord Mayor.

Clause 394 of the *Local Government (General) Regulation 2021* (the Regulation) stipulates that '*if a Mayor or Deputy Mayor is to be elected by the Councillors of an area, the election is to be in accordance with Schedule 7*' of the Regulation.

PROPOSAL

The General Manager has appointed Council's Governance and Risk Manager, Michelle Martin, to be the Returning Officer for the election of the Deputy Lord Mayor.

The process to be followed in the election of the Deputy Lord Mayor in accordance with Schedule 7 of the Regulation is as follows:

- A Councillor is to be nominated in writing by two or more Councillors, one of whom may be the nominee, and the nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- The nomination is to be delivered or sent to the Returning Officer by 5pm on 14 October 2024.
- The Returning Officer is to announce the names of the nominees at the Council meeting at which the election is to be held.
- Should more than one Councillor be nominated, Council is to resolve at the meeting at which the election is to be held whether the election is to proceed by way of open voting (i.e. a show of hands) ordinary ballot or preferential ballot.
- Ordinary or preferential ballots are secret ballots and all Councillors will need to be in physical attendance in the meeting if the election is to be held by way of an ordinary or preferential ballot.

- Open ballots can be undertaken remotely where a council is conducting its meetings by audio visual link, or if an individual Councillor/s is attending via audio visual link.
- Counting will be conducted in accordance with Parts 2 or 3 of Schedule 7, depending on the method adopted by Council.

The term of the Deputy Lord Mayor will need to be determined by Council and can be for a period of one year, two years, three years or the full term of Council. As all elections for Deputy Lord Mayor must follow the requirements of the Act and Regulations in relation to elections of mayors, Council will need to be cognisant of s290(1) of the Act when determining the term of the Deputy Lord Mayor.

Section 290(1)(b) of the Act states that an election of a mayor (or deputy mayor), if it is not the first election of the term, nor an election to fill a casual vacancy, must occur during the month of September. As such Council has the following options in determining the initial Deputy Mayor term:

- Initial term of one, two or three years, for the period up to September of the relevant year, which will result in additional term(s) to be filled by future elections; or
- Term for the entire Council term, i.e. for the period up to September 2028.

CONSULTATION AND COMMUNICATION

This report has been prepared in accordance with the provisions of the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*. Councillors separately received notification of this election together with a nomination form prior to the meeting occurring.

CONCLUSION

Council may elect a Deputy Lord Mayor to exercise the functions of the Lord Mayor at the request of the Lord Mayor, or if the Lord Mayor is prevented by illness, absence or otherwise from exercising the function, or if there is a casual vacancy in the Office of Lord Mayor.

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.