

## **6.4. Using Countbacks to Fill Casual Vacancies**

**AUTHOR:** Ian Curry, Manager Council & Committee Services

**ENDORSED BY:** Shane Sullivan, Executive Manager Governance

**ATTACHMENTS:** Nil

### **PURPOSE:**

To propose that Council exercise 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.

### **EXECUTIVE SUMMARY:**

Following the December 2021 local government elections, councils, 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.

This will allow councils to use a countback to fill vacancies at a lower cost than the cost of holding a by-election.

If Council does not resolve to take advantage of this provision at the first meeting after the election, it will be required to fill any casual vacancy through a by-election.

The Office of Local Government (OLG) has provided wording for a recommendation should Council wish to exercise this option.

### **FINANCIAL IMPLICATIONS:**

No estimated costs of a potential countback by the NSW Electoral Commission is available. However, the cost of a countback would be significantly less expensive than a by-election, should one be required. For 2021, the estimated cost of the conduct of the full election by the NSW Electoral Commission was approximately \$491,000, excluding GST.

### **RECOMMENDATION:**

**1. THAT** pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act), North Sydney 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.

## LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

5. Our Civic Leadership

5.2 Council is well governed and customer focused

## BACKGROUND

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 its 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, it will be required to fill casual vacancies through a by-election.

## CONSULTATION REQUIREMENTS

Community engagement is not required.

## DETAIL

OLG has provided the wording for a resolution should Council wish to exercise the option of using a countback:

*Pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act) [name of 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 [insert date of election] 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 [insert name of election manager] of the Council's decision within 7 days of the decision.*

Section 291A of the Act reads:

***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.

Should Council resolve to fill casual vacancies using a countback in the first 18 months of its term, the General Manager is required under the Local Government (General) Regulation 20053 (the Regulation) to notify the election manager that conducted Council's ordinary election of the resolution within 7 days of making the resolution.

For North Sydney Council, 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.

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.

At a countback election, a sitting councillor cannot be unelected, and non-eligible candidates cannot be elected.