



W A V E R L E Y  
C O U N C I L

# **EXTRAORDINARY COUNCIL MEETING**

## **(MAYORAL ELECTION)**

An extraordinary meeting of the COUNCIL will be held at Waverley Council Chambers, Cnr Paul Street and Bondi Road, Bondi Junction at:

**7.00 PM, MONDAY 10 JANUARY 2022**

A handwritten signature in black ink, appearing to read 'Emily Scott'.

Emily Scott  
**General Manager**

Waverley Council  
PO Box 9  
Bondi Junction NSW 1355  
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Tel. 9083 8000  
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### **Live Streaming of Meetings**

This meeting is streamed live via the internet and an audio-visual recording of the meeting will be publicly available on Council's website.

By attending this meeting, you consent to your image and/or voice being live streamed and publicly available.

## AGENDA

*The General Manager will open and chair the meeting until a mayor is elected.*

### PRAYER AND ACKNOWLEDGEMENT OF INDIGENOUS HERITAGE

The General Manager will read the following Opening Prayer and Acknowledgement of Indigenous Heritage:

*God, we pray for wisdom to govern with justice and equity. That we may see clearly and speak the truth and that we work together in harmony and mutual respect. May our actions demonstrate courage and leadership so that in all our works thy will be done. Amen.*

*Waverley Council respectfully acknowledges our Indigenous heritage and recognises the ongoing Aboriginal traditional custodianship of the land which forms our Local Government Area.*

### OATH OR AFFIRMATION OF OFFICE FOR COUNCILLORS

In accordance with section 233A of the *Local Government Act 1993*, a councillor must take an oath of office or make an affirmation of office in the form prescribed below at or before the first meeting of the council after the councillor is elected.

#### 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 Waverley and of Waverley 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 Waverley and of Waverley 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.*

At the time of this agenda being published, the following Councillors had taken the oath or made the affirmation:

Cr Betts took the oath.

Cr Burrill took the oath.

Cr Fabiano made the affirmation.

Cr Goltsman made the affirmation.

Cr Gray made the affirmation.

Cr Kay made the affirmation.

Cr Keenan made the affirmation.

Cr Lewis made the affirmation.

Cr Masselos made the affirmation.

Cr Murray took the oath.

Cr Nemesh took the oath.

**1. Apologies/Leaves of Absence**

**2. Declarations of Pecuniary and Non-Pecuniary Interests**

**3. Reports**

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**4. Meeting Closure**

**REPORT  
ME/3.1/22.01**

**Subject:** Election of Mayor and Deputy Mayor by Councillors

**TRIM No:** SF21/4356

**Author:** Evan Hutchings, Director, Finance and Governance

**Director:** Evan Hutchings, Director, Finance and Governance

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**RECOMMENDATION:**

That Council:

1. Notes the term of office of the Mayor elected at this meeting is until the next mayoral election on 19 September 2023.
2. Agrees to elect a Deputy Mayor for the term of the Mayor until the next mayoral election on 19 September 2023.
3. Notes the procedure for the election of Mayor and Deputy Mayor by Councillors outlined in this report.
4. Determines the method of voting for the election of Mayor and Deputy Mayor to be the Open voting method.

**1. Executive Summary**

Councillors must elect a Mayor from among their number every two years, unless the council term is less than four years. The next Council election is scheduled for September 2024. The Mayor elected at this meeting will hold office until 19 September 2023.

Councillors may also elect a person from their number to be Deputy Mayor. The Deputy Mayor may be elected for the mayoral term or a shorter term.

The procedure to elect a Mayor and Deputy Mayor is prescribed in schedule 7 of the *Local Government (General) Regulation 2021*. The procedure is outlined in this report and schedule 7 is attached for reference.

This report recommends that Council elects by open voting method a Mayor and a Deputy Mayor for the period to the next mayoral election on 19 September 2023.

**2. Introduction/Background**

Mayors elected by councillors normally hold office for two years (unless a casual vacancy occurs). The next council election is scheduled to be held in September 2024. Councils that elect their mayors are required under section 290(1)(b) of the *Local Government Act 1993* (the Act) to hold mid-term mayoral elections in the month of September. This means that the mid-term mayoral election will need to be held in September 2023. The mayor elected at the mid-term mayoral election will hold office until the day of the next Council election in September 2024.

The Act and the *Local Government (General) Regulation 2021* (the Regulation) determine the requirements and procedures for the election of Mayor and Deputy Mayor by Councillors. The key elements of the procedures are outlined below and Schedule 7 of the Regulation is attached to this report at Attachment 1.

Before conducting an election, Council is required to determine the method of voting it wishes to use for the election. If more than one nomination is received, the method of voting can be either by open voting method, ordinary ballot method or preferential ballot method. Each voting method is explained in more detail below. This report recommends that the open voting method be used.

### **3. Relevant Council Resolutions**

Not applicable.

### **4. Discussion**

The Returning Officer for the election of Mayor and Deputy Mayor by Councillors is the General Manager. However, the General Manager can appoint another person to be Returning Officer. The General Manager has appointed the Director, Finance and Governance, to the role of Returning Officer for this election.

To assist in understanding of the various procedures for election and requirements for voting, the key elements are summarised below.

#### **The Mayor**

A council must have a Mayor (s 225 of the Act).

A Mayor elected by the Councillors holds the office of Mayor for two years, subject to the Act. The period of office commences on the day the Councillor is declared to be elected as Mayor. It becomes vacant when the Mayor ceases to hold office as a Councillor (s 230 of the Act).

At this election, the term of office of the Mayor is for the period to the next mayoral election on 19 September 2023.

#### **The Deputy Mayor**

Councillors may elect a person from among their number to be Deputy Mayor. The term can be for the period of the mayoral term or a shorter term. The Deputy Mayor exercises functions of the Mayor at the request of the Mayor or if the Mayor is prevented by illness, absence or otherwise from exercising these functions (s 231 of the Act).

It is recommended that a Deputy Mayor be elected for the mayoral term; that is, up to the next mayoral election on 19 September 2023.

#### **Nomination forms**

Under the Act, 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.

Once the Returning Officer has finished the call for nominations for each election, the Returning Officer will announce the names of the nominees received. If there is one nomination, that Councillor is declared to be elected. If there is more than one nomination the Returning Officer will proceed to the election. A

copy of the nomination form to be used for the election is attached to this report at Attachment 2 and will also be distributed to councillors separately with the agenda.

### **Method of voting**

The Returning Officer will carry out the election in accordance with the method of voting determined by Council.

The open voting method means voting by a show of hands or similar means.

In the event that Council chooses the ordinary ballot or preferential ballot method, the Returning Officer prepares a ballot paper, which will be distributed at the meeting at which the voting is to occur. As the subject meeting is in 'hybrid' format, should Council resolve to conduct the meeting by a method other than 'Open Voting', the vote would need to be conducted at a future meeting at which Councillors would need to be present to participate. In such case the Returning Officer will give clear instructions to Councillors on their requirements for voting in the election and each ballot paper will include instructions on the face of the paper. The Returning Officer will conduct the election using a ballot box for the return of the ballot papers, and the appropriate documents for the recording of votes.

On counting of the ballot papers, the Returning Officer will use the relevant provisions of the Regulation to determine formality and informality of ballot papers. The Returning Officer will check each vote for formality, count the votes for the Councillors nominated, and declare the election, so long as there is no equal number of votes.

In the case of an equal number of votes, the Returning Officer will need to then proceed to choose the candidate by lot.

### **Choosing by lot**

The names of the candidates who have equal number of votes will be written on a similar slip of paper by the Returning Officer then folded by the Returning Officer so as to prevent the names from being seen. The Returning Officer will then place the slips into identical containers. The containers will be placed into the ballot box and then mixed, and one is drawn at random by the Returning Officer. The candidate whose name is on the slip within the drawn container is chosen.

### **Results**

The result of the election, including the name of the candidate elected as Deputy Mayor, will be announced at the meeting by the Returning Officer and the next day notified to the Departmental Chief Executive and to the Chief Executive of Local Government New South Wales.

## **5. Financial impact statement/Timeframe/Consultation**

There is no unbudgeted cost to Council to hold the Mayoral Election.

The term of the office of Mayor at this election is until the next mayoral election on 19 September 2023.

It is recommended that a Deputy Mayor be elected for the period until 19 September 2023 to match the mayoral term.

**6. Conclusion**

The election of the Mayor and Deputy Mayor will be undertaken by the voting method chosen by Council and in accordance with the requirements of the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*.

**7. Attachments**

1. Schedule 7 - Election of Mayor by Councillors [↓](#)
2. Nomination Form for election of Mayor and Deputy Mayor [↓](#) .





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## Local Government (General) Regulation 2021

Current version for 26 November 2021 to date (accessed 5 January 2022 at 12:03)

[Schedule 7](#)

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### Schedule 7 Election of mayor by councillors

(Section 394)

#### 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 section—  
*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

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Local Government (General) Regulation 2021 [NSW]

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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 section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (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 subsection (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Section 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 subsection (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 section 345 of this Regulation as if it were a ballot-paper referred to in that section.
- (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

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Local Government (General) Regulation 2021 [NSW]

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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. The latter is elected.
- (4) In this section, *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 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 Secretary and the Chief Executive Officer of Local Government NSW.



**NOMINATION FORM FOR ELECTION**  
**OF MAYOR / DEPUTY MAYOR**

We, the undersigned, nominate:

Councillor \_\_\_\_\_

For election to the position of Mayor / Deputy Mayor (\*)

Councillor: \_\_\_\_\_ Signature: \_\_\_\_\_

Councillor: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**CONSENT OF NOMINEE**

**I agree to the nomination for the election of Mayor / Deputy Mayor (\*)**

Councillor: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

(\*) Strike out whichever is not applicable.

**ONCE COMPLETED PLEASE SUBMIT THIS FORM TO THE RETURNING OFFICER**

**REPORT**  
**ME/7.2/22.01**

**Subject:** Casual Vacancies

**TRIM No:** SF21/940

**Author:** Evan Hutchings, Director, Finance and Governance

**Director:** Evan Hutchings, Director, Finance and Governance

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**RECOMMENDATION:**

That Council:

1. Pursuant to section 291A(1)(b) of the *Local Government Act 1993* (the Act), declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of councillors for 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.
2. Directs the General Manager to notify the NSW Electoral Commission of Council's decision within seven days of this resolution.

**1. Executive Summary**

If a casual vacancy occurs within 18 months of the election of Councillors on 4 December 2021, Council has the option of filling the vacancy by a countback of votes instead of holding a by-election. A countback can only occur if Council, at its first meeting following the election, declares that casual vacancies are to be filled by a countback of votes cast at the last election. This report recommends that Council makes this declaration.

**2. Introduction/Background**

Councillors generally hold office for four years. The office of councillor may become vacant before that time for a number of reasons; for example, the councillor may resign or be disqualified from holding civic office. This is known as a casual vacancy. Historically, casual vacancies have only been able to be filled by holding a by-election.

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 election to fill casual vacancies occurring in the first 18 months after the election. This is a result of amendments to the *Local Government Act 1993* and *Local Government (General) Regulation* in 2014 and 2018 respectively.

To exercise this option, Council must resolve, at its first meeting after the election, to hold a countback election to fill casual vacancies that occur within 18 months of the election. If Council does not pass such a resolution, it will be required to fill casual vacancies through a by-election.

**3. Relevant Council Resolutions**

Nil.

#### 4. Discussion

Countback elections are less costly and more efficient than by-elections. It is therefore recommended that Council exercises the option to hold countbacks.

In accordance with section 291A(1) of the *Local Government Act 1993*, a casual vacancy is to be filled by a countback election 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.*

The Office of Local Government has provided recommended wording for councils wishing to exercise the option of holding countback elections. The recommendation of this report uses this wording.

Countbacks cannot fill casual vacancies where:

- The councillor who vacated office was elected at an election using the optional preferential voting system; that is, elections where only one civic office is required to be filled, such as the election of a popularly elected mayor.
- The councillor was elected at an uncontested election.

These scenarios do not apply to Waverley.

If Council exercises the option to hold countback elections, it must notify the NSW Electoral Commission of Council's decision within seven days of its resolution.

Countback elections are conducted by a council's election manager. Waverley Council's election manager is the NSW Electoral Commission. The procedure for holding countback elections is set out in schedule 9A of the *Local Government Act 1993*.

#### 5. Financial impact statement/Time frame/Consultation

##### Financial impact

Countback elections are less costly than holding by-elections. The cost of a particular countback election would be negotiated with the NSW Electoral Commission in accordance with Council's contract with the Electoral Commission signed in 2019. Election costs are budgeted for.

##### Time frame

Countback elections can only be held to fill casual vacancies within 18 months of an election and only if Council, at its first meeting following the election, declares by resolution that that any such casual vacancy is to be filled by a countback of votes cast at the last election. Council needs to make this declaration after each local government election.

A casual vacancy that occurs after 18 months of the last election must be filled by a by-election. If a casual vacancy occurs within 18 months of the next election, Council can apply to the Minister for Local Government to dispense with the need to hold a by-election, thereby leaving the office vacant.

**Consultation**

Nil.

**6. Conclusion**

Council can decide to fill casual vacancies that occur within 18 months of an election by a countback of votes instead of holding a by-election. To do so, Council must resolve accordingly. This report recommends that Council exercises its option to hold countback elections.

**7. Attachments**

Nil.