

23 December 2021

At 2.30 pm

Extraordinary Council

Agenda

- 1. Oath or Affirmation of Office**
- 2. Disclosures of Interest**
- 3. Election of Deputy Lord Mayor**
- 4. Local Pedestrian, Cycling and Traffic Calming Committee - Extension of Interim Chairperson**
- 5. Filling A Casual Vacancy By Countback**

Item 1**Oath or Affirmation of Office****Section 233A of the Local Government Act 1993 - Oath and affirmation for councillors**

Pursuant to the provisions of section 233A of the Local Government Act 1993, Councillors are required to take an oath of office or make an affirmation at or before the first meeting of the Council after the Councillor is elected.

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 the City of Sydney local government area and the Council of the City of Sydney 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 the City of Sydney local government area and the Council of the City of Sydney 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.

Item 2

Disclosures of Interest

Pursuant to the provisions of the City of Sydney Code of Meeting Practice and the City of Sydney Code of Conduct, Councillors are required to disclose pecuniary interests in any matter on the agenda for this meeting.

Councillors are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting.

This will include receipt of reportable political donations over the previous four years.

In both cases, the nature of the interest must be disclosed.

Item 3**Election of Deputy Lord Mayor****File No: S062388****Memorandum by the Chief Executive Officer**

To Council:

Sections 231(1) and (2) of the Local Government Act 1993 (the Act) provide:

- (1) the councillors may elect a person from among their number to be the deputy mayor; and
- (2) the person may be elected for the mayoral term or a shorter term.

At the Council meeting of 21 September 2020, Councillor Jess Scully was elected Deputy Lord Mayor in accordance with the provisions of section 231 of the Local Government Act 1993 for a term commencing immediately and ending on the day appointed for the next ordinary election of Council (subsequently held on Saturday, 4 December 2021). The office of Deputy Lord Mayor is now vacant.

Payment of Fees

Section 249(5) of the Act provides:

- (5) a council may pay the deputy mayor (if there is one) a fee determined by the council for such time as the deputy mayor acts in the office of the mayor. The amount of the fee so paid must be deducted from the mayor's annual fee.

On 5 June 2000, Council resolved to:

“Pay Councillors the maximum of the range (as determined annually by the Local Government Remuneration Tribunal) as a matter of standing policy.

Pay the Lord Mayor the maximum of the range (in addition to the fee as a Councillor) - as a matter of standing policy (less the Deputy Lord Mayor's fee).

Pay the Deputy Lord Mayor, in addition to the fee as a Councillor, an amount equal to 10 per cent of the mayoral fee actually paid to the Lord Mayor as a matter of standing policy.”

Call for Nominations

Nominations for the office of Deputy Lord Mayor are now invited. Nominations must be made in writing by two or more Councillors (one of whom may be the nominee). Nomination forms will be provided to Councillors.

Conduct of Election

Schedule 7 of the Local Government (General) Regulation 2021 provides the method of conducting an election for Deputy Lord Mayor (further details on election procedures will be provided to Councillors). The last time the Deputy Lord Mayor's position was contested the method of voting selected by the Council was open, exhaustive voting.

Recommendation

It is resolved that:

- (A) Council elect a Deputy Lord Mayor for a term commencing immediately following the election and ending on 30 September 2022;
- (B) the method of voting be by open, exhaustive voting; and
- (C) the Chief Executive Officer conduct the election forthwith.

MONICA BARONE

Chief Executive Officer

Item 4**Local Pedestrian, Cycling and Traffic Calming Committee - Extension of Interim Chairperson****File No: S062388****Memorandum by the Chief Executive Officer**

To Council:

The Local Pedestrian, Cycling and Traffic Calming Committee is a statutory committee, established under the Roads Act 1993 and in accordance with administrative procedures required by Transport for NSW (formerly Roads and Maritime Services).

Councils have been delegated certain powers by Transport for NSW regarding the regulation of traffic on local roads. A condition of this delegation is that councils must take into account the advice of their Local Pedestrian, Cycling and Traffic Calming Committee before exercising these powers.

The Local Pedestrian, Cycling and Traffic Calming Committee has no decision-making powers. It is primarily a technical review body which is required to advise Council and City staff on traffic-related matters. Council and City staff are therefore not bound or required to implement a proposal supported by the Local Pedestrian, Cycling and Traffic Calming Committee. Any proposal supported by the Local Pedestrian, Cycling and Traffic Calming Committee must be approved by either the elected Council or authorised City staff (depending on the nature of the proposal) if it is to be implemented. This can only be done when the advice of the Committee is unanimous. Where the advice of the Committee is not unanimous, Council must separately notify and obtain the endorsement of Transport for NSW and NSW Police.

The Local Pedestrian, Cycling and Traffic Calming Committee is made up of four formal (voting) members as follows:

- one representative of Council (Chairperson or alternate Chairperson);
- one representative of NSW Police;
- one representative of Transport for NSW;
- the local State Member of Parliament (MP) or their nominee;
- one representative of a relevant NSW Government agency (where applicable)*.

Representatives of NSW Police and State MPs can only vote on matters in their respective command or electorate.

*The NSW Government agencies are formal (voting) members for matters relating to roads over which they have jurisdiction only (for example, Property NSW / Place Management NSW / Infrastructure NSW). The City of Sydney Council is not a formal (voting) member for these matters.

The Chairperson and alternate Chairperson are to be determined by Council, and Council's representative may be any Councillor or City staff. Council (in consultation with the formal members of the Local Pedestrian, Cycling and Traffic Calming Committee) may also decide to have additional informal (non-voting) representatives who can provide non-binding input on matters under consideration. Informal (non-voting) members of the Local Pedestrian, Cycling and Traffic Calming Committee are as follows:

- Transit Systems representative;
- Transport Workers Union representative;
- Cycling Representative appointed by the Lord Mayor;
- Pedestrian Representative appointed by Council; and
- Local Health District Representative appointed by Council.

City staff convene meetings and provide administrative support for the Committee, including the preparation of agendas, reports and minutes, and formally represent Council when both the Chairperson and the alternate Chairperson are absent.

At the Council meeting of 21 September 2020, Councillor Philip Thalys and Councillor Linda Scott were appointed Chairperson and alternate Chairperson of the Local Pedestrian, Cycling and Traffic Calming Committee respectively for a term of office ending on the day appointed for the next ordinary election of Council, subsequently held on Saturday, 4 December 2021.

In order to ensure there was capacity to deal with any urgent matters requiring the consideration of the Local Pedestrian, Cycling and Traffic Calming Committee during the post-election period, at the Council meeting of 15 November 2021, the Chief Executive Officer was appointed as interim Chairperson of the Local Pedestrian, Cycling and Traffic Calming Committee for the period 4 December 2021 to the day of the post-election extraordinary meeting of Council.

In order to continue to ensure there is capacity to deal with any urgent matters requiring the consideration of the Local Pedestrian, Cycling and Traffic Calming Committee during the recess period, it is recommended that the Chief Executive Officer be reappointed as interim Chairperson of the Local Pedestrian, Cycling and Traffic Calming Committee, until a Councillor Chairperson and alternate Chairperson are appointed. This will occur prior to the first formal meeting of the Local Pedestrian, Cycling and Traffic Calming Committee of 2022.

Recommendation

It is resolved that:

- (A) note the informal (non-voting) representatives to the Local Pedestrian, Cycling and Traffic Calming Committee, as outlined in the subject memorandum;
- (B) reappoint the Chief Executive Officer as the Interim Chairperson of the Local Pedestrian, Cycling and Traffic Calming Committee until a Councillor Chairperson and alternate Chairperson are appointed; and
- (C) note that a CEO Update will be provided in relation to any matters dealt with by the Local Pedestrian, Cycling and Traffic Calming Committee during this period.

MONICA BARONE

Chief Executive Officer

Item 5

Filling A Casual Vacancy By Countback

File No: X001937

Summary

Under section 291A of the Local Government Act 1993, a casual vacancy in the office of councillor, occurring within 18 months of an ordinary election, may be filled by a countback election if Council resolves to do this at its first meeting after that ordinary election.

This process will only be invoked in the event of one of the elected councillors vacating office during that 18-month period. A countback election effectively involves a re-count of the previously run election but making the vacating councillor ineligible and distributing each of their ballot papers to the next preference on the ballot paper.

Legislative requirements under the City of Sydney Act 1988 for the distribution of non-resident enrolment letters cannot be met for a by-election due to the timeframes involved. Using a countback to fill a casual vacancy will remove this risk. In addition, the cost of using a countback to fill a casual vacancy will be considerably lower than the cost of a by-election.

If the recommended resolution is adopted there will be no requirement for the City to undertake a by-election prior should a casual vacancy occur before 4 June 2023.

Recommendation

It is resolved that, pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act), the Council of the City of Sydney 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 CEO to notify the NSW Electoral Commissioner of the Council's decision within 7 days of the decision.

Attachments

Nil.

Background

1. Under section 291A of the Local Government Act 1993, a casual vacancy in the office of councillor, occurring within 18 months of an ordinary election, may be filled by a countback election if Council resolves to do this at its first meeting after that ordinary election.
2. If Council resolves to fill a casual vacancy by a countback election, there will be no requirement for a by-election for the office of councillor should a casual vacancy arise between now and 4 June 2023.
3. A countback election can be used to elect a councillor to fill a single vacancy, where the vacating councillor was elected under the proportional representation method. Ordinary elections of City councillors follow the proportional representation method.
4. If there are multiple vacancies, a separate countback election will be held for each vacancy. If there are multiple eligible candidates, the returning officer will conduct a countback election using preference data from ballot papers and the same proportional representation method as was used for the election held on 4 December 2021. This process effectively re-runs the recent election for councillors, making the vacating councillor or councillors ineligible and distributing each of their ballot papers to the next preference on the ballot paper.
5. Under the Local Government Act 1993, a countback is not available to fill a casual vacancy in the office of Lord Mayor because that position is filled using the optional preferential voting system.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

6. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic direction and objectives:
 - (a) Direction 10 - Implementation through Effective Governance and Partnerships

Organisational Impact

7. Adoption of this resolution will remove any requirement for a by-election until 4 June 2023, allowing plans for the maintenance of the non-residential register to be developed with relative certainty.

Risks

8. There are no risks associated with this proposal. Adoption of the proposed resolution will remove the risks associated with the inability to meet the timeframes required under the City of Sydney Act 1988 in relation to by-elections.

Social / Cultural / Community

9. This proposal will reduce the need for City resources to be diverted from community use together with removing the burden of additional voting by our residents and non-residents.

Financial Implications

10. The different costs of a countback election and a full by-election for the City are unknown, however a countback election would cost significantly less than a by-election. The City would be required to fund production of the non-residential rolls for a by-election in addition to NSW Electoral Commission's administration cost.

Relevant Legislation

11. Local Government Act 1993, section 291A

Critical Dates / Time Frames

12. Council can only resolve to use the countback process at its first meeting following the ordinary election.

Options

13. The alternative option is to do nothing, which carries significant risk and cost to Council. Doing nothing would mean any casual vacancy of a councillor occurring:
 - (a) before 14 March 2023 would need to be filled through a full by-election; and
 - (b) between 14 March 2023 and 4 June 2023 would need to be filled through either a full by-election or require a Council resolution to request that the Minister dispense with the by-election under section 294 of the Act.

KIRSTEN MORRIN

Director Legal and Governance

Sally Aves, Manager Council Elections