

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.

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