

Item 13

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.

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 14 March 2026.

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 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 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 14 March 2026. The wording of the proposed resolution has been provided to councils by the NSW Electoral Commission.
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 14 September 2024. 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 2030-2050 Continuing the Vision

6. Sustainable Sydney 2030-2050 Continuing the Vision renews the communities' vision for the sustainable development of the city to 2050. 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 directions and objectives:
 - (a) Direction 1 - Responsible governance and stewardship

Organisational Impact

7. Adoption of this resolution will remove any requirement for a by-election until 14 March 2026 which will minimise any impact on the organisation should a casual vacancy arise in that period.

Social / Cultural / Community

8. 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

9. 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 byelection.

Relevant Legislation

10. Local Government Act 1993, section 291A.

Critical Dates / Time Frames

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

Options

12. 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 11 March 2027 would need to be filled through a full by-election; and
 - (b) between 11 March 2027 and 11 June 2027 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.

MONICA BARONE PSM

Chief Executive Officer

Erin Cashman, Manager OCEO