

---

---

# Extraordinary Council Meeting Agenda

---

---

10 January 2022



To All Councillors

*You are hereby notified that the next meeting of the Upper Hunter Shire Council will be held on Monday, 10 January 2022 in the COUNCIL CHAMBERS commencing at 5.00PM, for the purpose of transacting the undermentioned business.*

*This meeting will be recorded and those in attendance should refrain from making any offensive statements.*

*There are to be no other recordings of this meeting without the prior authorisation of Council.*

**GREG MCDONALD  
GENERAL MANAGER**

1.	PRAYER	
2.	ACKNOWLEDGEMENT OF COUNTRY	
3.	OATHS AND AFFIRMATIONS OF OFFICE	
4.	APOLOGIES / APPLICATIONS FOR LEAVE OF ABSENCE BY COUNCILLORS	
5.	PUBLIC PARTICIPATION	
6.	DISCLOSURES OF INTEREST	
7.	REPORTS	
	G.01.1 ELECTION OF MAYOR .....	1
	G.01.2 ELECTION OF DEPUTY MAYOR .....	10
	G.01.3 COUNTBACK OF VOTES TO FILL CASUAL VACANCIES .....	13
	G.01.4 REMOTE ATTENDANCE AT COUNCIL MEETINGS .....	17

General Manager's Unit

**GENERAL ADMINISTRATION REPORTS**

**G.01.1 ELECTION OF MAYOR**

**RESPONSIBLE OFFICER:** Greg McDonald - General Manager

**AUTHOR:** Robyn Cox - Executive Assistant

**PURPOSE**

The purpose of this report is to elect a Mayor for the ensuing two (2) years.

**RECOMMENDATION**

1. that the Returning Officer conduct the election for the position of Mayor.
2. that nominations for the position of Mayor be accepted.
3. that in the event of there being more than one nominee, Council determine by resolution, the method by which the election be conducted being preferential ballot, ordinary ballot or open voting.
4. that the Mayor be elected and hold office for the ensuing two (2) years until January 2024.

**BACKGROUND**

Section 225 of the Local Government Act 1993 states that each Local Government area must have a Mayor elected in accordance with the provisions of the Act.

Section 230(1) of the Local Government Act states that a Mayor elected by the Councillors holds office for two years.

The role of the Mayor (as set out in Section 226 of the Act) is:

- a) to be the leader of the council and a leader in the local community,
- b) to advance community cohesion and promote civic awareness,
- c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- e) to preside at meetings of the council,
- f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- i) to promote partnerships between the council and key stakeholders,
- j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- l) to carry out the civic and ceremonial functions of the mayoral office,
- m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- n) in consultation with the councillors, to lead performance appraisals of the general manager,
- o) to exercise any other functions of the council that the council determines.

---

**General Manager's Unit**

If only one Councillor is nominated, that Councillor is elected.

***REPORT/PROPOSAL***

A Fact Sheet from the Office of Local Government, "Election of Mayor and Deputy Mayor by Councillors", is attached and includes Schedule 7, "Election of Mayor by Councillors" of the Local Government (General) Regulation 2005, which sets out the procedures for the election of a mayor by the councillors of an area.

Nomination forms for the position of Mayor have been distributed and will also be available at the meeting. The completed nomination form and acceptance may also be lodged with the Returning Officer prior to the meeting.

The Returning Officer is to be the General Manager or a person appointed by the General Manager.

The Returning Officer will call for final lodgement of nominations at the meeting. After the final call for nominations the Returning Officer will announce the names of the nominee(s) and an election conducted if required.

***OPTIONS***

Nil

***CONSULTATION***

- Councillors
- General Manager
- Director Corporate Services

***STRATEGIC LINKS***

**a. Community Strategic Plan 2027**

This report links to the Community Strategic Plan 2027 as follows:

**CIVIC LEADERSHIP**

- 7) Provide community leadership through open, accountable and efficient governance.

We are working to achieve the following Community Priorities:



Upper Hunter Shire Council is an effective and efficient organisation, focusing on community engagement, action and response.

**b. Delivery Program**

To effectively and efficiently manage a Shire that meets the needs of the community.

**General Manager's Unit**

---

**c. Other Plans**

N/A

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Nil

**b. Financial Implications**

Funding for the Mayoral allowance and expenditure has been included within the budget.

**c. Legislative Implications**

The election must be conducted in accordance with the relevant provisions of the Local Government Act 1993 & the Local Government (General) Regulation 2005.

**d. Risk Implications**

N/A

**e. Sustainability Implications**

N/A

**f. Other Implications**

N/A

**CONCLUSION**

Council must elect a Mayor in accordance with relevant provisions of the Local Government Act 1993 and Schedule 7 of the Local Government (General) Regulation 2005.

**ATTACHMENTS**

- 1 OLG - Mayor Election - Fact Sheet & Schedule 7

# Fact Sheet

## ELECTION OF MAYOR AND DEPUTY MAYOR BY COUNCILLORS



### Summary

Councillors must elect a mayor from among their number every two years unless they have a popularly elected mayor.

Councillors may also elect a deputy mayor. The deputy mayor may be elected for the mayoral term or a shorter term.

The election of the mayor and the deputy mayor must be conducted in accordance with clause 394 and Schedule 7 of the *Local Government (General) Regulation 2005* (the Regulation).

The purpose of this document is to assist councils to conduct mayoral and deputy mayoral elections in accordance with these requirements. It includes scripts for key activities to help returning officers exercise their functions. These scripts are provided in the text boxes inserted in the relevant parts of this document.

### How can councils use this document?

Electing a mayor is an important activity. It is vital that the process is smooth, open and easy to follow and not rushed or confusing. Where necessary, it may be appropriate to stop and provide clarification for the benefit of councillors, staff or the gallery.

Returning officers can circulate this document prior to the meeting to help councillors understand the election process.

### Election of a mayor after an ordinary election of councillors

An election for mayor must be held within three weeks of the declaration of the ordinary election at a meeting of the council.

The returning officer is to be the general manager or a person appointed by the general manager.

As no mayor or deputy mayor will be present at the start of the meeting, the first business of the meeting should be the election of a chairperson to preside at the meeting. Alternatively, the returning officer may assume the chair for the purpose of conducting the election.

### Mid-term election of a mayor

A mayor elected by councillors holds office for two years. A mid-term mayoral election must be held in the September two years after the ordinary election of councillors or the first election of a new council following its establishment.

### Procedures

#### Prior to the meeting

Before the council meeting at which the election is to be conducted, the returning officer will give notice of the election to the councillors.

The notice is to set out how a person may be nominated as a candidate for election as chairperson.

*As returning officer, I now invite nominations for the position of mayor/deputy mayor for [name of council] for a two year period.*

*In accordance with the Local Government (General) Regulation 2005, two or more councillors may nominate a councillor (one of whom may be the nominee) for the position of mayor/deputy mayor. Nominations must be in writing and the nominee must consent to their nomination in writing.*

A councillor may be nominated without notice for election as mayor or deputy mayor. The nomination is to be made in writing by two 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.

The returning officer checks the nomination forms and writes the nominees' names on a candidates' sheet.

#### At the meeting

At the start of the first meeting after an ordinary election, in the absence of a chairperson, the returning officer assumes the chair and announces that the first item of business is to be the election of a mayor.

If a chairperson is present, they announce that the first item of business is the election of the mayor then vacates the chair for the returning officer who will then conduct the election.

The returning officer reads out the names of the nominees and seeks confirmation that the nominee has accepted the nomination.

If only one councillor has been nominated for the position of mayor/deputy mayor, the nominee is elected.

*As there is only one nominee for the role of mayor/deputy mayor, I declare that [name of successful candidate] is elected as mayor/deputy mayor for the ensuing two years.*

If more than one candidate has been nominated, the council must determine by resolution, the method of voting for the position of mayor/deputy mayor, by way of one of the following methods:

- Open voting – i.e. by show of hands
- Ordinary ballot – i.e. a secret ballot (place an "X" against the candidate of their choice)
- Preferential ballot – i.e. place 1, 2, 3 etc. against each candidate.



The returning officer must ask for a motion to be put to the meeting by one of the councillors on the preferred method of voting for the election of a chairperson. This must then be seconded and voted on by the councillors.

**Note:** In the event of a tie, if there is a chairperson, they may use their casting vote. If there is a tie and no chairperson, an election for the role of chairperson should be conducted. Then the election for mayor resumes.

### Open voting (show of hands)

Open voting is the most transparent method of voting. It is also the least bureaucratic method and reflects normal council voting methods.

The returning officer will advise the meeting of the method of voting and explains the process.

*It has been resolved that the method of voting for the position of mayor/deputy mayor will be by show of hands.*

*Each councillor is entitled to vote for only one candidate in each round of voting.*

*I will now write each candidate's name on a slip of paper and deposit it in a barrel. The first name out of the barrel will be written first on the tally sheet, with second name out being written second on the tally sheet, etc.*

When all candidates' names have been written on the tally sheet, the returning officer announces the names of the candidates and, commencing with the first candidate, states the following:

*Would those councillors voting for [name of candidate] please raise your hand.*

The returning officer records the number of votes for each successive candidate on the tally sheet and announces the number of votes received for each candidate.

The minute taker records the vote of each councillor.

The returning officer should check with the minute taker that each councillor has voted. If a councillor has not voted it should be confirmed that they are abstaining (an informal vote).

#### Two candidates

If there are only two candidates for the position of mayor/deputy mayor and the voting is higher for one candidate than another (number of formal votes recorded on the tally sheet), the returning officer then announces the result.

*[Name of candidate] has the higher number of formal votes and as a result I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.*

In the event of a **tied vote**, the returning officer will advise the meeting of the following process.

*In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the*

*names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.*

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

*I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.*

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

#### Three or more candidates

If there are three or more candidates, the candidate with the lowest number of votes for the position of mayor/deputy mayor is excluded.

*[Name of candidate], having the lowest number of votes, is excluded.*

The voting continues as above until there are only two candidates remaining (see voting for **two candidates** above).

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

*In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.*

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

*I declare that [name of candidate] is excluded.*

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

### Ordinary ballot – (secret ballot)

The returning officer advises the meeting of the method of voting and explains the process.

*It has been resolved that the method for voting for the position of mayor/deputy mayor will be by ordinary ballot, in other words by placing an "X" against the candidate of the councillor's choice.*

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

It will be necessary to have a number of blank papers as this process may require more than one round of voting.

The returning officer writes the names on one set of the ballot papers and initials the front of each ballot paper.

A staff member distributes the ballot papers and collects them into the ballot box when completed and gives it to the returning officer who counts the votes and records them on the tally sheet.

The returning officer announces the results.

*[Name of candidate], having the lowest number of votes, is excluded.*

In the event that the **lowest number of votes are tied**, the returning officer advises the meeting of the following process:

*In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded.*

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel.

The returning officer then draws a name out of the barrel and shows it to the meeting.

*I declare that [name of candidate] is excluded.*

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

The returning officer writes the names of the remaining candidates on a further set of the ballot papers and initials the front of each ballot paper.

The staff member distributes ballot papers listing the remaining candidates and collects them into the ballot box when completed and gives it to the returning officer who again counts the votes and records them on the tally sheet and announces the results.

The process continues until two candidates remain, where a final vote takes place.

*[Name of candidate] has the higher number of votes and I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.*

In the event of a **tied vote** between the two remaining candidates, the returning officer makes the following statement and announces the process.

*The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel.*

*Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.*

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

*I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.*

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.



## Preferential ballot

The returning officer explains the process.

*It has been resolved that the method for voting for the position of mayor/deputy mayor will be by preferential ballot, i.e. placing 1, 2 and so on against the candidate of the councillor's choice in order of preference for all candidates.*

The returning officer announces the names of the candidates for mayor/deputy mayor and writes each candidate's name on a slip of paper and deposits it in a barrel.

The returning officer requests that a staff member shakes the barrel and advises that the order in which the names will appear on the ballot paper will be determined by a draw out of the barrel, i.e. first name out of the barrel is written first on the ballot papers and so on.

The returning officer writes the names on the ballot papers and initials the front of each ballot paper. This method of voting requires only one set of ballot papers.

A staff member distributes the ballot papers and collects them when completed and gives them to the returning officer who counts the first preference votes and records them on the tally sheet.

If a candidate has an absolute majority of first preference votes (more than half), the returning officer declares the outcome.

*[Name of candidate], having an absolute majority of first preference votes, is elected as mayor/deputy mayor for the ensuing two years.*

If no candidate has the absolute majority of first preference votes, the returning officer excludes the candidate with the lowest number of first preference votes.

*[Name of candidate], having the lowest number of first preference votes, is excluded.*

The preferences from the excluded candidate are distributed. This process continues until one candidate has received an absolute majority of votes, at which time the returning officer announces the result.

*[Name of candidate], having an absolute majority of votes, is elected as mayor/deputy mayor for the ensuing two years.*

In the event of a **tied vote** where there are only two candidates remaining in the election, the returning officer explains the process.

*The votes are tied between [name of candidate 1] and [name of candidate 2] having received [number] votes each, and, in accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be declared as mayor/deputy mayor.*

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests a staff member to shake the barrel. The returning officer then draws a name out of the barrel and shows the meeting.

*I declare that [name of candidate] is elected as mayor/deputy mayor for the ensuing two years.*

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

In the event that the **lowest number of votes are tied** and where there are three or more candidates remaining in the election, the returning officer advises the meeting of the process.

*In accordance with clause 12 of Schedule 7 of the Local Government (General) Regulation 2005, I will now write the names of the candidates on similar slips of paper, fold them and place them in the barrel. Please note that the candidate whose name is drawn out will be excluded and their preferences distributed.*

It is appropriate to show the meeting the names and the barrel. Councillors may inspect but not touch the items.

The returning officer places the names of the candidates into the barrel and requests that a staff member shakes the barrel.

The returning officer then draws a name out of the barrel and shows the meeting.

*I declare that [name of candidate] is excluded and any votes cast for them will be distributed by preference.*

The returning officer then draws out the remaining name and reads it for completeness. The second name should be shown to the meeting.

## Schedule 7 - Election of Mayor by Councillors

### 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 clause:  
*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 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 clause 345 (1) (b) and (c) and (6) of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 subclause (2) is to be repeated until only 2 candidates remain.
- (4) A further vote is to be taken of the 2 remaining candidates.
- (5) Clause 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 subclause (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 clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.
- (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 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. That candidate is elected.
- (4) In this clause, "**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 councillors at the council meeting at which the election is held by the returning officer, and
- b) to be delivered or sent to the Departmental Chief Executive and to the Chief Executive of Local Government New South Wales.

## **G.01.2** ***ELECTION OF DEPUTY MAYOR***

**RESPONSIBLE OFFICER:** Greg McDonald - General Manager

**AUTHOR:** Robyn Cox - Executive Assistant

## PURPOSE

The purpose of this report is to elect a Deputy for the ensuing 2 years.

## RECOMMENDATION

1. that the Returning Officer conduct the election for the position of Deputy Mayor.
2. that nominations for the position of Deputy Mayor be accepted.
3. that in the event of there being more than one nominee, Council determine by resolution, the method by which the election be conducted being preferential ballot, ordinary ballot or open voting.
4. that the Deputy Mayor be elected and hold office for the ensuing two (2) years until January 2024

## BACKGROUND

Council may elect a Deputy Mayor under Section 231 of the Local Government Act, 1993.

The Deputy Mayor may exercise any function of the Mayor at the request of the Mayor or if the Mayor is prevented by illness, absence or otherwise from exercising the function or if there is a casual vacancy in the office of Mayor.

Under section 231(2) of the Local Government Act, 1993 the Deputy Mayor can be elected for the same term as the Mayor or a shorter term.

The election of Deputy Mayor is conducted under the same provisions that apply for the election of Mayor.

If only one Councillor is nominated, that Councillor is elected.

**REPORT/PROPOSAL**

Nomination forms for the position of Deputy Mayor have been distributed and will also be available at the meeting. The completed nomination form and acceptance may also be lodged with the Returning Officer prior to the meeting.

The Returning Officer is to be the General Manager or a person appointed by the General Manager.

The Returning Officer will call for final lodgement of nominations at the meeting. After the final call for nominations the Returning Officer will announce the names of the nominee(s) and an election conducted if required.

## OPTIONS

Nil

**General Manager's Unit**

---

**CONSULTATION**

- Councillors
- General Manager
- Director Corporate Services

**STRATEGIC LINKS**

**a. Community Strategic Plan 2027**

This report links to the Community Strategic Plan 2027 as follows:

**CIVIC LEADERSHIP**

- 7) Provide community leadership through open, accountable and efficient governance.

We are working to achieve the following Community Priorities:



Upper Hunter Shire Council is an effective and efficient organisation, focusing on community engagement, action and response.

**b. Delivery Program**

To effectively and efficiently manage a Shire that meets the needs of the community.

**c. Other Plans**

N/A

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Nil

**b. Financial Implications**

Funding for the Councillors' allowances and expenditure has been included within the budget.

**c. Legislative Implications**

The election must be conducted in accordance with the relevant provisions of the Local Government Act 1993 & the Local Government (General) Regulation 2005.

**d. Risk Implications**

N/A



**General Manager's Unit**

---

**e. Sustainability Implications**

N/A

**f. Other Implications**

N/A

***CONCLUSION***

Under Section 231 of the Local Government Act, 1993, Council may elect a Deputy Mayor and can be elected for the same term as the Mayor or a shorter term.

***ATTACHMENTS***

There are no enclosures for this report

General Manager's Unit

---

**G.01.3** ***COUNTBACK OF VOTES TO FILL CASUAL VACANCIES***

**RESPONSIBLE OFFICER:** Greg McDonald - General Manager

**AUTHOR:** Robyn Cox - Executive Assistant

---

**PURPOSE**

The purpose of this report is to consider the option of using a countback of votes cast at the 2021 Local Government Elections to fill casual vacancies occurring in the offices of Councillors in the first 18 months after the election.

**RECOMMENDATION**

That Council, pursuant to section 291A(1)(b) of the *Local Government Act 1993* (the Act), declare 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 direct the General Manager to notify the NSW Electoral Commissioner of Council's decision within 7 days of the decision.

**BACKGROUND**

Following the 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.

**REPORT/PROPOSAL**

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 method to fill casual vacancies. If Council does not resolve this at its first meeting after the election, it will be required to fill casual vacancies through a by-election.

There are a number of considerations for Councillors.

**Cost**

Council is required to bear the costs of a by-election. An estimate of a by-election cost is in the order of \$125,000. Candidates of course bear their own costs of advertising and campaigning. While this is not borne by the Council, any by-election will add to the cost of candidates campaigning who have already expended campaign funds in the original election process. Adopting the count back provision will result in a saving to both Council and any candidates who wish to recontest.

**Timeline**

The below information on the process of a countback is provided by the Electoral Commission:

The timeline for a countback election is:

### **General Manager's Unit**

---

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.

A by-election will take approximately 3 months given a month to notify and call for registration of candidates, a month to run the campaign period and up to a month to declare results (although this final month would ideally be shorter).

Adopting the countback process is likely to take less time although it is difficult to be exact in regard to how much time would be saved.

### **Governance**

During the term of the vacancy there will be an even number of Councillors. In the event that there is a split vote on a matter in this period the Mayor has a casting vote.

The adoption of a by-election will allow new candidates to consider running for Council that weren't previously part of the original election process and for re-contesting candidates to run a new campaign if they chose to do so. Adoption of the countback provision will limit the pool to those candidates who previously ran and choose to be considered in the countback process.

## General Manager's Unit

---

### OPTIONS

1. To fill casual vacancies occurring in the first 18 months after the Local Government Election held on 4 December 2021 by using a countback of votes cast at that election.
2. To fill casual vacancies using a by-election.

### CONSULTATION

- Office of Local Government
- General Manager

### STRATEGIC LINKS

#### a. Community Strategic Plan 2027

This report links to the Community Strategic Plan 2027 as follows:

#### LEADERSHIP

##### Goal 8 Provide Community Leadership

CS30 Effectively and efficiently manage the business of Council, while encouraging an open and participatory Council with an emphasis on transparency, Community engagement, action and response.

We are working to achieve the following Community Priorities:



Upper Hunter Shire Council is an effective and efficient organisation, focusing on community engagement, action and response.



Upper Hunter Shire Council demonstrates it is Fit for the Future and can meet all State Government indicators for financial stability.

#### b. Delivery Program

- Providing Community leadership and to ensure the delivery of an efficient, effective local government service.

#### c. Other Plans

N/A

### IMPLICATIONS

#### a. Policy and Procedural Implications

Office of Local Government Circular to Councils 21-31 / 5 October 2021.

---

**General Manager's Unit**

**b. Financial Implications**

The cost of a by-election would be in the vicinity of an ordinary election, which was approximately \$125,000. This would be avoided by adopting the count back option.

**c. Legislative Implications**

If Council doesn't resolve to go with the count back option a full by-election would need to be conducted in accordance with the Local Government Act.

**d. Risk Implications**

There are no risks associated with adopting the count back provisions.

**e. Sustainability Implications**

There are no sustainability implications

**f. Other Implications**

Nil

**CONCLUSION**

Council must resolve at its first meeting whether it wants to use a countback of votes at the Local Government Election held on 4 December 2021 to fill casual vacancies occurring in the offices of Councillors in the first 18 months after the election. If Council does not resolve this at its first meeting after the election, it will be required to fill casual vacancies through a by-election, which would result in higher costs to Council.

**ATTACHMENTS**

There are no enclosures for this report



## Corporate Services

---

### G.01.4

### **REMOTE ATTENDANCE AT COUNCIL MEETINGS**

**RESPONSIBLE OFFICER:** Greg McDonald - General Manager

**AUTHOR:** Kristian Enevoldson - Director Corporate Services

---

#### **PURPOSE**

The purpose of this report is for Council to consider the continuation of permitting Councillors to attend Council and Committee meetings by audio-visual link until either 30 June 2022 or when the new Code of Meeting Practice is adopted by Council.

#### **RECOMMENDATION**

That Council:

1. permit Councillors to attend Council meetings by audio-visual means, subject to approval of individual requests, until the earlier of 30 June 2022 or the adoption of a new Code of Meeting Practice.
2. adopt the suggested Procedures governing Councillor attendance at meetings by audio-visual link.

#### **BACKGROUND**

Temporary amendments were made to the Local Government Act 1993 in March 2020 in response to the COVID-19 pandemic allowing councillors to participate in meetings remotely by audio-visual link. The amendments allowing remote attendance were time limited and expired on 25 March 2021. As an interim measure, the Local Government (General) Regulation 2005 was amended to allow councils to permit individual (but not all) councillors to attend meetings remotely until 31 December 2021. A further extension to 30 June 2022 has now been approved by the Office of Local Government. This is not mandatory however, and is up to individual councils to decide and adopt.

#### **REPORT/PROPOSAL**

Most councils have successfully implemented remote attendance by councillors at meetings during the Covid19 pandemic. The government acknowledges that remote attendance does have some advantages with the new the Model Code of Meeting Practice to include non-mandatory provisions that allow councils to permit councillors to attend meetings remotely by audio-visual links in a limited range of circumstances. The following is part of the new Meeting Code:

- Remote attendance will only be permissible in a limited range of circumstances such as ill health, disability, carer responsibilities or natural disaster
- Remote attendance must be approved by Council
- The same meeting rules are to apply as if the councillor was physically present
- The confidentiality of information must be protected (for example, no other parties are to be in the same room as the councillor when confidential items are being considered)

The repeal date for section 237 of the Regulation which exempts councils from the requirement under clause 5.2 of the previous iteration of the Model Meeting Code for councillors to be personally present at meetings in order to participate in them has been extended to 30 June 2022. This is to allow councils additional time to exhibit and adopt new codes of meeting practice containing provisions allowing attendance by audio-visual link at

## **Corporate Services**

---

meetings. If councils have not adopted a new meeting code that allows councillors to attend meetings by audio-visual link, they will not be permitted to do so after that date. Should Council allow remote attendance, it is not required to amend the Code of Meeting Practice but rather adopt procedures governing the practice of remote attendance. It is recommended that Council adopt the OLG's suggested Procedures. The draft procedures are attached to this report.

The proposed Procedures include the following:

- The process for approval for councillors to attend meetings by AV link
- Rules for attending meetings by AV link
- Managing conflicts of interest
- Maintaining confidentiality

### **OPTIONS**

1. Adopt the recommendation including the suggested Procedures
2. Adopt the recommendation with an amendment to the suggested procedures
  - a. Limiting the number of councillors permitted to attend remotely at any one time
  - b. Reducing the notification period from 5 business days (eg to 2 or 3)
  - c. Expanding/reducing the reasons for remote attendance
  - d. Zoom background not to be computer generated image (ie must be actual background)
3. Not adopt the recommendation and prohibit remote attendance by councillors at Council and Standing Committee meetings

### **CONSULTATION**

- Senior Staff

### **STRATEGIC LINKS**

#### **IMPLICATIONS**

##### **a. Policy and Procedural Implications**

Council is not required to amend the Code of Meeting Practice to allow councillors to attend meetings remotely by audio-visual link while the Regulation amendment is in force, but should adopt associated Procedures. It is recommended that the suggested Procedures from the OLG be adopted by Council.

##### **b. Financial Implications**

N/A

##### **c. Legislative Implications**

Council meetings are governed by the Local Government Act 1993, Local Government (General) Regulation 2005 and OLG Model Code of Meeting Practice. The new Code of Meeting Practice must be adopted within 12 months of the Council election.

## **Corporate Services**

---

### **d. Risk Implications**

If Council does allow remote attendance at meetings it should have robust procedures in place to manage risks such as conflict of interest and maintenance of confidentiality. Remote attendance may, in certain circumstances, ensure that a quorum of councillors is present to mitigate the risk of Council meetings not being able to proceed.

### **e. Sustainability Implications**

N/A

### **f. Other Implications**

N/A

## **CONCLUSION**

It is important that Council has a framework around remote attendance by councillors at council meetings. This includes the adoption of clear and robust procedures.

## **ATTACHMENTS**

- 1 Procedures for Attendance by Councillors Meetings by Audio-Visual Link

## ATTACHMENT

### Procedures for attendance by councillors at meetings by audio-visual link

#### What is an “audio visual link”

- For the purposes of these procedures, an audio-visual link is a facility that enables audio and visual communication between persons at different places.

#### Approval for councillors to attend meetings by audio visual link

- The council and committees of the council comprising wholly of councillors may, in response to a request made by a councillor, resolve to permit the councillor to attend one or more meetings of the council or committee remotely by audio visual link where it is satisfied that the councillor will be prevented from attending the meeting/s in person because of illness, disability, caring responsibilities, or such other reason that is acceptable to the council or committee.
- Requests by councillors to attend meetings remotely by audio-visual link must be made in writing to the General Manager at least *[council to specify a timeframe that is consistent with the timeframe for lodging notices of motion]* business days before a meeting, and must provide information about the meetings the councillor will be prevented from attending in person and the reason why the councillor will be prevented from attending the meeting/s in person.
- A resolution by the council or a committee of the council permitting a councillor to attend one or more meetings by audio-visual link must provide the following information:
  - the grounds on which the councillor is being permitted to attend meetings remotely by audio visual link, but not where those grounds relate to illness, disability or caring responsibilities, and
  - details of the meetings the resolution applies to.
- The council or committee of the council may permit more than one councillor to attend a meeting by audio-visual link but must not permit all councillors to attend a meeting by audio-visual link.
- A decision to permit a councillor to attend a meeting remotely by audio-visual link is at the council's or the committee's discretion. The council and its committees must act reasonably when considering requests by councillors to attend meetings remotely by audio-visual link.
- The council and its committees are under no obligation to permit a councillor to attend a meeting remotely by audio-visual link where the technical capacity does not exist to allow the councillor to attend a meeting by these means.
- The council and its committees may refuse a councillor's request to attend a meeting remotely by audio-visual link where the councillor has failed to appropriately declare and manage conflicts of interest, observe confidentiality or comply with the council's code of meeting practice on one or more previous occasions when they have attended a meeting of the council or its committees by audio-visual link.

### **Attendance by councillors at meetings by audio visual link**

- Where a councillor attends a meeting by audio-visual link with the approval of the council or a committee of the council they are to be taken as attending the meeting in person for the purposes of the council's code of meeting practice and will have the same voting rights as if they were attending the meeting in person.
- The council's code of meeting practice will apply to a councillor attending a meeting remotely by audio-visual link, in the same way it would if the councillor was attending the meeting in person.
- Councillors must give their full attention to the business and proceedings of the meeting when attending a meeting by audio-visual link.
- Councillors must be appropriately dressed when attending meetings by audio-visual link and must ensure that no items are within sight of the meeting that are inconsistent with the maintenance of order at the meeting or that are likely to bring the council or the committee into disrepute.
- Where a councillor attends a meeting of the council or a committee of the council by audio-visual link, the minutes of the meeting must record that they attended the meeting by audio-visual link.

### **Conflicts of interest**

- Councillors attending a meeting by audio-visual link must declare and manage any conflicts of interest they may have in matters being considered at the meeting in accordance with the council's code of conduct.
- Where a councillor has declared a pecuniary or significant non-pecuniary conflict of interest in a matter being discussed at the meeting, the councillor's audio-visual link to the meeting must be terminated and the councillor must not be in sight or hearing of the meeting at any time during which the matter is being considered or discussed by the council or committee, or at any time during which the council or committee is voting on the matter.

### **Confidentiality**

- Councillors attending a meeting by audio-visual link must ensure that no other person is within sight or hearing of the meeting at any time that the meeting has been closed to the public under section 10A of the *Local Government Act 1993*.

### **Maintenance of order**

- Where a councillor is attending a meeting by audio-visual link, the chairperson or a person authorised by the chairperson may mute the councillor's audio link to the meeting for the purposes of enforcing compliance with the council's code of meeting practice.
- If a councillor attending a meeting by audio-visual link is expelled from a meeting for an act of disorder, the chairperson of the meeting or a person authorised by the chairperson, may terminate the councillor's audio-visual link to the meeting.



### Compliance with the Health Privacy Principles

- The council must comply with the Health Privacy Principles prescribed under the *Health Records and Information Privacy Act 2002* when collecting, holding, using and disclosing health information in connection with a request by a councillor to attend a meeting remotely by audio-visual link.