



SNOWY MONARO
REGIONAL COUNCIL

BUSINESS PAPER

PUBLIC EXHIBITION COPY

**Ordinary Council Meeting
6 January 2022**

CONFLICTS OF INTEREST

A conflict of interest arises when the Mayor or Council staff are influenced, or are seen to be influenced, in carrying out their duties by personal interests. Conflicts of interest can be pecuniary or non-pecuniary in nature.

A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of a financial gain or loss.

A non-pecuniary interest can arise as a result of a private or personal interest, which does not relate to money. Examples include friendship, membership of an association or involvement or interest in an activity.

The Mayor or staff member who considers they may have a conflict of interest should read Council Policy.

The responsibility of determining whether or not the Mayor or Council employee has a pecuniary or non-pecuniary interest in a matter, is the responsibility of that individual. It is not the role of the Mayor or Chief Executive Officer, or another Council employee to determine whether or not a person may have a conflict of interest.

COUNCIL CODE OF CONDUCT

The Council Code of Conduct is a requirement of Section 440 of the Local Government Act 1993, which requires all councils to have a code of conduct to be observed by the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council.

The code of conduct sets out the responsibilities of the Mayor and Council employees attending a Council meeting or a meeting of a committee of Council. The code also sets out how complaints against a Council employee, the Mayor or Chief Executive Officer are to be made.

COUNCIL CODE OF MEETING PRACTICE

The Council Code of Meeting Practice is a requirement of Section 360(3) of the Local Government Act 1993, which requires all councils to have a code of meeting practice. The code of meeting practice is to be observed by the Mayor, members of staff, delegates of the Council and members of the public attending a Council or a meeting of a committee of Council.

Acknowledgement of Country

Council wishes to show our respect to the First Custodians of this land the Ngarigo, Walgalu, Ngunnawal and Bidhawal people and their Ancestors past and present.

Webcasting

Council meetings are recorded and live streamed to the internet for public viewing. By entering the Chambers during an open session of Council, you consent to your attendance and participation being recorded and streamed on Council's website www.snowymonaro.nsw.gov.au

**ORDINARY COUNCIL MEETING
TO BE HELD IN COUNCIL CHAMBERS, 81 COMMISSIONER STREET, COOMA NSW
2630**

**ON THURSDAY 6 JANUARY 2022
COMMENCING AT 5:00PM**

BUSINESS PAPER

1. OPENING MEETING

2. ACKNOWLEDGEMENT OF COUNTRY

3. CONFIRMATION OF MINUTES

3.1 Ordinary Council Meeting held on 18 November 2021

4. KEY THEME 4. LEADERSHIP

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4.1 ELECTION OF MAYOR AND DEPUTY MAYOR

Record No: I21/429

OFFICER'S RECOMMENDATION

That Council

- A. Invite nominations for the election of Mayor to September 2023.
- B. Invite nominations for the election of Deputy Mayor to September 2023.
- C. In the event of there being more than one candidate nominated for either the position of Mayor or Deputy Mayor, an election be held in accordance with Schedule 7 of the Local Government (General) Regulation 2005 and the method of voting be by ordinary ballot.
- D. In accordance with Section 255 of the Local Government Act elect a Mayor for the term of January 2022 to September 2023.
- E. In accordance with Section 231 of the Local Government Act elect a Deputy Mayor for the term January 2022 to September 2023, being the same term as the Mayor.

ISSUES

The election of a Mayor is necessary for Council to function. The election of a Deputy Mayor will see that the role of Mayor is fulfilled should the Mayor be unavailable.

The Mayor of Snowy Monaro Regional Council is to be elected by the Councillors and is required to be conducted pursuant to Section 225 of the Local Government Act 1993 (the Act) which states: *An area must have a mayor who is elected in accordance with this Division.*

The deputy mayor may hold their office for the same term as the mayor or a shorter term specified in the council's resolution, S231 (2).

RISK ASSESSMENT

Risk Type	Current Risk	Expected Risk	Within Accepted
External Political Environment	Low	Low	Yes
Financial Sustainability	Low	Low	Yes
Legislative Governance and Compliance	Low	Low	Yes
Reputation and Image	Low	Low	Yes
Service Delivery	Low	Low	Yes

The election of Mayor and Deputy Mayor is a low risk activity and also the risk of Council not meeting the legislative requirement to do so.

4.1 ELECTION OF MAYOR AND DEPUTY MAYOR

FINANCIAL IMPACTS

	Amount	Details
Current Annualised Net Cost	Nil	
Estimated Annualised Net Cost	Nil	
Capital Investment	Nil	
Capital Funding Source	Nil	

The resources required to facilitate the recommendations in the report are contained within adopted budgets.

OPTIONS CONSIDERED

The election of Mayor and Deputy Mayor are required and in a specific timeframe. However the position of Deputy Mayor is optional, and Council can resolve not to have the position. This option is not recommended.

IMPLEMENTATION PLANS

The procedure for the election of Mayor and Deputy Mayor is covered by the provisions of [Local Government \(General\) Regulation 2005](#), attached to this report.

Procedure for nominating

In accordance with Schedule 7 of 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.

Councillors are required to complete the nomination papers (attached) prior to the meeting to enable them to be delivered or sent to the Returning Officer.

- A nomination is to be made in writing by two or more councillors, one of whom may be the nominee.
- The nominee must indicate consent to the nomination in writing. If more than one nomination is received the Council must resolve the preferred procedure of election either by preferential ballot, ordinary ballot or open voting.
- Preferential ballot and ordinary ballot will be secret ballots.

The Election Procedures will generally be as follows: -

1. Councillors will be called upon by the Returning Officer (Chief Executive Officer) to submit their written nomination papers.
 2. The nominations received will be announced to the meeting by the Returning Officer.
 3. If only one Councillor is nominated and accepts the nomination, that Councillor is elected.
-

4.1 ELECTION OF MAYOR AND DEPUTY MAYOR

4. If there is more than one candidate contesting a position, the provisions of clause 3(2), Schedule 7 of the Local Government (General) Regulation 2005 will take effect.
5. The Council must resolve which method of election will be used, i.e. by preferential ballot, by ordinary ballot (secret ballot) or by open voting (show of hands) and the election must be held at the Council meeting at which the Council resolves on the method of voting.
6. If an election by ballot is necessary, the Council will be asked to adjourn for a short time to allow the preparation of ballot papers. The ballot will be undertaken using a combination of physical ballot papers and use of an online tool for anonymous electronic voting.
 - (i) When the ballot papers have been prepared, the meeting will be resumed and the ballot papers will be distributed to Councillors for marking.
 - (ii) Upon completion of marking of the ballot papers by Councillors, the papers will be collected by or on behalf of the Returning Officer and a short adjournment will again be necessary to enable the counting of votes.
7. When all voting and the counting has been completed, and the result has been obtained, the returning officer will declare the result to the meeting.
8. The returning officer will vacate the chair and hand over to mayor elect to run the meeting.

Once the election process is complete it will be recorded in Council minutes and published on Council's website and appropriate notice sent to relevant stakeholders.

EXISTING POLICY/DECISIONS

Election of mayors by councillors are to be held within three weeks after the ordinary elections, [S290 \(1\)\(a\)](#).

BACKGROUND

Mayors elected by councillors normally hold office for two years under [s230 of the Act](#). However, because of the postponement of the ordinary council elections to 4 December 2021, mayors elected by councillors following the 2021 local government elections will have a shorter term than the usual two years. The term of this mayor will be from 6 January 2022 to September 2023 (20 months).

Councils that elect their mayors are required under the Act to hold mid-term mayoral elections in the month of September. The mayor elected at the mid-term mayoral election, in September 2023, will then hold their office until the day of the council's next local government election in September 2024.

The term of Council is usually for four years, however, Councils whose elections were held in December 2021 have a reduced term to September 2024 to align with the Council election cycle.

The procedure for the election of Mayor and Deputy Mayor is covered by the provisions of Schedule 7 of the Local Government (General) Regulation 2005, attached to this report.

4.1 ELECTION OF MAYOR AND DEPUTY MAYOR

Main points from the legislation are:

- The Chief Executive Officer (CEO) (or a person appointed by the CEO) is the Returning Officer.
- Nominations are to be announced and elections are to be conducted at the same council meeting.
- Councillors need to be present at the meeting in person to participate in voting by means other than an open ballot.

ATTACHMENTS

1. SMRC Mayor Nomination Form
 2. SMRC Deputy Mayor Nomination Form
 3. Local Government (General) Regulations 2021 Schedule 7 Election of Mayor by Councillors
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SNOWY MONARO REGIONAL COUNCIL

NOMINATION FORM

Election of Mayor

We, the undersigned, herewith nominate -

Councillor _____
(Print full name)

for the position of **MAYOR**

Nominators:

Name: Clr _____

Signature: _____

Date: _____

Name: Clr _____

Signature: _____

Date: _____

I herewith accept nomination for the Snowy Monaro Regional Council

Name: Clr _____

Signature: _____

Date: _____



SNOWY MONARO REGIONAL COUNCIL

NOMINATION FORM

Election of Deputy Mayor

We, the undersigned, herewith nominate -

Councillor _____
(Print full name)

for the position of **DEPUTY MAYOR**

Nominators:

Name: Clr _____

Signature: _____

Date: _____

Name: Clr _____

Signature: _____

Date: _____

I herewith accept nomination for the Snowy Monaro Regional Council

Name: Clr _____

Signature: _____

Date: _____

Local Government (General) Regulation 2021 [NSW]
Schedule 7 Election of mayor by councillors

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 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.

Local Government (General) Regulation 2021 [NSW]
Schedule 7 Election of mayor by councillors

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 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

Local Government (General) Regulation 2021 [NSW]
Schedule 7 Election of mayor by councillors

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.

4.2 MEETING DATES AND TIMES OF COUNCIL MEETINGS - MARCH 2022 TO SEPTEMBER 2024

Record No: I21/426

OFFICER'S RECOMMENDATION

That

- A) Subject to the right to amend the schedule for any reason from time to time, schedule Council Meetings for the period March 2022 to September 2024 (the term of Council) to be held on the fourth Thursday of each month commencing at 5.00pm with the primary location being the Cooma Council Chambers.
- B) Council meetings are not held during the month of January each year for the term of Council.
- C) Pre meeting briefings are held from 3.30pm to 5.00pm before each Council meeting.
- D) Councillor briefing sessions are held on the second Thursday of each month commencing at 4.00pm, with the exception of January.
- E) Meetings are scheduled in even months in Cooma Council Chambers and odd months to rotate between Bombala and Jindabyne.
- F) The requirements for attending Council meetings by audio-visual link are observed and maintained subject to current and changing conditions.

ISSUES

One of the key matters to be dealt with at the inaugural meeting of the newly elected Snowy Monaro Regional Council is setting of meeting dates, times and locations for the Council meetings. Per [Section 365 of the Local Government Act 1993](#) (The Act) Council is required to meet no less than 10 times each year, each time in a different month.

Monthly reporting is being put into place, which takes time to collate, review and include in the business paper. Due to the length of this process a meeting late in the month allows for the information to be provided within the month aligning with the end of the previous month, which will make it easier to assess where the Council is at compared to the monthly budgets and targets.

RISK ASSESSMENT

Risk Type	Current Risk	Expected Risk	Within Accepted
External Political Environment	Low	Low	Yes
Financial Sustainability	Low	Low	Yes
Legislative Governance and Compliance	Low	Low	Yes
Reputation and Image	Low	Low	Yes
Service Delivery	Low	Low	Yes

The setting of Council meeting dates is a low risk activity and mitigates the risk of Council not meeting the legislative requirement to meet ten times each year.

FINANCIAL IMPACTS

	Amount	Details
Current Annualised Net Cost	Nil	
Estimated Annualised Net Cost	Nil	
Capital Investment	Nil	
Capital Funding Source	Nil	

The resources required to facilitate the recommendations in the report are contained within adopted budgets. Deferment or failure to set meeting dates as recommended will invoke requirements on workforce resources to develop an additional process to complete the required actions in order to maintain Council's compliance with the Act.

OPTIONS CONSIDERED

Previous Council meetings have been held on the third Thursday of each meeting month. The option to meet on the fourth Thursday will enable improved timeliness in the content of the regular monthly status reports.

Choosing dates earlier in the month that lead to a delay in the reporting timelines is not seen as significantly changing the level of risk.

Council can choose not to set the dates in advance and determine these at the meeting. This provide less certainty to the community as to when Council is possibly meeting and makes the administration of the process of preparing from the meeting more difficult.

IMPLEMENTATION PLANS

Once the schedule is determined it will be published on Council's website and regular notice of meetings provided to Councillors and the public.

EXISTING POLICY/DECISIONS

Council is required to give notice to the public of the time, date and places of its meetings and committee meetings where all councillors are members in accordance with [Section 9 of The Act](#). Notice of meetings must be published on council's website, and such other means the council is satisfied is likely to bring notice of the meeting to the attention of the community.

BACKGROUND

Council meetings are the formal mechanism for making decisions. In setting the time and date of the meetings the councillors need to consider the ability of the councillors to attend the meetings as well as the community. Some councils choose to meet during the day, citing ease for people to attend and lower costs due to the staff working within their normal hours. Other have evening meetings citing the benefit of having a lower impact on the councillor working lives and making it easier for people to attend. There is no research showing that any particular option results in more attendance by the public. Generally, if a matter concerns people most will attend the meeting irrespective of the time of day. Equally the day can be different to what has traditionally been followed. Monday day meetings can create issues as last minute changes or problems are harder to cater for.

To enable staff to organise meetings and to advise the community, the meeting date and time for the February Council meetings has been set and advertised for 5.30pm Thursday, 17 February 2022. This can be changed by the Council if so desired.

The reason that it is not recommended that Council hold a meeting in the month of January is that with the impact of Christmas and the New Year public holidays, there is a limited amount of time between the meetings, meaning that there is generally very little business to transact. Should there be a need for a decision, an emergency meeting can be called. This is considered the most efficient way to deal with the small amount of business and limited time created by the public holidays.

Briefing sessions are common across NSW local government and provide an opportunity for Councillors and staff to interact in a setting that is less formal than Council meetings. Briefing sessions are typically chaired by the CEO. They are not open to the public and are not decisions making forums. They allow councillor to gain information on matters in the lead up to the decision coming before Council. The Code of Meeting Practice allows for pre meeting briefings to be held before a Council meeting to brief Councillors on business to be considered at the meeting. This session is limited to questions being asked on matter before the meeting. To further support Councillors a second briefing sessions is recommend this allows staff to update Councillors on the regular operations of council and emerging issues. This session also has a section allowing councillors to ask questions on other issues that they are seeking information on

ATTACHMENTS

1. Procedure - Attendance by Councillors at Meetings by Audio-Visual Link
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Procedure



Name of Procedure	Attendance by Councillors at Meetings by Audio-Visual Link		
Document Register ID	250.2021.37.2	Date Approved	07 October 2021
Document Author	Governance Administration Support		
Authorised by	Coordinator Governance		
Applicable to	Councillor SMRC Staff		
Purpose	The purpose of this document is to: Manage request and attendance by Councillors at a council meeting and committee of the council comprising wholly of Councillors, via audio visual.		
Frequency	When will this procedure be followed For all council meeting meetings and is in effect until 31 December 2021.		
Hazard Identification	N/A		
Level of risk	Various levels of risk may be determined in the analysis of identified hazards. Levels of risk identified in each circumstance should be managed in accordance with Councils enterprise risk management system.		
PPE required for procedure	N/A		

1 Procedures for attendance by councillors at meetings by audio-visual link:

1.1 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.

1.2 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 Chief Executive Officer by Monday, the week of the Council meeting (as per resolution

190/21), 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.

Where changes in legislation occur that prevent a councillor from physically attending a meeting and those changes occur after the notice period has passed, the notice period in clause 1.2 shall not be required.

1.3 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.

Councillor must give their full attention to the business and proceeding 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.

1.4 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.

1.5 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.

1.6 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.

1.7 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.

2 Related Documents

This procedure should be read in conjunction with the following documents:

Documentation

List the name and document reference number of any other document referred to in this document, including any related policies and procedures

250.2016.72.72 Code of Meeting Practice

250.2016.1.4 Code of Conduct

4.3 CASUAL VACANICES IN CIVIC OFFICES - COUNTBACK OPTION

Record No: I21/427

OFFICER'S RECOMMENDATION

That pursuant to section 291A(1)(b) of the Local Government Act 1993 Snowy Monaro Regional Council declares that casual vacancies occurring in the office of a councillor within 18 months after the last ordinary election of 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.

ISSUES

In accordance with section [291A\(1\)\(b\) of the Local Government Act 1993](#) (the Act) Council can elect to utilise a countback option to fill a casual vacancy in civic office within 18 months (i.e. up to March 2023) following the 2021 elections and dispense with the need for a by-election should a casual vacancy occur.

To exercise the option of using a countback to fill vacancies Council must resolve, at their first meeting following the election, to use a countback to fill casual vacancies.

RISK ASSESSMENT

Risk Type	Current Risk	Expected Risk	Within Accepted
External Political Environment	Low	Low	Yes
Financial Sustainability	Medium	Low	Yes
Legislative Governance and Compliance	Low	Low	Yes
Reputation and Image	Low	Low	Yes
Service Delivery	Low	Low	Yes

The utilisation of the countback process is low risk in being regulated by the Act and within council's capability to implement. The Risk in not taking the option is the possibility of by election in the event of a casual vacancy which has significant potential impact on resources and reputational image.

FINANCIAL IMPACTS

	Amount	Details
Current Annualised Net Cost	Nil	
Estimated Annualised Net Cost	Nil	
Capital Investment	Nil	
Capital Funding Source	Nil	

4.3 CASUAL VACANCIES IN CIVIC OFFICES - COUNTBACK OPTION

	Amount	Details
Current Annualised Net Cost	Nil	

The cost of implementing the count back process is within council's means in the operational budget. The provision of the cost of a by election is not within the current budget allocation. Given the cost of the recent council election exceeded \$250,000 it is recommended the countback option as the responsible action to take.

OPTIONS CONSIDERED

The alternate option to countback is a by-election and not recommended given the likely cost and impost on resources.

IMPLEMENTATION PLANS

Once the decision is made it will be recorded in council minutes to support any requirement to manage a casual vacancy within 18 months of the election.

In the event that a countback option is required the following applies:

The returning officer, in this instance the Chief Executive Officer, contacts all unelected candidates from the local government ordinary election who may still qualify to be elected to the office of councillor. Where the candidate is interested, they must submit a formal application to the returning officer. All candidates who submit and do not withdraw their application, become eligible candidates.

The timeline for a countback election:

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
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4.3 CASUAL VACANCIES IN CIVIC OFFICES - COUNTBACK OPTION

- 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.

BACKGROUND

In the context [Section 234](#) of the Act a casual vacancy occurs if the holder;

- (a) dies, or
- (b) resigns the office by writing addressed to the general manager, or
- (c) is disqualified from holding civic office, or
- (d) is absent from 3 consecutive ordinary meetings of the council (unless the holder is absent because he or she has been suspended from office under this Act or because the council has been suspended under this Act or as a consequence of a compliance order under section 438HA) without—
 - (i) prior leave of the council, or
 - (ii) leave granted by the council at any of the meetings concerned, or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is dismissed from civic office, or
- (g1) in the case of the office of a councillor, is elected as mayor by the electors, or
- (h) ceases to hold the office for any other reason.

If a casual vacancy occurs in a civic office, the vacancies is to be filled no later than three months after the vacancy occurs and the office is to be filled by a by-election, subject to [S291](#).

Council may utilise the option of using a countback election, this option is in accordance with Section 291A of the Act. The benefits of a countback election are both financial and logistical, as the cost associated with a countback would be significantly less than a by-election. In using the countback new candidates would not be able to run for Council as part of the countback process.

A countback election is used to elect a councillor to fill a single vacancy, where the vacating councillor was elected under the proportional representation method (i.e. where two or more candidates were elected at a local government ordinary election). If there are multiple vacancies, a separate countback election is held for each vacancy.

4.3 CASUAL VACANICES IN CIVIC OFFICES - COUNTBACK OPTION

The opportunity to utilise the countback option is only available if Council resolves to do so at its first meeting.

If council resolves to fill casual vacancies by a countback the Chief Executive Officer (CEO) is required under the Local Government (General) Regulations 2021 (the Regulations) to notify the election manager (NSW Election Commission) of the council's resolution within seven days of the resolution.

ATTACHMENTS

1. Local Government (General) Regulation 2021 Schedule 9A Countback Elections

Local Government (General) Regulation 2021 [NSW]
Schedule 9A Countback elections

Schedule 9A Countback elections

(Section 393C(1))

Part 1 Preliminary

1 Definitions

In this Schedule—

ballot-paper includes a vote record.

close of applications—see section 3(3) of this Schedule.

eligible candidate, in a countback election, means a person who has been declared by the returning officer under section 4(a) of this Schedule to have duly applied to be a candidate in the countback election.

non-participating candidate means a person who was a candidate at the original election and is neither an eligible candidate nor a previously elected councillor.

original election, in relation to a vacancy, means the ordinary election of councillors in respect of which the vacancy has occurred at which the vacating councillor was elected or in a case where the vacating councillor was elected under this Schedule, the councillor who was the predecessor (whether immediate, intermediate, or original) of that councillor, was elected.

previously elected councillor means a person who—

- (a) was elected as a councillor at the original election, or
- (b) was declared elected as a councillor under this Schedule after the original election.

returning officer means the person conducting the countback election in accordance with section 291A(4) of the Act.

vacating councillor means the person whose departure created the casual vacancy (even if that person never became a councillor).

Note. If a candidate who is nominated for election to a civic office in respect of a ward or area dies after the day when the poll at a contested election closes, but before the declaration of the election, the candidate is a “vacating councillor” even if that person never became a councillor by operation of section 233(2)(a) of the Act.

2 Notice of casual vacancy

Note. Section 285 of this Regulation requires the general manager of a council of the area to give notice of a casual vacancy to the Electoral Commissioner within 7 days of its occurrence.

- (1A) After a casual vacancy occurs that is to be filled by a countback election, the general manager of the council concerned must, in relation to an election administered by an electoral services provider, give notice of the vacancy to the electoral services provider within 7 days.
- (1) After a casual vacancy occurs that is to be filled by a countback election, the electoral services provider concerned (in relation to an election administered by an electoral services provider) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner) must—
 - (a) give notice of the vacancy to the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected or, if it is not possible for the returning officer to conduct the countback election, the substitute returning officer at that earlier election, or
 - (b) if not possible for that returning officer or that substitute returning officer to conduct the countback election, appoint a returning officer in accordance with the Act.

Local Government (General) Regulation 2021 [NSW]
Schedule 9A Countback elections

- (2) The notice under subsection (1) must be given or appointment made—
 - (a) in relation to an election administered by an electoral services provider—within 14 days of the electoral services provider being notified of the casual vacancy under subsection (1A), or
 - (b) in relation to an election administered by the Electoral Commissioner—within 14 days of the Electoral Commissioner being notified of the casual vacancy under section 285 of this Regulation.
- (3) Within 14 days of being given notice or being appointed, the returning officer who is to conduct the countback election must—
 - (a) arrange for the publication of a notice of the casual vacancy as follows—
 - (i) in relation to an election administered by an electoral services provider—on both the council’s website and the electoral services provider’s website,
 - (ii) in relation to an election administered by the Electoral Commissioner—on the websites of the Electoral Commissioner and the relevant council, and
 - (b) give notice in accordance with this section to each person (at the person’s last known address or by email to an email address specified by the person for the giving of notice of this kind) who, in the opinion of the returning officer, may be entitled to make an application under this Schedule in relation to the vacancy.
- (4) The notice under subsection (3) must—
 - (a) declare that a casual vacancy in the office of a specified councillor exists that is to be filled by a countback election, and
 - (b) advise that a person may apply to be a candidate in accordance with this Schedule, and
 - (c) specify the date and time that applications close, and
 - (d) specify the date, time and place for the conduct of the countback election, and
 - (e) advise that an eligible candidate is entitled to appoint scrutineers for the countback election, and
 - (f) give the contact details of the returning officer.
- (5) The date for the conduct of the countback election must be the date which in the opinion of the returning officer is the earliest practicable date to conduct the countback election, but is—
 - (a) at least 14 days after the date of the publication of the notice of the relevant council’s website, and
 - (b) not more than 49 days after the date of the casual vacancy occurring.

3 Candidates for casual vacancy

- (1) A person may apply to be a candidate in the countback election if the person—
 - (a) was a candidate at the original election, and
 - (b) did not withdraw the person’s nomination from, and was not elected at, that election, and
 - (c) is still eligible to be elected as a councillor at the close of applications.
- (1A) A person elected to the office of councillor or mayor at the original election, or at a countback election under this Schedule, who subsequently vacates the office by resignation or disqualification may not apply to be a candidate in a subsequent countback election.

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- (2) An application under this section is to be made in the way approved by the election manager and must contain—
 - (a) a statement by the applicant that he or she consents to be a councillor if elected, and
 - (b) a declaration that the applicant is still eligible to become a councillor.
- (3) An application must be lodged with the returning officer before noon on the 10th day after the day on which public notice of the vacancy was given under this Schedule (the *close of applications*).
- (4) An applicant may withdraw his or her application by giving the returning officer written notice of withdrawal in the way approved by the election manager before applications close.
- (5) An application or a withdrawal of an application under this section may be made by electronic means approved by the election manager.

4 Publication of candidates' details

If one or more persons have applied to be a candidate in accordance with this Schedule, the returning officer must, as soon as practicable after the close of applications—

- (a) publicly produce all the applications and declare each person who has duly applied to be a candidate (the *eligible candidates*), and
- (b) arrange for a notice containing particulars relating to each candidate to be published on the website of the relevant council.

5 Determination of candidate to fill casual vacancy

- (1) If there is only one eligible candidate in relation to a casual vacancy, the returning officer must declare the candidate elected.
- (2) If there are no candidates in relation to a casual vacancy—
 - (a) the returning officer is to declare that there are no candidates and inform the general manager of the relevant council accordingly, and
 - (b) the countback election fails.
Note. Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.
- (3) If there is more than one eligible candidate in relation to a casual vacancy, a countback election must be conducted in accordance with Part 2.

6 Filling of multiple casual vacancies

- (1) If there is more than one casual vacancy to be filled at any time, the casual vacancy that occurred first is to be filled first.
- (2) If, in the opinion of the returning officer, it is impossible to determine which vacancy occurred first, the vacating councillor who was elected first (either at the same election or in point of time) is deemed to have left office before the other vacating councillor or councillors.
- (3) If it is still not possible to determine which vacancy occurred first despite subsection (2), the returning officer must determine which casual vacancy is to be filled first by an approved method of random selection (including by electronic means).
- (5) The returning officer may comply with section 5 of this Schedule in respect of a casual vacancy even while the returning officer or another returning officer is complying with that section in respect of another casual vacancy.

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Part 2 Countback procedures

7 Casual vacancy to be filled by recount

- (1) The countback election is to be conducted by a recount of the votes on the ballot-papers used in the counting of votes at the original election and the result is to be ascertained in accordance with Schedule 5.
- (2) On the recount under subsection (1) a preference indicated on a ballot-paper for a previously elected councillor whose seat has become vacant is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (3) If on the recount under subsection (1) a non-participating candidate is elected that election has no effect and the returning officer is to terminate that recount and repeat the procedure of recounting the votes on the ballot-papers until an eligible candidate is elected.
- (4) On a recount under subsection (3) a preference indicated on a ballot-paper for—
 - (a) a previously elected councillor whose seat has become vacant, or
 - (b) a non-participating candidate who has been elected on the recount under subsection (1) or on a previous recount under subsection (3),is to be disregarded and the ballot-paper is to be treated as if the numeral indicating any subsequent preference had been altered accordingly.
- (4A) If, on any recount under this Schedule, more than one candidate would be elected, the following applies instead—
 - (a) only one candidate is taken to be elected, being the candidate who has the highest number of votes,
 - (b) if 2 or more candidates have an equal number of votes—
 - (i) if the number of votes at the last count or transfer was unequal—the candidate who had the highest number of votes at the last count or transfer at which the candidates had an unequal number of votes is taken to be elected, or
 - (ii) otherwise—the elected candidate is to be determined by a method of random selection, including by electronic means, approved by the election manager.
- (5) A recount under this Schedule does not affect the election of a previously elected councillor and where a previously elected councillor is elected or excluded during a recount that election or exclusion has effect for the purposes of the continuation of the recount and for those purposes only.
- (6) If no recount under subsection (1) or (3) results in the election of an eligible candidate—
 - (a) the returning officer is to declare that the countback election has failed, and
 - (b) inform the general manager of the relevant council accordingly.

Note. Section 291A(5)(b) of the Act provides that if a countback election fails a by-election must be held to fill the casual vacancy.

8 Declaration of result

- (1) As soon as possible after the conclusion of the countback election, the returning officer must—
 - (a) inform the persons present of the result, and
 - (b) immediately notify the election manager of the result, and

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- (c) inform the participating eligible candidates (in person, in writing, by facsimile, by telephone, by email, by text message or in any other way) as soon as practicable after the result is ascertained—
 - (i) of the result of the countback, and
 - (ii) when the returning officer's declaration under this section will be available for inspection at the office of the relevant council, and
 - (iii) that the information contained in a notice under subsection (5) is to be published on the election manager's website for at least one month.

Note. Section 353 (Recount) of this Regulation does not apply to a countback election.

- (2) The election manager is to approve of the returning officer's declaring of the countback election in writing as soon as practicable after the notification of the result.
- (3) The declaration is to be signed by the returning officer and is to state the number of votes recorded for each candidate and the names of the candidate declared elected.
- (4) After the election is declared—
 - (a) the election manager must deliver or send a copy of the written declaration to—
 - (i) the Secretary, and
 - (ii) the Chief Executive Officer of Local Government NSW, and
 - (iii) the relevant general manager, and
 - (iv) for an election administered by an electoral services provider—the Electoral Commissioner, and
 - (b) the general manager of the council must display the written declaration in a conspicuous position at the office of the relevant council.
- (5) The election manager must cause the information in the declaration to be published on the election manager's website for at least one month.

10 Application of other provisions

- (1) The following provisions of this Regulation apply to a countback election with all necessary modifications—
 - (a) section 337 (Scrutineers),
 - (a1) section 346 (Persons present at scrutiny and count),
 - (b) section 365 (Obstruction of election officials),
 - (c) section 368 (Persons present in polling place),
 - (d) section 369 (Misconduct by scrutineers),
 - (e) section 370 (Misconduct at polling place or pre-poll voting office).

Note. Section 329 (Can the holder of a civic office be dismissed?) of the Act applies to a person holding civic office who has been elected at a countback election.
- (2) For the avoidance of doubt, sections 353 (Recount), 354 (Who pays for the recount?) and 355 (Result of recount) of this Regulation do not apply to a countback election.

Part 3 Miscellaneous

11 Costs

Expenses incurred by the election manager in connection with a countback election are to be met by the council.

4.4 LOCAL GOVERNMENT NEW SOUTH WALES SPECIAL CONFERENCE

Record No: I21/435

OFFICER'S RECOMMENDATION

That

- A. The Mayor and Chief Executive Officer attend the Local Government NSW Special Conference to be held 28 February to 2 March 2022.
- B. Council nominate and authorise Cr _____ and Cr _____ and as the remaining voting members.
- C. Council authorise the expenditure and allocate the approximate amount of \$12,303.20 in the 2021/22 Financial Year budget with funding to be provided from the Mayor and Councillor conferences finance category.
- D. Council determine whether Council wishes to submit any strategic motions that impact the broader local government sector.

ISSUES

Local Government New South Wales (LGNSW) is hosting a Special Conference from 28 February to 2 March 2022 as a follow up to the online 2021 Annual Conference held on 9 November 2021. It is hosted by the City of Sydney at the Hyatt Regency, Sydney.

RISK ASSESSMENT

Risk Type	Current Risk	Expected Risk	Within Accepted
External Political Environment	Low	Low	Yes
Financial Sustainability	Low	Low	Yes
Legislative Governance and Compliance	Low	Low	Yes
Reputation and Image	Low	Low	Yes

The recommendations to attend are within acceptable risk parameters.

FINANCIAL IMPACTS

	Amount	Details	
Estimated Cost	\$12,303.20	Registration	\$3916.00
		Conference Dinner	\$704.00
		Accommodation for three nights	\$3985.20
		Forum	\$220.00
		ALGWA Breakfast	\$308.00
		Travel Costs	\$2520.00
		Meals	\$650.00

The costs associated with this annual event contained within the adopted budget for elected members' administration.

RESPONSIBLE OFFICER

Executive Assistant to Chief Executive Officer, Mayor and Councillors

OPTIONS CONSIDERED

The event is not compulsory however attendance and participation are recommended given the benefits the sector and networking opportunities.

There are no options for remote attendance.

IMPLEMENTATION PLANS

Registration, travel, accommodation and meal bookings will be facilitated by the Executive Office

BACKGROUND

The conference is the annual policy-making event for NSW general-purpose councils and associate members and is the main policy making event for the local government sector. Voting delegates must be registered to attend the conference and registered as a voting delegate. Snowy Monaro Regional Council must have three voting delegates in attendance for voting and motions during formal business sessions.

NSW regional, country and metropolitan councils attend with an anticipated 800 attendees from across the state, inclusive of mayors, councillors, general managers and senior staff.

Attendance at the Special Conference will enable direct input in to the development of policy and influence the future direction of our councils and committees across the sector. Further, the conference provides an excellent opportunity for networking and information gathering.

ATTACHMENTS

Nil.
