

13 REPORT OF THE CHIEF EXECUTIVE OFFICER

13.1 Election of Mayor

CSP Objective: Outcome 5.2: Governance is transparent and builds trust

CSP Strategy: 5.2.1 Build strong relationships and ensure our partners and community share the responsibilities and benefits of putting plans into practice.

Delivery Program: 5.2.1.2 Support good governance through systems and processes for legislative compliance.

Summary

This report advises the procedure for the election of the Mayor.

Financial implications

Not applicable.

Risk implications

Election of the Mayor by councillors must follow the process set out in Schedule 7 of the Local Government (General) Regulation 2021 to ensure fairness and transparency.

Policy

Local Government Act 1993.

Schedule 7 of the Local Government (General) Regulation 2021 – attached.

Consultation (internal)

N/A

Communication/Community engagement

N/A

Attachments

- 1 Local Government (General) Regulation 2021 - Schedule 7 Election of Mayor by Councillors [↓](#)
- 2 Nomination form for position of Mayor for the period to September 2026 - pro forma [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. receive written nominations for the Office of Mayor for the period to September 2026.

Report of the Chief Executive Officer

13.1 Election of Mayor (cont)

2. determine the form of election, if required.
3. thereafter, proceed with the election of the Mayor.
4. declare the outcome of the election at the meeting.
5. send the results to the Secretary and Chief Executive Officer of Local Government NSW.

Background

Section 230 of the Local Government Act 1993 states that the term of office for a Mayor elected by Councillors is for 2 years.

Section 290(1)(b) of the Local Government Act requires that mid-term mayoral elections are held in the month of September. This means that the mid-term mayoral elections will need to be held in September 2026. The Mayor elected at the mid term mayoral election will hold office until the election in September 2028.

Schedule 7 of the Local Government (General) Regulation 2021 sets out the procedures for the election of a Mayor by Councillors. The Chief Executive Officer is appointed as the Returning Officer for such an election. Nominations can be made without notice, must be made in writing by two or more Councillors (one of whom may be the nominee) and signed by the nominee. The nomination is not valid unless the nominee has indicated consent to the nomination in writing.

A “pro forma” nomination form has been prepared and circulated with this business paper (attached) for Councillors to use if so desired. There is no necessity to use this form, but the criteria detailed above must be met for a nomination to be valid. The nomination forms must be delivered to the Chief Executive Officer and can be delivered at any time up to consideration of this item at the meeting. Pro forma nomination forms will also be available at the Council meeting.

If only one Councillor is nominated, that Councillor is elected as Mayor. If more than one Councillor is nominated, Council must determine the form of election to be held:

- Preferential balloting (voting “1”, “2”, “3” in order of preference – secret ballot)
- Ordinary ballot (“First Past the Post” by secret ballot)
- Open voting (“First Past the Post” by show of hands).

Schedule 7 also describes how each of these forms of election are counted. Councillors are able to determine the preferred method of voting, and an amendment to the motion would be required to be put to reflect the preferred method to be used. In prior terms Councillors have opted for the first past the post by secret ballot option.



Local Government (General) Regulation 2021

Current version for 2 September 2024 to date (accessed 24 September 2024 at 16:05)

Schedule 7

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.

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 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.

To the Chief Executive Officer
Kiama Municipal Council
PO Box 75
KIAMA NSW 2533

Nomination for position of Mayor for the period to September 2026

Please note that the Councillors whose signatures appear below formally nominate Councillor _____ for the position of Mayor of Kiama Council for the period to September 2026.

Signed:

Cr name: _____ Signature: _____

Cr name: _____ Signature: _____

I, Councillor _____ formally consent to this nomination being made on my behalf.

Dated: _____ Cr signature: _____

13.2 Election of Deputy Mayor

CSP Objective: 4 Responsible Civic Leadership that is Transparent, Innovative and Accessible

CSP Strategy: 4.4 Ensure a policy framework exists which meets all legislative requirements and community expectations

Delivery Program: 4.4.1 Ensure corporate legislative compliance

Summary

This report advises of the procedure for the election of the deputy mayor.

Financial implications

Not applicable.

Risk implications

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 which may improve any risk exposure to Council in some situations.

Policy

Local Government Act 1993

Schedule 7 of the Local Government (General) Regulation 2021

Consultation (internal)

N/A

Communication/Community engagement

N/A

Attachments

- 1 Nomination form for position of deputy mayor for the determined period - pro forma [↓](#)

Enclosures

Nil

RECOMMENDATION

That Council:

1. determine the term of the Deputy Mayor.
2. proceed with the election of a Deputy Mayor for the determined term and that such election be conducted in the same manner as that which applied to the election of the Mayor.
3. declare the outcome of the election at the meeting.

Report of the Chief Executive Officer

13.2 Election of Deputy Mayor (cont)

4. [send the results to the Secretary and Chief Executive Officer of Local Government NSW.](#)

Background

Section 231 of the Act provides that Council may elect one of its members as the Deputy Mayor for the Mayoral term or for a shorter term if so resolved. Council policy has been to formally elect a Deputy Mayor each year.

The Deputy Mayor may act in the Office of the Mayor on the Mayor's request or during such time (if any) as the Mayor is prevented by absence from so doing, or during such time as a casual vacancy exists in the Office of Mayor.

While acting in place of the Mayor, the Deputy Mayor may exercise any function of that office. Section 249(5) of the Act provides that Council may pay a fee to the Deputy Mayor where that person acts in the Office of Mayor. Any such fee must be approved and determined by Council and is deducted from the Mayor's fee.

Council may determine the manner of election for the position of Deputy Mayor as detailed in the item dealing with the Mayoral election. A proforma nomination form is attached for Councillors' use.

Item 13.2

To the Chief Executive Officer
Kiama Municipal Council
PO Box 75
KIAMA NSW 2533

Item 13.2

Nomination for position of Deputy Mayor for the determined period

Please note that the Councillors whose signatures appear below formally nominate Councillor _____ for the position of Deputy Mayor of Kiama Council for the period determined at the Council meeting held on 8 October 2024.

Attachment 1

Signed:

Cr name: _____ Signature: _____

Cr name: _____ Signature: _____

I, Councillor _____ formally consent to this nomination being made on my behalf.

Dated: _____ Cr signature: _____

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13.3 Managing casual councillor vacancies within 18 months of the election

CSP Objective: Outcome 5.2: Governance is transparent and builds trust

CSP Strategy: 5.2.1 Build strong relationships and ensure our partners and community share the responsibilities and benefits of putting plans into practice.

Delivery Program: 5.2.1.2 Support good governance through systems and processes for legislative compliance.

Item 13.3

Summary

Under the Local Government Act (1993) (the LG Act), councils must, by resolution, declare that casual vacancies occurring in the office of a councillor within 18 months of the election are to be filled by a countback of votes cast at the election if councils want to fill vacancies by these means. Councils that do not resolve to fill vacancies using a countback at their first meeting after the election will be required to fill vacancies using a by-election.

Financial implication

A countback process would be administered by the NSW Electoral Commission returning officer and likely to incur only nominal costs calculated on an hourly basis to undertake and advise the countback.

The alternative of a by-election would be administered by the Electoral Commission and incur costs. It is acknowledged that this does allow an opportunity for voters to determine their preferred democratic representation at that point in time.

Risk implication

Adoption of the proposed resolution to utilize a count-back method would mitigate the significant financial and reputational risks associated with having to undertake a by-election within 18 months of the last election.

Policy

Local Government Act (1993) Sections 291A – 295

Consultation (internal)

N/A

Communication/Community engagement

N/A

Attachments

Nil

Enclosures

Nil

Report of the Chief Executive Officer

13.3 Managing casual councillor vacancies within 18 months of the election (cont)

RECOMMENDATION

That Council:

1. determines, should a casual vacancy in the office of a Councillor occur within 18 months after the 14 September 2024 ordinary election, whether the casual vacancy will be filled by a countback of votes cast at the last election for that office or a by-election is held.
2. directs the Chief Executive Officer to notify the NSW Electoral Office of the Council's decision within 7 days of Council's decision.

Item 13.3

Background

The Local Government Act (1993) includes provisions for appointing Councillors in the event that casual vacancies occur during the term of Council. This report focuses on the first 18 months of the Council term (Sections 291A and 292). Councillors can choose to fill the vacancy by a countback of votes cast at the 14 September 2024 local government election or run a by-election.

Relevant legislation

Relevant extracts from the LG Act are provided below and summarised here:

- Section 291A: Defines the process for using a countback process to replace a vacant Councillor position, which would be facilitated by the Electoral Commission returning officer.
- Section 292: Defines the alternative process of filling the vacancy via a by-election.
- Section 295: Outlines the process for filling a casual vacancy of the Mayor elected by Councillors.

291A Countback to be held instead of by-election in certain circumstances

- (1) This section applies to a casual vacancy in the office of a councillor if-
 - (a) the casual vacancy occurs within 18 months after the date of the last ordinary election of the councillors for the area, and
 - (b) the council has at its first meeting following that ordinary election of councillors, by resolution, declared that any such casual vacancy is to be filled by a countback of votes cast at the last election for that office.
- (2) ... [Not Relevant]
- (3) A casual vacancy to which this section applies is to be filled by a countback election conducted in accordance with the regulations.
- (4) A countback election to fill a casual vacancy to which this section applies must be conducted--
 - (a) if the election at which the person whose departure created the casual vacancy was elected was administered by the Electoral Commissioner--by a returning officer appointed by the Electoral Commissioner, or
 - (b) if the election at which the person whose departure created the casual vacancy was elected was administered by a returning officer appointed by an electoral services provider engaged by the council--by a returning officer appointed by the electoral services provider.

Report of the Chief Executive Officer

13.3 Managing casual councillor vacancies within 18 months of the election (cont)

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- (5) If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election--
- (a) the returning officer must notify the general manager of the council concerned, and
 - (b) a by-election in accordance with this Part must be held to fill the casual vacancy.
- (5A) If an electoral services provider engaged by the council is unable to appoint a returning officer for the purposes of subsection (4)(b), a by-election in accordance with this Part must be held to fill the casual vacancy.
- (6) This section does not apply to a casual vacancy in the office of a councillor if the vacancy occurs before the day prescribed for the purposes of this section by the regulations.

292 When is a by-election to be held?

A by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors of an area is to be held on a Saturday that -

- (a) falls not later than 3 months after the vacancy occurs, and
- (b) is fixed by the general manager (in relation to an election administered by the general manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner).

295 Casual vacancy in office of mayor elected by the councillors

- (1) If a casual vacancy occurs in the office of a mayor elected by the councillors, the vacancy is to be filled at a meeting of the council to be held within 14 days after the occurrence of the vacancy.
- (2) If the councillors fail to elect a mayor as required by this section, the Governor may appoint one of the councillors as the mayor.

How the countback election works

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.

The returning 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 is

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.

Report of the Chief Executive Officer

13.3 Managing casual councillor vacancies within 18 months of the election (cont)

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.

How a by-election works

A by-election is run the same way as the recent local government elections. The by election would be conducted by the NSW Electoral Commission in accordance with the *Electoral Act 2017*.

To run a by-election a date would be set, nominations called for, public notification of candidates made, polling arrangements (including venue hire, polling staff, distribution of ballot papers, etc), the count, declaration of results and post-election procedures. Voting is compulsory and the costs may be similar to the cost of a full election (approx. \$220,000).

Conclusion

Councillors need to determine how to deal with casual vacancies occurring in the office of a councillor within 18 months of the election, whether that be by countback or a by-election.