

REPORT TO COUNCIL

Procedure for Election of Mayor and Deputy Mayor by Councillors (A04/0335)

Report dated 9 September 2006 from the Acting General Manager about the procedure for electing the Mayor and Deputy Mayor.

Recommendation: That the information be received and noted.

BACKGROUND

Council's Code of Meeting Practice determines the procedures for the business of Council and Committee meetings. It also includes the procedures for the election of Mayor and Deputy Mayor by Councillors. Council has a new Code in draft form currently on exhibition until 6 October 2006. However there is no practical difference between the new Code and the old Code for the purpose of the Mayoral election.

The relevant sections of the existing Code are attached at Appendix 1. The Code expresses the requirements of the Local Government Act 1993 and the Local Government (General) Regulation 2005.

The Returning Officer for the election of the Mayor and Deputy Mayor by Councillors is the General Manager; however, the General Manager can appoint another person to be Returning Officer.

To assist you in understanding the various procedures for election and requirements for voting, I have summarised key elements.

The Mayor

A Council must have a Mayor.

The Mayor elected by the Councillors holds the office of Mayor for one year subject to the Act. The period of office commences on the day the Councillor is declared to be elected as Mayor. It becomes vacant when the person's successor is declared to be elected to the office.

The Deputy Mayor

Councillors may elect a person from among their number to be the Deputy Mayor. The term can be for the period of the Mayoral term or a shorter term. The Deputy Mayor exercises functions of the Mayor at the request of the Mayor or if the Mayor is prevented by illness, absence or otherwise from exercising these functions.

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Nomination Forms

Under the Act, Councillors may be nominated without notice for election as Mayor or Deputy Mayor. The nomination must be in writing by two or more Councillors (one of whom may be the nominee) and is not valid unless the nominee has indicated consent to the nomination in writing. The nomination forms can be delivered to the Returning Officer any time up to and including the calling of nominations for the election. I will then announce the names of the nominees before proceeding to election. I have attached copies of the nomination paper which will be used for the election of the Mayor. It will also be used for the election of Deputy Mayor if Council determines to elect this position.

Method of Voting

Council is required to determine the method of voting at the meeting at which the election is held. If more than one nomination is received, the method of voting can be either by open voting method, ordinary ballot method or preferential ballot method.

Once the decision is taken by Council on the method of voting, I will then assume the role of Returning Officer and carry out those duties in accordance with the Act.

In the event that Council chooses the ordinary ballot or preferential voting method, I have prepared a ballot paper which will be distributed at the meeting. I will give clear instructions to Councillors on their requirements for voting in the election and each ballot paper will include instructions on the face of the paper. On counting of the ballot papers, I will use the relevant provisions of the Local Government Act and the Local Government (General) Regulation 2005 to determine formality and informality of ballot papers. These provisions are outlined in Appendix 1.

The instructions about how to cast a formal vote will need to be borne in mind when casting the vote on the prescribed ballot paper.

If Council decides to use Ordinary Ballot or Preferential Ballot method, I will be conducting the election on the side of the Chamber at a separate table, with the ballot box for the return of the ballot papers and appropriate documents for the recording of votes. I will check each vote for formality, count the votes for the Councillors nominated, and declare the election, so long as there is no equal number of votes. In that case, the Returning Officer will need to then proceed to choose the candidate by lot.

Choosing by Lot

The names of two candidates who have equal number of votes will be written on a similar slip of paper by the Returning Officer then folded by the Returning Officer so as to prevent the names from being seen. The slips of paper are then mixed and one is drawn at random by the Returning Officer. The candidate whose name is on the drawn slip is chosen.

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Should there be more than two candidates with equal votes, please refer to Appendix 1 for a summary of the procedures.

Results

The result of the elections (including the name of the candidate elected as Mayor or Deputy Mayor) will be announced to the Councillors at the Council meeting by the Returning Officer and the next day sent to the Director General of the Department of Local Government and to the Secretary of the Local Government and Shires Associations of New South Wales.

Recommendation: That the information be received and noted.



Meredith Wallace
ACTING GENERAL MANAGER

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APPENDIX 1

The following is an extract from Waverley Council's Code of Meeting Practice:

Mayoral Elections

Election of Mayor by Councillors

- (1) The Mayor is a person elected to the office of mayor by:
 - (a) the Councillors from among their number, unless there is a decision in force under Chapter 9 of the Local Government Act which provides for the election of the Mayor by the electors.
 - (b) the electors, if such a decision is in force.

When is an election of a mayor by Councillors to be held

- (1) The election of the Mayor by the Councillors is to be held:
 - (a) if it is the first election after an ordinary election of Councillors, within three weeks of the ordinary election; or
 - (b) if it is not that first election or an election to fill a casual vacancy, during the month of September.
- (2) If the Councillors fail to elect a Mayor as required by the Act, the Governor may appoint one of the Councillors as the Mayor.

Casual vacancies in the office of Mayor elected by Councillors

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

Election of Deputy Mayor

- (1) Councillors may elect a person from among their number to be the Deputy Mayor. The person may be elected for a mayoral term or a shorter term.

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- (2) 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 the Mayor.
- (3) Councillors may elect a person from among their number to act as Deputy Mayor if the Deputy Mayor is prevented by illness, absence or otherwise from exercising a function under the Act, or if no Deputy Mayor has been elected.

Procedure for Election of Mayor by Councillors

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) and 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.

Election

- (1) If only one Councillor is nominated, that Councillor is elected.
- (2) If more than one Councillor is nominated, the election 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 Council resolves on the method of voting.
- (4) In this clause "ballot" has its normal meaning of secret ballot and "open voting" means voting by a show of hands or similar means.

Returning Officer

- (1) The General Manager (or a person appointed by the General Manager) is the Returning Officer.

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Election Process using Ordinary Ballot or Open Voting

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 (5) of the Local Government (General) Regulation as if it were a ballot paper referred to in that clause.
- (3) Clause 345(1)(b) of the Regulation states that:

A ballot paper of an elector at an election is informal if it has not been initialled on the back by the Returning Officer or an electoral official.

- (4) Clause 345(c) of the Regulation states as follows:

A ballot paper of an elector at an election is informal if it contains a mark or writing which, in the Returning Officer's opinion would enable the elector to be identified.

- (5) Clause 345(5) of the Regulation states as follows:

Despite clause (1), a ballot paper of an elector at an election is not informal by virtue of the existence of an unnecessary mark on the ballot paper if, in the opinion of the Returning Officer, the elector's intention is clearly indicated on the ballot paper.

- (6) An informal ballot paper must be rejected at the count.

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.

Count 3 of 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.

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- (3) If, after that, 3 or more candidates still remain, the procedure set out in clause (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 clause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

Election Process Using Preferential Ballot

Marking of ballot papers

- (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 the candidates.
- (2) The formality of a ballot paper is to be determined in accordance with Clause 345(1)(b) and (c) and 5 of the Regulation as if it were a ballot paper referred to in that clause.

Clause 345(1)(b) states as follows:

A ballot paper of an elector at an election is informal if it has not been initialled on the back by the Returning Officer or an electoral official.

Clause 345(1)(c) states as follows:

A ballot paper of an elector at an election is informal if it contains a mark or writing which, in the Returning Officer's opinion, would enable the elector to be identified.

Clause 345(5) states as follows:

Despite clause (1), a ballot paper of an elector at an election is not informal by virtue of the existence of an unnecessary mark on the ballot paper if, in the opinion of the Returning Officer, the elector's intention is clearly indicated on the ballot paper.

An informal ballot paper must be rejected at the count.

Count

- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.

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- (2) If not, the candidate with the lowest number of first reference 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 her 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 clause "absolute majority" in relation to votes, means a number which is more than one-half of the number of unexhausted formal ballot papers.

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.

Choosing by Lot

- (1) 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.

Result

- (1) 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 being held by the Returning Officer; and
 - (b) to be delivered or sent to the Director-General of the Department of Local Government and to the Secretary of the Local Government and Shires Association of New South Wales.