



PORT MACQUARIE-HASTINGS
COUNCIL



Extraordinary Council

Business Paper

date of meeting: Thursday 13 January 2022

location: Council Chambers
17 Burrawan Street
Port Macquarie

time: 12:00 noon

Note: Council is distributing this agenda on the strict understanding that the publication and/or announcement of any material from the Paper before the meeting not be such as to presume the outcome of consideration of the matters thereon.

Community Vision

A sustainable high quality of life for all

Community Mission

Building the future together
People Place Health Education Technology

Council's Corporate Values

- ★ Sustainability
- ★ Excellence in Service Delivery
- ★ Consultation and Communication
- ★ Openness and Accountability
- ★ Community Advocacy

Community Themes

- ★ Leadership and Governance
- ★ Your Community Life
- ★ Your Business and Industry
- ★ Your Natural and Built Environment

Extraordinary Council Meeting

Thursday, 13 January 2022

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Item: 01**Subject: ACKNOWLEDGEMENT OF COUNTRY**

"I acknowledge that we are gathered on Birpai Land. I pay respect to the Birpai Elders both past and present. I also extend that respect to all other Aboriginal and Torres Strait Islander people present."

Item: 02**Subject: REMOTE ATTENDANCE AT MEETING**

RECOMMENDATION

That Council accede to the request of Councillors to attend the meeting by remote means.

Item: 03**Subject: APOLOGIES**

RECOMMENDATION

That the apologies received be accepted.

Item: 04
Subject: DISCLOSURES OF INTEREST

RECOMMENDATION

That Disclosures of Interest be presented

DISCLOSURE OF INTEREST DECLARATION

Name of Meeting:	
Meeting Date:	
Item Number:	
Subject:	
I, the undersigned, hereby declare the following interest:	
<input type="checkbox"/> Pecuniary: Take no part in the consideration and voting and be out of sight of the meeting.	
<input type="checkbox"/> Non-Pecuniary – Significant Interest: Take no part in the consideration and voting and be out of sight of the meeting.	
<input type="checkbox"/> Non-Pecuniary – Less than Significant Interest: May participate in consideration and voting.	
For the reason that:	
Name: Signed:	Date:
Please submit to the Governance Support Officer at the Council Meeting.	

(Refer to next page and the Code of Conduct)

Pecuniary Interest

- 4.1 A pecuniary interest is an interest that you have in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to you or a person referred to in clause 4.3.
- 4.2 You will not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision you might make in relation to the matter, or if the interest is of a kind specified in clause 4.6.
- 4.3 For the purposes of this Part, you will have a pecuniary interest in a matter if the pecuniary interest is:
- (a) your interest, or
 - (b) the interest of your spouse or de facto partner, your relative, or your partner or employer, or
 - (c) a company or other body of which you, or your nominee, partner or employer, is a shareholder or member.
- 4.4 For the purposes of clause 4.3:
- (a) Your "relative" is any of the following:
 - i) your parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - ii) your spouse's or de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child
 - iii) the spouse or de facto partner of a person referred to in paragraphs (i) and (i)
 - (b) "de facto partner" has the same meaning as defined in section 21C of the *Interpretation Act 1987*.
- 4.5 You will not have a pecuniary interest in relation to a person referred to in subclauses 4.3(b) or (c)
- (a) if you are unaware of the relevant pecuniary interest of your spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body, or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

Non-Pecuniary

- 5.1 Non-pecuniary interests are private or personal interests a council official has that do not amount to a pecuniary interest as defined in clause 4.1 of this code. These commonly arise out of family or personal relationships, or out of involvement in sporting, social, religious or other cultural groups and associations, and may include an interest of a financial nature.
- 5.2 A non-pecuniary conflict of interest exists where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your official functions in relation to a matter.
- 5.3 The personal or political views of a council official do not constitute a private interest for the purposes of clause 5.2.
- 5.4 Non-pecuniary conflicts of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. The onus is on you to identify any non-pecuniary conflict of interest you may have in matters that you deal with, to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with this code.
- 5.5 When considering whether or not you have a non-pecuniary conflict of interest in a matter you are dealing with, it is always important to think about how others would view your situation.

Managing non-pecuniary conflicts of interest

- 5.6 Where you have a non-pecuniary conflict of interest in a matter for the purposes of clause 5.2, you must disclose the relevant private interest you have in relation to the matter fully and in writing as soon as practicable after becoming aware of the non-pecuniary conflict of interest and on each occasion on which the non-pecuniary conflict of interest arises in relation to the matter. In the case of members of council staff other than the Chief Executive Officer, such a disclosure is to be made to the staff member's manager. In the case of the Chief Executive Officer, such a disclosure is to be made to the mayor.
- 5.7 If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes on each occasion on which the non-pecuniary conflict of interest arises. This disclosure constitutes disclosure in writing for the purposes of clause 5.6.
- 5.8 How you manage a non-pecuniary conflict of interest will depend on whether or not it is significant.
- 5.9 As a general rule, a non-pecuniary conflict of interest will be significant where it does not involve a pecuniary interest for the purposes of clause 4.1, but it involves:
- a) a relationship between a council official and another person who is affected by a decision or a matter under consideration that is particularly close, such as a current or former spouse or de facto partner, a relative for the purposes of clause 4.4 or another person from the council official's extended family that the council official has a close personal relationship with, or another person living in the same household
 - b) other relationships with persons who are affected by a decision or a matter under consideration that are particularly close, such as friendships and business relationships. Closeness is defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship.
 - c) an affiliation between the council official and an organisation (such as a sporting body, club, religious, cultural or charitable organisation, corporation or association) that is affected by a decision or a matter under consideration that is particularly strong. The strength of a council official's affiliation with an organisation is to be determined by the extent to which they actively participate in the management, administration or other activities of the organisation.
 - d) membership, as the council's representative, of the board or management committee of an organisation that is affected by a decision or a matter under consideration, in circumstances where the interests of the council and the organisation are potentially in conflict in relation to the particular matter
 - e) a financial interest (other than an interest of a type referred to in clause 4.6) that is not a pecuniary interest for the purposes of clause 4.1
 - f) the conferral or loss of a personal benefit other than one conferred or lost as a member of the community or a broader class of people affected by a decision.
- 5.10 Significant non-pecuniary conflicts of interest must be managed in one of two ways:
- a) by not participating in consideration of, or decision making in relation to, the matter in which you have the significant non-pecuniary conflict of interest and the matter being allocated to another person for consideration or determination, or
 - b) if the significant non-pecuniary conflict of interest arises in relation to a matter under consideration at a council or committee meeting, by managing the conflict of interest as if you had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29.
- 5.11 If you determine that you have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, when disclosing the interest you must also explain in writing why you consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- 5.12 If you are a member of staff of council other than the Chief Executive Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of your manager. In the case of the Chief Executive Officer, the decision on which option should be taken to manage a non-pecuniary conflict of interest must be made in consultation with and at the direction of the mayor.
- 5.13 Despite clause 5.10(b), a councillor who has a significant non-pecuniary conflict of interest in a matter, may participate in a decision to delegate consideration of the matter in question to another body or person.
- 5.14 Council committee members are not required to declare and manage a non-pecuniary conflict of interest in accordance with the requirements of this Part where it arises from an interest they have as a person chosen to represent the community, or as a member of a non-profit organisation or other community or special interest group, if they have been appointed to represent the organisation or group on the council committee.

SPECIAL DISCLOSURE OF PECUNIARY INTEREST DECLARATION

This form must be completed using block letters or typed.

If there is insufficient space for all the information you are required to disclose, you must attach an appendix which is to be properly identified and signed by you.

By <i>[insert full name of councillor]</i>	
In the matter of <i>[insert name of environmental planning instrument]</i>	
Which is to be considered at a meeting of the <i>[insert name of meeting]</i>	
Held on <i>[insert date of meeting]</i>	
PECUNIARY INTEREST	
Address of the affected principal place of residence of the councillor or an associated person, company or body <i>(the identified land)</i>	
Relationship of identified land to councillor <i>[Tick or cross one box.]</i>	<input type="checkbox"/> The councillor has interest in the land (e.g. is owner or has other interest arising out of a mortgage, lease, trust, option or contract, or otherwise). <input type="checkbox"/> An associated person of the councillor has an interest in the land. <input type="checkbox"/> An associated company or body of the councillor has interest in the land.
MATTER GIVING RISE TO PECUNIARY INTEREST¹	
Nature of land that is subject to a change in zone/planning control by proposed LEP <i>(the subject land²)</i> <i>[Tick or cross one box]</i>	<input type="checkbox"/> The identified land. <input type="checkbox"/> Land that adjoins or is adjacent to or is in proximity to the identified land.
Current zone/planning control <i>[Insert name of current planning instrument and identify relevant zone/planning control applying to the subject land]</i>	
Proposed change of zone/planning control <i>[Insert name of proposed LEP and identify proposed change of zone/planning control applying to the subject land]</i>	
Effect of proposed change of zone/planning control on councillor or associated person <i>[Tick or cross one box]</i>	<input type="checkbox"/> Appreciable financial gain. <input type="checkbox"/> Appreciable financial loss.

[If more than one pecuniary interest is to be declared, reprint the above box and fill in for each additional interest]

Councillor's Signature: **Date:**

This form is to be retained by the council's Chief Executive Officer and included in full in the minutes of the meeting

Last Updated: 3 June 2019

Important Information

This information is being collected for the purpose of making a special disclosure of pecuniary interests under clause 4.36(c) of the Model Code of Conduct for Local Councils in NSW (the Model Code of Conduct).

The special disclosure must relate only to a pecuniary interest that a councillor has in the councillor's principal place of residence, or an interest another person (whose interests are relevant under clause 4.3 of the Model Code of Conduct) has in that person's principal place of residence.

Clause 4.3 of the Model Code of Conduct states that you will have a pecuniary interest in a matter because of the pecuniary interest of your spouse or your de facto partner or your relative or because your business partner or employer has a pecuniary interest. You will also have a pecuniary interest in a matter because you, your nominee, your business partner or your employer is a member of a company or other body that has a pecuniary interest in the matter.

"Relative" is defined by clause 4.4 of the Model Code of Conduct as meaning your, your spouse's or your de facto partner's parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descendant or adopted child and the spouse or de facto partner of any of those persons.

You must not make a special disclosure that you know or ought reasonably to know is false or misleading in a material particular. Complaints about breaches of these requirements are to be referred to the Office of Local Government and may result in disciplinary action by the Chief Executive of the Office of Local Government or the NSW Civil and Administrative Tribunal.

This form must be completed by you before the commencement of the council or council committee meeting at which the special disclosure is being made. The completed form must be tabled at the meeting. Everyone is entitled to inspect it. The special disclosure must be recorded in the minutes of the meeting.

¹ Clause 4.1 of the Model Code of Conduct provides that a pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter, or if the interest is of a kind specified in clause 4.6 of the Model Code of Conduct.

² A pecuniary interest may arise by way of a change of permissible use of land adjoining, adjacent to or in proximity to land in which a councillor or a person, company or body referred to in clause 4.3 of the Model Code of Conduct has a proprietary interest

Item: 05.01**Subject: MAYORAL MINUTE - OPENING LAKE CATHIE****Mayor, Peta Pinson**

RECOMMENDATION**That Council:**

- 1. Undertake an urgent review of the adopted Lake Cathie Opening Strategy triggers to reduce the high level trigger from 1.6m to 1.4m to mitigate flood impacts on Council infrastructure.**
- 2. Continue to pursue the option to dredge the lake for recreational purposes and for beach nourishment.**
- 3. Urgently seek the appropriate approvals to affect a traditional opening of the lake, if closed and/or water quality has been determined to be a risk to public health and marine life, in December annually.**
- 4. Request the Chief Executive Officer to host a meeting of the key Government agencies/officers involved in the management of the Lake Cathie system and Councillors to discuss the future management of the lake.**
- 5. Request the Chief Executive Officer to provide a monthly update report to Council on the progress of Items 1 to 4 above.**

Discussion

The Lake Cathie Opening Strategy was developed in 1995. The Strategy was updated and reviewed in 2001, 2004/05 and 2011. Work is progressing on the development of the Coastal Management Program (CMP) for Lake Cathie/Lake Innes and Bonny Hills Estuary and Coastline with projects currently underway including:

- Hydrodynamic model update for Lake Cathie/Lake Innes commencing January 2022;
- Illaroo Coastal Hazard protection review and co-design - commenced with community engagement scheduled to commence early February 2022;
- Coastal recreational needs user analysis due to commence March 2022.

In addition, a significant portion of work has been undertaken in relation to bushfire recovery and impacts on the lake system particularly in relation to current situation and future impact on the acid sulphate potential of the system. Bathometric survey of the system has been undertaken in preparation for the hydrometric model, Coastsnap station monitoring continues and quarterly drone surveys of the erosion conditions of Lighthouse Beach from Middle Rock to 4WD access north of Lake Cathie are being carried out.

Lake Cathie lagoon is a much loved community asset and has been the subject of significant debate and studies for decades. The opening of Lake Cathie and water

quality in particular, is an issue that continues to be important to the community and one which has been consistently been raised and that continues to cause angst amongst the community and for Council in finding a solution to the issue of the quality of water in the lake and one which Council continues to struggle to be able to deliver a solution to.

The community is very frustrated by the perceived lack of action by both Council and the other government stakeholders responsible for the lake system and while I acknowledge that the system and the environment are very complex the community is demanding something be done now.

Our community has been very patient and has experienced a lot over the past few years with drought, fires, floods and a pandemic. Lake Cathie is the heart of the Lake Cathie community and a key tourist attraction for the area. The closed lake system and declining water quality is detracting from this area and the community and visitors' enjoyment of this area, particularly during the popular Christmas holiday period and this is having an economic impact on our community at a time when they need our support.

While the work continues on the CMP and in order to respond to the community's desire to seek the lake open and water quality improved, particularly in time for the busy Christmas holiday period, it is essential that Council take action now to ensure an opening can be undertaken before the 2022 Christmas holiday period.

Attachments

Nil

1 Leadership and Governance

What we are trying to achieve

A community that works together in decision making that is defined as ethically, socially and environmentally responsible.

What the result will be

We will have:

- A community that has the opportunity to be involved in decision making
- Open, easy, meaningful, regular and diverse communication between the community and decision makers
- Partnerships and collaborative projects, that meet the community's expectations, needs and challenges
- Knowledgeable, skilled and connected community leaders
- Strong corporate management that is transparent

How we will get there

- 1.1 Inform and engage with the community about what Council does using varied communication channels
- 1.2 Maintain strong partnerships between all stakeholders - local, state and federal — so that they are effective advocates for the community
- 1.3 Demonstrate leadership
- 1.4 Use innovative, efficient and sustainable practices
- 1.5 Ensure strong corporate and financial management that is transparent and accountable

Item: 06.01

Subject: CREATION OF OFFICE OF DEPUTY MAYOR

Presented by: Chief Executive Officer, Dr Clare Allen

Alignment with Delivery Program

1.3.1 Provide effective leadership and equity.

RECOMMENDATION

That Council:

1. Create the Office of Deputy Mayor.
2. Determine the term of the Office of Deputy Mayor to be the Mayoral term or a shorter term.
3. Elect the Deputy Mayor by way of preferential ballot, ordinary ballot or open voting, if more than one nomination for Deputy Mayor is received.

Executive Summary

Council can determine to create the Office of Deputy Mayor, under Section 231 of the *Local Government Act 1993*, for a period coinciding with the Mayoral term or a shorter period.

On the assumption that Councillors will wish to elect a Deputy Mayor, a nomination paper for Office of Deputy Mayor has been prepared and is provided with this report.

Discussion

Council can determine to create the Office of Deputy Mayor for a period coinciding with the Mayoral term or a shorter period.

Section 231 of the *Local Government Act 1993* ("the Act"), provides the following:

- 231
- (1) *The Councillors may elect a person from among their number to be the Deputy Mayor.*
 - (2) *The person may be elected for the Mayoral term or a shorter term.*
 - (3) *The Deputy Mayor may exercise any functions 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.*
 - (4) *The 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 this Section, or if no Deputy Mayor has been elected.*

On the assumption that Councillors will wish to elect a Deputy Mayor, a nomination paper for Office of Deputy Mayor has been prepared and is provided as Attachment 1 to this report.

Nomination papers may be delivered or sent to the Chief Executive Officer either prior to or at the Council Meeting. Additionally, Council will also be required to determine the term of the Office of Deputy Mayor.

Should there be only one (1) Councillor nominated for the Office of Deputy Mayor, in accordance with Schedule 7 Section 3(1) of the Local Government (General) Regulation 2005 that Councillor is elected as Deputy Mayor and no vote is required.

Should there be more than one (1) Councillor nominated for the Office of Deputy Mayor, Council is to determine whether the election is to be by preferential ballot, by ordinary ballot or by open voting.

Election Methods

Preferential Ballot

This method utilises ballot-papers. Councillors are to mark their votes by placing the numbers "1", "2" and so on against the candidate names so as to indicate the order of their preference for all the candidates.

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

If an absolute majority is not achieved, 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.

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, whom is then elected.

If, on any count of votes, there are two candidates in, or remaining in, the election and the numbers of votes cast for the two 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.

If, on any count of votes, there are three or more candidates in, or remaining in, the election and the numbers of votes cast for two 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.

Ordinary Ballot

This method utilises ballot-papers. The Returning Officer decides the manner in which votes are to be marked on the ballot-papers.

If there are only two candidates, the candidate with the higher number of votes is elected. If there are only two candidates and they are tied, the one elected is to be chosen by lot.

If there are three or more candidates, a vote is taken, the candidate with the lowest number of votes is excluded. If three or more candidates still remain further votes are taken with the candidate receiving the lowest number of votes being excluded until two candidates remain.

A further vote is taken of the two remaining candidates, the candidate with the higher number of votes is elected. If there are only two candidates and they are tied, the one elected is to be chosen by lot.

If at any stage during a count two or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

Open Voting

This method utilises a show of hands. The election procedure is the same as for the ordinary ballot method.

Definitions

Absolute majority: In relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

Ballot: In the context of this type of election has the meaning of a secret ballot.

Chosen by lot: If two candidates are tied (having equal numbers of votes) their names are written on similar slips of paper by the Returning Officer, the slips are folded by the Returning Officer so as to prevent the candidate 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.

Timing of Election

The election for Office of Deputy Mayor is to take place at the Council Meeting at which the Council determines the method of voting.

Options

Council can determine to create, or not create the Office of Deputy Mayor for a term equal to the Mayoral term or a shorter term.

Community Engagement and Internal ConsultationCommunity Engagement

There has been no external community engagement required for the subject of this report.

Internal Consultation

- Chief Executive Officer.
- Group Manager Governance.

Planning and Policy Implications

There are no planning or policy implications as a result of this report.

Financial and Economic Implications

There are no financial or economic implications as a result of this report.

Attachments

1.  Deputy Mayor Nomination Paper

Item: 06.02

Subject: FEBRUARY 2022 ORDINARY COUNCIL MEETING DATE

Presented by: Chief Executive Officer, Dr Clare Allen

Alignment with Delivery Program

1.3.1 Provide effective leadership and equity.

RECOMMENDATION

That Council:

- 1. Conducts the February 2022 Ordinary Council meeting at 5.30pm Wednesday 16 February 2022.**
- 2. Determine the times and dates of the remainder of Ordinary Council meetings for 2022 at the February 2022 Ordinary Council meeting.**

Executive Summary

In accordance with clause 3.2 of Council's Code of Meeting Practice, Council is required to set the frequency, time, date and place of its ordinary meetings.

A date for the February 2022 meeting was not previously determined to allow the availability of the new Council to be considered when setting this date.

Council must now determine the date and time of the February 2022 Ordinary Council meeting.

Discussion

Traditionally, Council has conducted Ordinary Council meetings on the third Wednesday of each month at 5.30pm, except January where no meeting has been held.

To allow the newly elected Council to determine the most appropriate date and time for Council to meet, a date for the February 2022 Ordinary Council meeting was not previously determined by Council. Accordingly, Council must determine a suitable date and time for the February 2022 Ordinary meeting.

Options

Council may conduct the February 2022 Ordinary Council meeting at the recommended date and time or at some other date or time in February.

Community Engagement and Internal Consultation

Nil.

Planning and Policy Implications

There are no planning and policy implications in relation to this report.

Financial and Economic Implications

There are no financial and economic implications in relation to this report.

Attachments

Nil

Item: 06.03

Subject: LOCAL GOVERNMENT NSW SPECIAL CONFERENCE

Presented by: Chief Executive Officer, Dr Clare Allen

Alignment with Delivery Program

1.3.1 Provide effective leadership and equity.

RECOMMENDATION

That Council:

- 1. Determine attendees for the Special Conference to be held between 28 February 2022 and 2 March 2022.**
- 2. Determine voting delegates for the Special Conference to be held between 28 February 2022 and 2 March 2022.**
- 3. Note that the Chief Executive Officer will also attend the Conference.**

Executive Summary

Local Government NSW postponed its in-person annual conference (now called 'Special Conference') from November 2021 due to the COVID-19 conditions at that time. An online Annual Conference was held on 29 November 2021 at which time the Financial Statements and the Annual Report were presented.

A Special Conference will be conducted from 28 February 2022 to 2 March 2022 at the Hyatt Regency, Sydney. The program for this event is attached as Attachment 1.

Council is entitled to four (4) voting delegates at the Conference. It is recommended that Council determine the attendees and voting delegates for this conference.

As in past years, it is also proposed that the Chief Executive Officer will also attend the Conference.

Discussion

The Local Government NSW (LGNSW) Annual Conference is the signature event of the year for all NSW Councils and provides a forum in which to debate important issues pertinent to our local communities. It also provides the opportunity to hear from State and Federal Government leaders, business representatives, community groups and academics. Unfortunately, due to the COVID-19 situation in NSW in November 2021, LGNSW postponed the 2021 event until 2022.

Voting Delegate Entitlements

Local Government NSW has confirmed that, as in previous years, Council will be entitled to four (4) voting delegates at the Conference. It is proposed that Council

determine four voting delegates for attendance at the conference. It is noted that Council could send more than four delegates to the conference however only the four nominated voting delegates will be able to vote on motions at the conference.

Options

Council could determine not to determine delegates, or choose to select more or less delegates to the Annual Conference, noting that the number of voting delegates is fixed at four (4) should more than four Councillors wish to participate.

Community Engagement and Internal Consultation

Nil

Planning and Policy Implications

There are no planning and policy implications in relation to this report.

Financial and Economic Implications

Funding is available in the Governance budget for attendance at this conference. Cost per attendee is \$1,094.50 plus travel, accommodation and expenses.

Attachments

1.  Local Government NSW Special Conference Program

Item: 06.04

Subject: COUNTBACK ELECTION

Presented by: Chief Executive Officer, Dr Clare Allen

Alignment with Delivery Program

1.3.3 Ensure there is appropriate management of risk to mitigate impact for Council and the community.

RECOMMENDATION

That Council make the following declaration:

Pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act) Port Macquarie-Hastings Council declares that casual vacancies occurring in the office of a Councillor within 18 months after the last ordinary election of Councillors for the Council on 4 December 2021 are to be filled by a countback of votes cast at that election for the office in accordance with section 291A of the Act and directs the Chief Executive Officer to notify the NSW Electoral Commission of the Council's decision within 7 days of the decision.

Executive Summary

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 (section 291A of the Act).

Discussion

Following the 2021 local government elections, councils will, for the first time, have the option of using a countback of votes cast at the last ordinary election to fill casual vacancies occurring in the offices of councillors in the first 18 months after the election.

This will allow councils to use a countback to fill vacancies at a lower cost than the cost of holding a by-election.

To exercise the option of using a countback to fill casual vacancies occurring in the first 18 months following the election, councils must resolve, at their first meeting after the election, to use a countback to fill casual vacancies. If councils do not resolve this at the first meeting after the election, they will be required to fill casual vacancies through a by-election.

Where councils resolve to fill casual vacancies using a countback in the first 18 months of their terms, the Chief Executive Officer is required under the *Local*

Government (General) Regulation 2021 (the Regulation) to notify the election manager of the council's ordinary election of the council's resolution within 7 days of the resolution. The Office of Local Government (OLG) have provided the wording for this resolution.

This option is in accordance with Sec 291A of the Act, which provides:

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) *This section does not apply to a casual vacancy in the office of a councillor if the councillor who vacated office was elected--*
 - a. *in an election using the optional preferential voting system (including the election of a mayor elected by the electors of an area), or*
 - b. *in an election without a poll being required to be held.*
- (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. *by the returning officer who conducted the election at which the person whose departure created the casual vacancy was elected, or*
 - b. *if that is not possible, by the substitute returning officer at that election, or*
 - c. *(Repealed)*
- (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.*
- (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.*

Countback Election 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.

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:

- The Electoral Commissioner is notified of a casual vacancy, within seven days of it occurring.
- A returning officer is appointed within 14 days of the notification of the vacancy.
- Casual vacancy notices are issued 2 to 14 days from the appointment of the returning officer.
- 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.
- The countback is conducted within 14 days of the vacancy notices being issued.
- 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

Countbacks are not available to fill casual vacancies in the office of a councillor where:

- the councillor who vacated office was elected at an election using the optional preferential voting system (i.e. elections where only one civic office is required to be filled such as the election of popularly elected mayors), or
- the councillor was elected at an uncontested election.

A by-election must be used to fill these vacancies.

Options

Council has two options to fill casual vacancies occurring in the office of a councillor within 18 months of the election:

1. Declare that casual vacancies occurring in the office of a councillor within 18 months of the last ordinary election of Council are to be filled by a countback of votes cast at that election; or
2. Make no declaration, which results in the requirement for a by-election to fill any vacancies occurring in the office of a councillor within 18 months of the election.

Community Engagement and Internal Consultation

External consultation has been undertaken with:

- The Office of Local Government
- Local Government NSW - Governance Network

Planning and Policy Implications

There are no planning and policy implications in relation to this report.

Financial and Economic Implications

If Council resolve to implement the countback option the cost is significantly lower than holding a by-election as it will require very few staff and does not require the leasing of venues. If Council does not resolve to implement the countback option and there is a casual vacancy in the first 18 months, a by-election will need to be held. Elections costs to Council in the past three elections include \$446,731 in the 2016 Local Government elections, \$327,901 for the Mayoral by-election in 2017, and the 2021 Local Government elections will cost approximately \$600,000. It is expected that any by-election as a result of not utilising a countback election could cost in the vicinity of \$500,000.

Attachments

Nil

4 Your Natural and Built Environment

What we are trying to achieve

A connected, sustainable, accessible community and environment that is protected now and into the future.

What the result will be

We will have:

- Effective management and maintenance of essential water, waste and sewer infrastructure
- A community that is prepared for natural events and climate change
- Sustainable and environmentally sensitive development outcomes that consider the impact on the natural environment
- Accessible transport network for our communities
- Infrastructure provision and maintenance that meets community expectations and needs
- Well planned communities that are linked to encourage and manage growth
- Accessible and protected waterways, foreshores, beaches and bushlands
- An environment that is protected and conserved for future generations
- Renewable energy options that are understood and accessible by the community

How we will get there

- 4.1 Provide (appropriate) infrastructure and services including water cycle management, waste management, and sewer management
- 4.2 Aim to minimise the impact of natural events and climate change, for example, floods, bushfires and coastal erosion
- 4.3 Facilitate development that is compatible with the natural and built environment
- 4.4 Plan for integrated transport systems that help people get around and link our communities
- 4.5 Plan for integrated and connected communities across the Port Macquarie-Hastings area
- 4.6 Restore and protect natural areas
- 4.7 Provide leadership in the development of renewable energy opportunities
- 4.8 Increase awareness of issues affecting our environment, including the preservation of flora and fauna



Item: 09.01

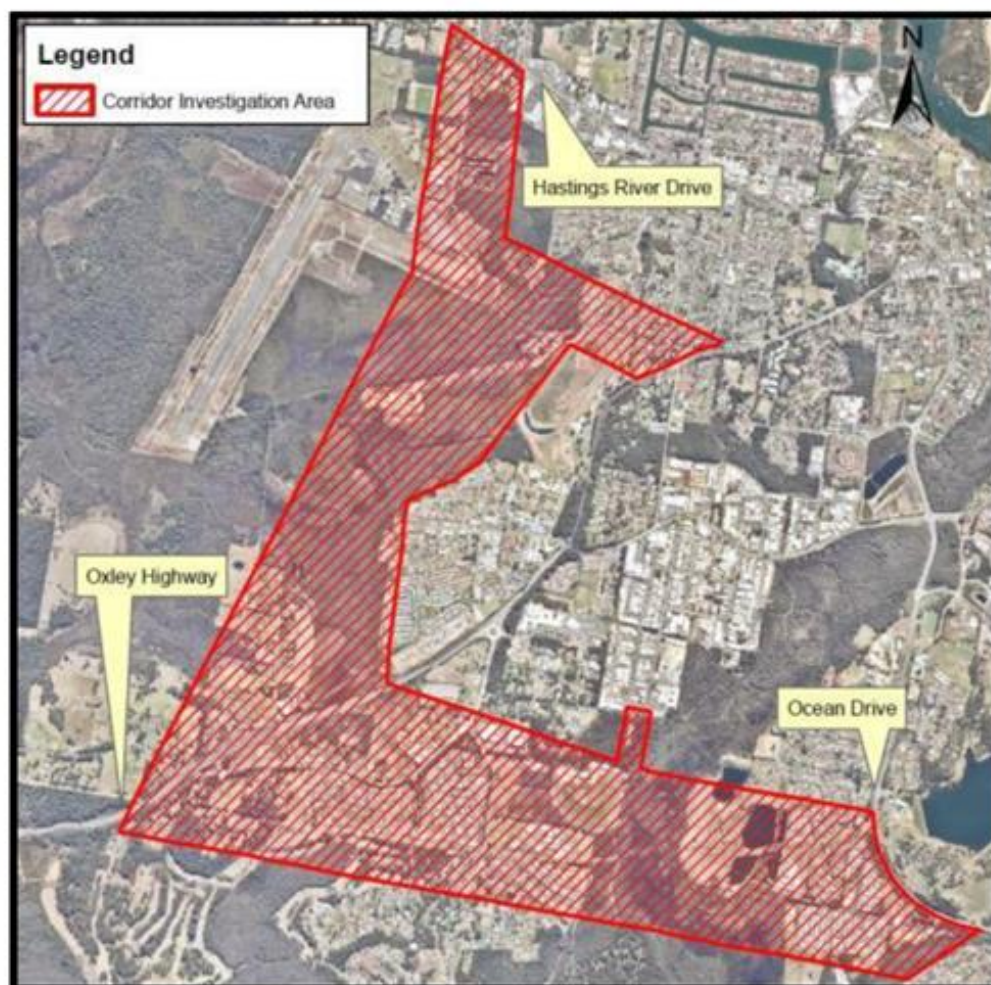
Subject: NOTICE OF MOTION - ORBITAL ROAD

Mayor Pinson has given notice of her intention to move the following motion:

RECOMMENDATION

That Council discontinue any investigations, planning, funding for new roads / links within the below shown Orbital Road Corridor.

Comments by Councillor (if provided)



Attachments

Nil

Subject: CONFIDENTIAL SESSION

RECOMMENDATION

- 1. That Council move into Confidential Session to receive and consider the following items:**
 - Item 10.01 Notice of Motion - Proposed Road Closure - Part Pacific Drive, North of Home Street, Port Macquarie**

This item is considered confidential under Section 10A(2)(e) of the Local Government Act 1993, as it contains information that would, if disclosed, prejudice the maintenance of law.
 - Item 10.02 EOI-21-05 Flood Recovery Works - Civil Construction**

This item is considered confidential under Section 10A(2)(d(i)) of the Local Government Act 1993, as it contains commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.
- 2. That pursuant to Section 10A subsections 2 & 3 and 10B of the Local Government Act 1993 (as amended), the press and public be excluded from the proceedings of the Confidential Session of Council on the basis that the items to be considered are of a confidential nature.**
- 3. That the resolutions made by Council in Confidential Session be made public as soon as practicable after the conclusion of the Confidential Session and such resolutions be recorded in the Minutes of the Council Meeting.**