

# Business Paper



Ordinary Meeting of Council

to be held at

Council Administration Centre

180 Mort Street, Lithgow

on

Tuesday 8 October 2024

at 6:00 PM

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# ORDER OF BUSINESS

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## Acknowledgement of Country

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### **Acknowledgement of Country**

Lithgow City Council acknowledges Wiradjuri Elders past and present of the Wiradjuri nation - the original custodians of the land on which the Lithgow's communities reside. The Council also extends our respects to our neighbouring nations.

### **Declaration of Webcasting**

I inform all those in attendance at this meeting, that the meeting is being webcast and that those in attendance should refrain from making any defamatory statements concerning any person, Councillor or employee, and refrain from discussing those matters subject to Closed Council proceedings as indicated in clause 14.1 of the code of meeting practice.

## Present

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## Apologies

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## Public Forum

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Any person registered to speak during Public Forum on a matters included in the business paper and registered via the Council website prior to 12 Noon on the day of the meeting will have the opportunity to speak. There will be only two speakers for and against, on each matter on the business paper.

Public forum will be allocated half an hour time in total with each speaker having 3 minutes to speak.

Speakers not registered for public forum will have an opportunity to speak on matters on the business paper if time permits.

## 1. Administration Reports

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### 1.1. GM - 08/10/2024 - Oath and Affirmation of Office by Councillors

**Strategic Context for this matter:**

Responsible Governance & Civic Leadership:

To develop community confidence in the organisation by the way it is directed, controlled and managed.

**Author:** Trinity Newton – Executive Assistant

**Responsible Officer:** Ross Gurney - General Manager

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### Executive Summary

Under the Local Government Act 1993 (the Act), Councillors (including Mayors) are required to take an oath or make an affirmation of office.

### Administration Recommendation:

The Council is not formally constituted or therefore able to pass resolutions until such time as this procedure is completed. It is proposed that the General Manager conduct the necessary process for Councillors to take the Oath or Affirmation of Office. The taking of the Oath or Affirmation of Office by Councillors will be recorded in the minutes for the meeting.

### Attachments

Nil

### Reference to any relevant previous minute

Nil.

### Background and discussion

S233A (1) of the Act states that "a Councillor must take an oath of office or make an affirmation of office at or before the first meeting of the Council after the Councillor is elected".

S233A (2) of the Act states "the oath or affirmation may be taken or made before the General Manager of the Council, an Australian legal practitioner, or a justice of the peace."

Councillors need to be physically present before the General Manager, legal practitioner or justice of the peace when taking their oath or making their affirmation of office.

An oath or affirmation should be taken or made by each Councillor as the first item of business for the first meeting. The General Manager must ensure that a record is kept of the taking of the oath or making of the affirmation.

The oath or affirmation can be done by way of a signed statement containing the oath or affirmation or by recording the taking of the oath or making of the affirmation by each Councillor in the minutes of the Council meeting.

If a Councillor is not able to attend the first Council meeting, they may take the oath or affirmation of office at another location in front of the General Manager.

As noted above, the oath or affirmation of office may also be taken before an Australian legal practitioner or a justice of the peace. The taking of the oath or making an affirmation of office outside a Council meeting must be publicly recorded by the Council.

Where an oath or affirmation is taken or made outside a Council meeting, a Council staff member should also be present to ensure that an accurate record can be kept by the Council.

A Councillor who fails, without a reasonable excuse, to take the oath or make an affirmation of office, will not be entitled to attend Council meetings until they do so and will be taken to be absent without leave.

If a Councillor is absent without leave for three consecutive Ordinary Council meetings their office is automatically declared vacant and a by-election or countback must be held.

The prescribed words of the oath and affirmation are provided below:

**Oath**

*"I [name of Councillor] swear that I will undertake the duties of the office of Councillor in the best interests of the people of Lithgow local government area and the Lithgow City Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment."*

**Affirmation**

*"I [name of Councillor] solemnly and sincerely declare and affirm that I will undertake the duties of the office of Councillor in the best interests of the people of Lithgow local government area and the Lithgow City Council and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the Local Government Act 1993 or any other Act to the best of my ability and judgment."*

**Consultation and Communication**

N/A

**Policy**

Nil

**Legal**

The subject matter of this report is a function of Council conferred by the Local Government Act 1993 – S233A.

**Risk Management**

N/A

**Financial**

N/A

**Consultation and Communication**

N/A

## 1.2. GM - 08/10/2024 - Nominations for and Election for the position of Mayor for the period October 2024 to September 2026

### Strategic Context for this matter:

#### Responsible Governance & Civic Leadership:

To develop community confidence in the organisation by the way it is directed, controlled and managed.

**Author:** Trinity Newton – Executive Assistant

**Responsible Officer:** Ross Gurney - General Manager

### Executive Summary

The newly elected Councillors must elect a mayor from among their numbers. This is to occur every two years.

This report provides the procedure for the election of a mayor for the period to the September 2026 Ordinary Meeting.

The Office of Local Government Mayoral Elections Fact Sheet is included as an attachment.

### Administration's Recommendation

THAT Council proceed with the election of the Mayor for the period to September 2026 and, in order to facilitate that, determine the method of voting.

### Attachments

1. Mayor Election Form 2024 [1.2.1 - 1 page]
2. Mayoral-elections- Fact- Sheet [1.2.2 - 6 pages]

### Reference to any relevant previous minute

Nil

### Background and discussion

Section 230(1) of the Act states that a mayor elected by councillors holds office for two years, subject to the Act.

Section 290 of the Act states when an election of a Mayor by the Councillors is to be held, in ordinary circumstances.

*290 When is an election of a mayor by the 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 3 weeks after 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, or*
  - (c) if it is the first election after the constitution of an area-within 14 days after the appointment of a provisional council or the first election of the council if a provisional council is not appointed, or*

- (d) *if the relevant council is a non-functioning council, or a council of which all civic offices have been declared vacant, and the election is the first to be held after the appointment or election of the councillors-within 14 days after the appointment or election of the councillors.*
- (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.*
- (3) *For the purposes of this section, an election of councillors does not conclude until the declaration of election of all the councillors of the council concerned.*

Mayors elected by councillors normally hold their office for two years (unless a casual vacancy occurs).

Councils that elect their mayors are required under the Act to hold mid-term mayoral elections in the month of September (S290(1)(b) of the Act). This means that the mid-term mayoral election will need to be held in September 2026. The Mayor elected at the mid-term mayoral election will hold their office until the day of the Council's next ordinary election in September 2028.

Councillors need to be present at the meeting in person to participate in voting by means other than an open ballot.

The election is to be conducted by the General Manager or in his or her absence, a Council employee designated by the General Manager, or in the event that all of these people are absent, by the person who called the meeting.

The Mayoral fee presently paid by Lithgow City Council is \$31,765 p.a., plus the \$15,000 p.a. councillor fee - totalling \$46,765 p.a. Private use of a Council supplied motor vehicle is also provided.

### **Nominations**

Nominations are invited for the Office of Mayor for the 2024 to 2026 term (until September 2026). The elections of Mayor of Lithgow City Council must be held in accordance with Schedule 7 of the Local Government (General) Regulation, 2005 and Council's Code of Meeting Practice.

In accordance with Section 227(a) of the Local Government Act, 1993 the Mayor of Lithgow City Council is elected by the Councillors from among their number.

Schedule 7 of the Local Government (General) Regulation, 2005, outlines the following procedures for the election of Mayor.

### **Returning Officer**

The General Manager (or a person nominated by the General Manager) is the Returning Officer.

### **Nomination**

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

The nomination is to be delivered or sent to the Returning Officer, who shall announce the names of the nominees at the Council meeting at which the election is to be held.

### **Election**

If only one councillor is nominated for the position of Mayor, that councillor is elected. If more than one councillor is nominated, Council must determine if voting is to be by preferential ballot, by ordinary ballot (both secret ballots) or by Open Voting (voting by a show of hands or similar means). The elections of Mayor and Deputy Mayor are the only times Council can choose to vote by way of secret ballot. In all other matters open voting must be used. The election is to be held at the Council meeting at which the Council resolves on the method of voting.

Lithgow City Council has traditionally held the vote by the 'Open Voting' method.

### **Ordinary Ballot**

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.
- 2a. If there are only 2 candidates, the candidate with the higher number of votes is elected.
- 2b. If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.
- 3a. If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.
- 3b. 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.
- 3c. If, after that, 3 or more candidates still remain, the procedure set out in subclause 3(b) is to be repeated until only 2 candidates remain.
- 3d. A further vote is to be taken of the 2 remaining candidates.
- 3e. Clause 2 of the above then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- 3f. If at any stage during a count under subclause 3(a) or 3(b), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

### **Open Voting**

Follows the same procedures as for ordinary ballot excepting it is by a show of hands or similar means.

### **Preferential Ballot**

1. This part applies if the election proceeds by preferential ballot.
2. 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.

### **Count for Preferential Ballot**

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 un-exhausted 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 candidates 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 un-exhausted 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 the clause "absolute majority" in relation to votes means a number which is more than one-half of the number of formal un-exhausted ballot papers.

### **Preferential Voting - 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.

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.

**Notes:**

- (i) Nomination forms for the position of Mayor and Deputy Mayor are enclosed with this meeting agenda. These may be completed and returned to the Returning Officer at any time before the Council Meeting scheduled for Monday 27th September 2018 OR at this Meeting up to the time that the Returning Officer announces that nominations are closed;
- (ii) Elections at Lithgow City have been conducted under the Open Voting system in recent years;
- (iii) "Open Voting" means voting by a show of hands or similar means;
- (iv) "Ballot" has its normal meaning of secret ballot; and
- (v) "Ordinary Ballot" means indicating the name, or if applicable the placing of the number 1 only against the name, of your preferred candidate.

Nomination forms for the position of Mayor are coloured blue and are enclosed with the business paper and will also be available at the meeting.

The returning officer will call for the final lodgement of nominations at the meeting. After the final call for nominations the Returning Officer will announce the names of the nominee(s). If necessary, an election will then be conducted as per the decision of the Council in this regard.

**Consultation and Communication**

N/A

**Policy**

N/A

**Legal**

The subject matter of this report is a function of Council conferred by the Local Government Act 1993.

**Risk Management**

N/A

**Financial**

N/A

**Consultation and Communication**

N/A

### 1.3. GM - 08/10/2024 - Nominations for and Election for the Position of Deputy Mayor from 2024 to September 2026

#### **Strategic Context for this matter:**

##### **Responsible Governance & Civic Leadership:**

To develop community confidence in the organisation by the way it is directed, controlled and managed.

**Author:** Trinity Newton – Executive Assistant

**Responsible Officer:** Ross Gurney - General Manager

#### **Executive Summary**

S231 of the NSW Local Government Act 1993 states that “Councillors **may** elect a person from among their number to be the Deputy Mayor”. This report sets out the procedure for the election of the Deputy Mayor, if so decided.

This report describes the methods of election available. Council will need to determine which of these it wishes to use. The Local Government Remuneration Tribunal’s fees for General Purpose and County Councils does not include an additional fee for a Deputy Mayor.

#### **Administration's Recommendation**

THAT Council:

1. Note the report on the appointment of and procedure for the election of a Deputy Mayor.
2. Determine whether to hold an election for the position of a Deputy Mayor.
3. Determine whether the Deputy Mayor will be elected for the Mayoral term or a shorter term.
4. Determine the method of voting for any election of a Deputy Mayor.
5. Determine the fee that is to be paid to the Deputy Mayor, if any.

#### **Attachments**

1. Deputy Mayor Election Form 2024 [1.3.1 - 1 page]

#### **Reference to any relevant previous minute**

Nil

#### **Background and discussion**

##### **Role of Deputy Mayor**

Council may elect a Councillor to be the Deputy Mayor.

The Deputy Mayor’s role is to exercise any function and delegation of the Mayor:-

- i) At the request of the Mayor; or
- ii) If the Mayor is prevented by illness, absence or otherwise from exercising the function; or
- iii) If there is a casual vacancy in the Office of Mayor.

## The procedures to be followed

The election of a Deputy Mayor must be held in accordance with Schedule 7 of the Local Government (General) Regulation, 2005 and Council's Code of Meeting Practice.

In accordance with Section 227(a) of the Local Government Act, 1993 the Deputy Mayor of Lithgow City Council is elected by the councillors from among their number.

Schedule 7 of the Local Government (General) Regulation, 2005, outlines the following procedures for the election of the Deputy Mayor.

### Returning Officer

The General Manager (or a person nominated by the General Manager) is the Returning Officer.

### Nomination

Unless otherwise determined by Council, nominations will be requested by the Returning Officer at this Meeting for the Office of Deputy Mayor for the 2024 to 2026 term (until September 2026).

Nomination forms for the position of Deputy Mayor were provided to councillors prior to this meeting. These may be completed and returned to the Returning Officer at any time before the Council Meeting scheduled for Monday 8 October 2024 **OR** at this Meeting up to the time that the Returning Officer announces that nominations are closed. Nomination forms are coloured **GREEN** and will also be available at the Meeting.

A councillor may be nominated without notice for election as Deputy Mayor. The nomination is to be made in writing by two (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.

The returning officer will call for the final lodgement of nominations at the meeting. After the final call for nominations the Returning Officer will announce the names of the nominee(s).

If necessary, an election will then be conducted as per the decision made on the previous report

### Election

The election is to be held at the Council meeting at which the Council resolves on the method of voting.

If only one councillor is nominated for the position of Deputy Mayor, that councillor is elected.

If more than one councillor is nominated, Council must determine if voting is to be by preferential ballot, by ordinary ballot (both secret ballots) or by Open Voting (voting by a show of hands or similar means).

The elections of Mayor and Deputy Mayor are the only times Council can choose to vote by way of secret ballot. In all other matters open voting must be used.

### Ordinary Ballot

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.
  - 2a. If there are only 2 candidates, the candidate with the higher number of votes is elected.
  - 2b. If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.
  - 3a. If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.

- 3b. 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.
- 3c. If, after that, 3 or more candidates still remain, the procedure set out in subclause 3(b) is to be repeated until only 2 candidates remain.
- 3d. A further vote is to be taken of the 2 remaining candidates.
- 3e. Clause 2 of the above then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.
- 3f. If at any stage during a count under subclause 3(a) or 3(b), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

### **Open Voting**

Follows the same procedures as for ordinary ballot excepting it is by a show of hands or similar means.

### **Preferential Ballot**

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.

### **Count for Preferential Ballot**

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 un-exhausted 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 un-exhausted 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 the clause "absolute majority" in relation to votes means a number which is more than one-half of the number of formal un-exhausted ballot papers.

### **Preferential Voting - 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.

### **General**

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**.

#### Notes:

- (i) Elections at Lithgow City have been conducted under the Open Voting system in recent years;
- (ii) "Open Voting" means voting by a show of hands or similar means;

- (iii) "Ballot" has its normal meaning of secret ballot; and
- (iv) "Ordinary Ballot" means indicating the name, or if applicable the placing of the number 1 only against the name, of your preferred candidate.

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**Policy Implications**

Nil.

**Financial Implications**

No additional fees are presently paid by Council for the holder of the position of Deputy Mayor.

**Legal and Risk Management Implications**

The election of a Deputy Mayor, as well as the process for nominations and voting is in accordance with the NSW Local Government Act 1993.

**Consultation and Communication**

N/A

## 1.4. GM - 08/10/2024 - Delegations to the Mayor and Deputy Mayor

### Strategic Context for this matter:

Responsible Governance & Civic Leadership:

To develop community confidence in the organisation by the way it is directed, controlled and managed.

**Author:** Trinity Newton – Executive Assistant

**Responsible Officer:** Ross Gurney - General Manager

### Executive Summary

This report seeks Council's consideration of the granting of delegations of authority to the Mayor and Deputy Mayor to assist them in performing their roles with Council.

### Administration's Recommendation

THAT Council, in addition to the functions outlined in Section 226 of the New South Wales Local Government Act 1993, delegate the following:

1. To the Mayor of Lithgow City Council:
  - a. **Donations** - To approve donations up to the sum of \$250 subject to Council being informed of any such decision, provided that funds are available within the sum voted by Council for donations in the adopted Delivery Program and Operational Plan. Such donations may only be made to community based, not for profit, groups functioning in the Lithgow Local Government Area.
  - b. **Mayoral Reception** -To authorise expenditure for minor civic receptions for visitors up to a maximum of \$500 for any one reception provided that funds are available within the sum voted by Council in the adopted Delivery Program and Operational Plan.
  - c. **Temporary General Manager** - In accordance with Section 351(1)(a) of the Local Government Act, the Mayor be given the authority to appoint a temporary General Manager, either during the absence of the General Manager on leave or otherwise.
  - d. **General Manager – Leave** - Authority to approve applications for holidays and leave of absence to the General Manager.
  - e. **General Manager's Performance Review Panel** - Lead the establishment of the General Manager's Performance Review Panel. The panel is comprised of the Mayor, the Deputy Mayor, another Councillor nominated by Council and a Councillor nominated by the General Manager.
2. To the Deputy Mayor of Lithgow City Council:
  - a. **Function of the Mayor** - 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.  
That the Deputy Mayor shall exercise the Delegation of Authority of the Mayor in those cases where the General Manager certifies that the matter is of such an urgent nature that it will not wait until the return of the Mayor.
  - b. **General Manager's Performance Review Panel** - Member of the General Manager's Performance Review Panel. The panel is comprised of the Mayor, the Deputy Mayor, another Councillor nominated by Council and a Councillor nominated by the General Manager.
3. These delegations shall remain in force unless otherwise revoked or amended in whole or in part, as Council may from time to time determine.

**Attachments**

Nil

**Reference to any relevant previous minute**

N/A

**Background and discussion**

Section 226 of the Local Government Act 1993 outlines the role of the Mayor. Section 226 provides:

The role of the mayor is:

- to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- to exercise such other functions of the council as the council determines
- to preside at meetings of the council
- to carry out the civic and ceremonial functions of the mayoral office.

These additional proposed delegations for the **Mayor** are:

**1. Donations**

To approve donations up to the sum of \$250 subject to Council being informed of any such decision, provided that funds are available within the sum voted by Council for donations in the adopted Delivery Program and Operational Plan. Such donations may only be made to community based, not for profit, groups functioning in the Lithgow Local Government Area.

**2. Mayoral Reception**

To authorise expenditure for minor civic receptions for visitors up to a maximum of \$500 for any one reception provided that funds are available within the sum voted by Council in the adopted Delivery Program and Operational Plan.

**3. Temporary General Manager**

In accordance with Section 351(1)(a) of the Local Government Act, the Mayor be given the authority to appoint a temporary General Manager, either during the absence of the General Manager on leave or otherwise.

**4. General Manager – Leave**

Authority to approve applications for holidays and leave of absence to the General Manager.

**5. General Manager's Performance Review Panel**

Lead the establishment of the General Manager's Performance Review Panel. The panel is comprised of the Mayor, the Deputy Mayor, another Councillor nominated by Council and a Councillor nominated by the General Manager.

The additional proposed delegations for the **Deputy Mayor** are:

**1. Function of the Deputy Mayor**

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.

The Deputy Mayor may also exercise the delegation of authority of the Mayor in those cases where the General Manager certifies that the matter is of such an urgent nature that it will not wait until the return of the Mayor.

## **2. General Manager's Performance Review Panel**

Member of the General Manager's Performance Review Panel. The panel is comprised of the Mayor, the Deputy Mayor, another Councillor nominated by Council and a Councillor nominated by the General Manager.

### Review of Delegations

At the 13 February 2024 Finance Committee Meeting, the Committee agreed that Council should have detailed and specific delegations for the Mayor and General Manager which includes a list of all relevant Acts. The Mayoral delegation should include urgent expenditure, allocating a specific amount that the Mayor can approve.

The Administration has programmed the development of draft detailed delegations for the Mayor and the General Manager for early consideration of the new Council.

### **Policy**

As outlined in the report.

### **Legal**

Council is limited in the functions that can be delegated. This is provided for in Section 377 of the New South Wales Local Government Act 1993.

### **Risk Management**

These additional functions are practical delegations which assist the smooth functioning of the Council. Such delegations shall remain in force unless otherwise revoked or amended in whole or in part, as Council may from time to time determine.

### **Financial**

- Budget approved – N/A
- Cost centre – N/A
- Expended to date – N/A
- Future potential impact – N/A

### **Consultation and Communication**

Nil.

## 1.5. GM - 08/10/2024 - Countbacks to fill Casual Councillor Vacancies

### Strategic Context for this matter:

**Responsible Governance & Civic Leadership** To develop community confidence in the organisation by the way it is directed, controlled and managed.

**Author:** Trinity Newton – Executive Assistant

**Responsible Officer:** Ross Gurney - General Manager

### Executive Summary

The purpose of the report is to enable the Council to take a position as to the option of using a countback to fill casual vacancies for Councillors which occur in the first 18 months following the election.

### Administration's Recommendation

THAT Council, pursuant to section 291A(1)(b) of the Local Government Act 1993 (the Act), declare that casual vacancies occurring in the office of a Councillor within 18 months after the last ordinary election of councillors for the Council on 14 September 2024 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 General Manager to notify the NSW Electoral Commissioner of the Council's decision within 7 days.

### Attachments

Nil

### Reference to any relevant previous minute

N/A

### Background and discussion

Following the September 2024 local government election, councils 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 allows councils a lower cost alternative to the holding of a by-election.

As Lithgow Council does not have wards, by-elections are held across the LGA, similar to an ordinary election. The cost estimate for the September 2024 ordinary election is \$214K, a 20% increase on the \$178K cost of the 2021 election. It is likely that the cost of any by-election would exceed \$214K.

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 General Manager is required under the Local Government (General) Regulation 2005 (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 election manager is the NSW Electoral Commissioner.

**Policy**

Nil

**Legal**

The requirements for a countback to be held instead of by-election in certain circumstances are set in S291A of the Local Government Act 1993.

**Risk Management**

There is a cost impact (likely to exceed \$214K) and a workload impact from holding a by-election. The countback option removes most of these impacts. The administration see no particular shortcoming from the countback option with the will of the electorate, as expressed by the votes cast in the election, still determining the make-up of the elected Council.

**Financial**

It is likely that the cost of any by-election would be in excess of \$214K.

**Consultation and Communication**

N/A

**1.6. GM - 08/10/2024 - Councillor Member of ARIC****Strategic Context for this matter:**

**Responsible Governance & Civic Leadership.** To develop community confidence in the organisation by the way it is directed, controlled and managed.

**Author:** Raj Singh – Governance and Risk Manager

**Responsible Officer:** Ross Gurney - General Manager

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**Executive Summary**

Lithgow City Council (Council) has established an Audit Risk and Improvement Committee (ARIC) in compliance with section 428A of the Local Government Act 1993 and relevant clauses of the Local Government (General) Regulation 2021.

The Office of Local Government has stated in the 2024 Post-election Guide that the Councillor member of the ARIC is to be appointed by the governing body at the first meeting of the Council after the election.

**Administration's Recommendation**

THAT Council appoint a non-voting Councillor member to the Audit Risk and Improvement Committee.

**Attachments**

1. Lithgow ARIC TOR - V 2 FINAL - 18 Sept 2024 [1.6.1 - 16 pages]

**Reference to any relevant previous minute**

N/A

**Background and discussion**

The initial term of a Councillor member of an ARIC is 4 years, coinciding the with term of the Council.

The Councillor member can be reappointed for another term (i.e. 4 years), if re-elected at the Council's next ordinary elections, however, the total period of continuous membership on the Committee cannot exceed 8 years (two Council terms).

The Councillor member is to be appointed by the governing body at the first meeting of the council after the elections. Note, Councils are not required to appoint a councillor member to an Audit, Risk and Improvement Committee.

The Councillor member's term ends at the end of the Council term.

**ARIC Terms of Reference**

The ARIC Terms of Reference (ToR) are included as an attachment. The ToR sets out the Committee's objectives, authority, composition and tenure, roles, and responsibilities, reporting and administrative arrangements.

The ARIC consists of an independent Chair and two independent members who have voting rights and one non-voting Councillor member, as required under the Local Government (General) Regulation 2021.

The role of the Councillor member is to:

- relay to the Committee any concerns the governing body may have regarding the Council and issues being considered by the Committee,
- provide insights into local issues and the strategic priorities of the Council that would add value to the Committee's consideration of agenda items,
- advise the governing body (as necessary) of the work of the Committee and any issues arising from it, and
- assist the governing body to review the performance of the Committee.

Issues or information the Councillor member raises with or provides to the Committee must relate to the matters listed in Schedule 1 of the ToR and issues being considered by the Committee.

The Councillor member of the Committee must conduct themselves in a non-partisan and professional manner. The Councillor member of the Committee must not engage in any conduct that seeks to politicise the activities of the committee or the internal audit function or that could be seen to do so.

The position of Councillor member on the Committee can be terminated at any time by the governing body via resolution.

#### Other Council Committees

All other Committees of Council will be presented and discussed with Councillors at a November 2024 Information Session. Councillor representation on other Committees will be determined at the 25 November 2024 meeting.

#### **Consultation and Communication**

N/A

#### **Policy**

N/A

#### **Legal**

The subject matter of this report is a function of Council conferred by the Local Government Act 1993.

#### **Risk Management**

N/A

#### **Financial**

N/A

## **2. Business of Great Urgency**

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In accordance with Clause 241 of the Local Government Act (General) Regulations 2005 business may be transacted at a meeting of Council even though due notice of the business has not been given to the Councillors. However, this can happen only if:

- a) A motion is passed to have the business transacted at the meeting; and
- b) The business proposed to be brought forward is ruled by the Chairperson to be of great urgency.