



BUSINESS PAPER

GENERAL MEETING

**Wednesday 9 February 2022
at 6:30PM**



TABLE OF CONTENTS

AGENDA AND SUMMARY OF RECOMMENDATIONS

RESCISSION MOTIONS

MAYORAL MINUTES

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

GENERAL BUSINESS

Office of the General Manager

Nil

Corporate Support Division

Item 1	CS7/22 Election of Deputy Mayor	1
Item 2	CS3/22 Filling of Casual Councillor Vacancies - 2021 to 2024 Council Term	5
Item 3	CS5/22 Local Government NSW - 2022 Special Conference - Determination of Voting Delegates	16

Community and Environment Division

Nil

Planning and Compliance Division

Item 4	PC1/22 Infrastructure Contributions Reform Submission.....	19
Item 5	PC2/22 Sydney North Planning Panel and Hornsby Local Planning Panel - Local and Community Panel Members.....	27

Infrastructure and Major Projects Division

Nil

CONFIDENTIAL ITEMS

Item 6	CS6/22 Settlement Offer – Legal Proceedings – Compulsory Acquisition of Land	
--------	---	--

PUBLIC FORUM – NON AGENDA ITEMS

QUESTIONS WITH NOTICE

MAYOR'S NOTES

NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

AGENDA AND SUMMARY OF RECOMMENDATIONS

PRESENT

NATIONAL ANTHEM

OPENING PRAYER/S

ACKNOWLEDGEMENT OF RELIGIOUS DIVERSITY

Statement by the Chairperson:

"We recognise our Shire's rich cultural and religious diversity and we acknowledge and pay respect to the beliefs of all members of our community, regardless of creed or faith."

ACKNOWLEDGEMENT OF COUNTRY

Statement by the Chairperson:

"Council recognises the Traditional Owners of the lands of Hornsby Shire, the Darug and GuriNgai peoples, and pays respect to their Ancestors and Elders past and present and to their Heritage. We acknowledge and uphold their intrinsic connections and continuing relationships to Country."

VIDEO AND AUDIO RECORDING OF COUNCIL MEETING

Statement by the Chairperson:

"I advise all present that tonight's meeting is being video streamed live via Council's website and also audio recorded for the purposes of providing a record of public comment at the meeting, supporting the democratic process, broadening knowledge and participation in community affairs, and demonstrating Council's commitment to openness and accountability. The audio and video recordings of the non-confidential parts of the meeting will be made available on Council's website once the Minutes have been finalised. All speakers are requested to ensure their comments are relevant to the issue at hand and to refrain from making personal comments or criticisms. No other persons are permitted to record the Meeting, unless specifically authorised by Council to do so."

OATH OR AFFIRMATION OF OFFICE

The Mayor to invite all Councillors to read the following Oath or Affirmation:

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 Hornsby Shire and the Hornsby Shire 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 Hornsby Shire and the Hornsby Shire 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.

APOLOGIES / LEAVE OF ABSENCE

POLITICAL DONATIONS DISCLOSURE

Statement by the Chairperson:

"In accordance with Section 10.4 of the Environmental Planning and Assessment Act 1979, any person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, and who has made a reportable political donation or gift to a Councillor or employee of the Council, must make a Political Donations Disclosure Statement.

If a Councillor or employee has received a reportable political donation or gift from a person or organisation who has made a relevant planning application or a submission in respect of a relevant planning application which is on tonight's agenda, they must declare a non-pecuniary conflict of interests to the meeting, disclose the nature of the interest and manage the conflict of interests in accordance with Council's Code of Conduct."

DECLARATIONS OF INTEREST

Clause 4.16 and 4.17 of Council's Code of Conduct for Councillors requires that a councillor or a member of a Council committee who has a pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

4.16 A councillor who has a pecuniary interest in any matter with which the council is concerned, and who is present at a meeting of the council or committee at which the matter is being considered, must disclose the nature of the interest to the meeting as soon as practicable.

4.17 The councillor must not be present at, or in sight of, the meeting of the council or committee:

- a) at any time during which the matter is being considered or discussed by the council or committee, or*
- b) at any time during which the council or committee is voting on any question in relation to the matter.*

Clause 5.10 and 5.11 of Council's Code of Conduct for Councillors requires that a councillor or a member of a Council committee who has a non pecuniary interest in a matter which is before the Council or committee and who is present at a meeting of the Council or committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable. The disclosure is also to be submitted in writing (on the form titled "Declaration of Interest").

- 5.10 *Significant non-pecuniary conflict of interests 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 4.16 and 4.17.*
- 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.*

CONFIRMATION OF MINUTES

THAT the Minutes of the General Meeting held on 10 November, 2021 be confirmed; a copy having been distributed to all Councillors.

PETITIONS

PRESENTATIONS

RESCISSION MOTIONS

MAYORAL MINUTES

ITEMS PASSED BY EXCEPTION / CALL FOR SPEAKERS ON AGENDA ITEMS

Note:

Persons wishing to address Council on matters which are on the Agenda are permitted to speak, prior to the item being discussed, and their names will be recorded in the Minutes in respect of that particular item.

*Persons wishing to address Council on **non agenda matters**, are permitted to speak after all items on the agenda in respect of which there is a speaker from the public have been finalised by Council. Their names will be recorded in the Minutes under the heading "Public Forum for Non Agenda Items".*

GENERAL BUSINESS

- *Items for which there is a Public Forum Speaker*
- *Public Forum for non agenda items*
- *Balance of General Business items*

OFFICE OF THE GENERAL MANAGER

Nil

CORPORATE SUPPORT DIVISION**Page Number 1****Item 1 CS7/22 ELECTION OF DEPUTY MAYOR****RECOMMENDATION**

THAT:

1. Council determine if it wishes to elect a Deputy Mayor.
2. If a Deputy Mayor is to be elected, Council:
 - a) Determine the period for which the Deputy Mayor is to be elected.
 - b) Determine if the election of the Deputy Mayor is to be by preferential ballot, ordinary ballot or open voting.
 - c) Request the Returning Officer to conduct the election, using the election method determined in b) above.
3. If a Deputy Mayoral election is held, the ballot papers (if any) be destroyed following the declaration of the election.

Page Number 5**Item 2 CS3/22 FILLING OF CASUAL COUNCILLOR VACANCIES - 2021 TO 2024 COUNCIL TERM****RECOMMENDATION**

THAT:

1. The contents of Director's Report No. CS3/22 be received and noted.
2. Council determine its position in respect of the use of a countback election if a casual Councillor vacancy arises within 18 months of the 4 December 2021 election.

Page Number 16**Item 3 CS5/22 LOCAL GOVERNMENT NSW - 2022 SPECIAL CONFERENCE - DETERMINATION OF VOTING DELEGATES****RECOMMENDATION**

THAT:

1. Council determine the nine Councillors who will be Council's voting delegates for Motions at the LGNSW 2022 Special Conference.

2. All Councillors be registered for attendance at the Local Government NSW Special Conference to be held from Monday 28 February to Wednesday 2 March 2022.

COMMUNITY AND ENVIRONMENT DIVISION

Nil

PLANNING AND COMPLIANCE DIVISION

Page Number 19

Item 4 PC1/22 INFRASTRUCTURE CONTRIBUTIONS REFORM SUBMISSION

RECOMMENDATION

THAT:

1. Council formally endorse the submissions on Infrastructure Contributions Reform attached to Directors Report No. PC1/22 and confirm Council's position to the Department of Planning, Industry and Environment and the Independent Pricing and Regulatory Tribunal.
2. A copy of Council's submissions be forwarded to local State members of Parliament and be made publicly available.

Page Number 27

Item 5 PC2/22 SYDNEY NORTH PLANNING PANEL AND HORNSBY LOCAL PLANNING PANEL - LOCAL AND COMMUNITY PANEL MEMBERS

RECOMMENDATION

THAT Council:

1. Acknowledge the resignation of Jerome Cox from the Hornsby Local Planning Panel and thank him for his participation and contribution to planning for Hornsby Shire.
2. Extend the term of appointment for the balance of the community representatives on the Hornsby Local Planning Panel (HLPP) and local members on the Sydney North Planning Panel (SNPP) until 31 July 2022 to enable an expression of interest process to be undertaken to appoint new panel members for a period of 3 years.
3. The Planning Panels Secretariat at the Department of Planning, Industry and Environment be advised of Council's resolution.

INFRASTRUCTURE AND MAJOR PROJECTS DIVISION

Nil

PUBLIC FORUM – NON AGENDA ITEMS

QUESTIONS WITH NOTICE

MAYOR'S NOTES

NOTICES OF MOTION

SUPPLEMENTARY AGENDA

MATTERS OF URGENCY

1 ELECTION OF DEPUTY MAYOR

EXECUTIVE SUMMARY

- In accordance with Section 231 of the Local Government Act, Councillors may elect a person from among their number to be the Deputy Mayor, with the term of such office being either equal to that of the Mayoral term or for a shorter period.
- This Report provides details about the role of a Deputy Mayor and the choices that Council has about the period and method of election to such office.
- If Council decides to elect a Deputy Mayor, it will need to determine the term for which the Deputy Mayor will serve and the method of voting to be used for electing the Deputy Mayor. It will also need to appoint the General Manager (or his delegate) to conduct the election.

RECOMMENDATION

THAT:

1. Council determine if it wishes to elect a Deputy Mayor.
2. If a Deputy Mayor is to be elected, Council:
 - a) Determine the period for which the Deputy Mayor is to be elected.
 - b) Determine if the election of the Deputy Mayor is to be by preferential ballot, ordinary ballot or open voting.
 - c) Request the Returning Officer to conduct the election, using the election method determined in b) above.
3. If a Deputy Mayoral election is held, the ballot papers (if any) be destroyed following the declaration of the election.

PURPOSE

The purpose of this Report is to provide Council with the opportunity to consider whether or not it wishes to elect a Deputy Mayor. The Report includes information about the role of the Deputy Mayor and the different methods of voting which can be used to elect a Deputy Mayor.

BACKGROUND

In accordance with Section 231 of the Local Government Act, Councillors may elect a person from among their number to be the Deputy Mayor, with such term of office being either equal to that of the Mayoral term or for a shorter period.

Prior to the March 2004 local government elections, Hornsby Council's Mayor was elected annually by the Councillors. It was also Council's practice to annually elect a Deputy Mayor. At the 2004 election, the method of electing Hornsby's Mayor was changed to be by the residents/ratepayers across the Shire for the term of the elected Council, i.e. a popularly elected Mayor rather than by the elected Councillors on an annual basis.

Although Councillors no longer have the responsibility of electing the Mayor, it is still necessary for Council to decide whether or not to elect a Deputy Mayor and, if so, to determine the period of the term to be served by the Deputy Mayor. Council's latest decision in this regard was at the General Meeting held on 8 September 2021, when it considered Director's Report No. CS60/21 and elected Councillor Hutchence as Deputy Mayor for the period September 2021 to the next local government election (4 December 2021).

DISCUSSION

The Role of Deputy Mayor

The Deputy Mayor may exercise any function of the Mayor, at the request of the Mayor, 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. If there was to be a casual vacancy in the office of Mayor up until 18 months prior to the date specified for the next ordinary election, a by-election for the position of Mayor would need to be conducted in accordance with a timetable set by the Local Government Act. If the vacancy occurred within 18 months of the next ordinary election, the vacancy would be filled by the NSW Governor appointing a Councillor nominated by the Council to be the Mayor. The Deputy Mayor would usually fulfil the duties of Mayor during the above periods until a new Mayor was elected or appointed.

Period of Election of the Deputy Mayor

Under Section 231 of the Local Government Act, Councillors may elect a Deputy Mayor for the same period as the Mayoral term or for a shorter period. As Council's Mayor is popularly elected, the current Mayoral term is until the next local government elections, currently scheduled for September 2024. Council may, therefore, determine that a Deputy Mayor be elected for the period until September 2024 or for some shorter period e.g. six months. The practice at Hornsby Council has been to elect a Deputy Mayor for a 12-month period (September to September).

Method of Election

If a Deputy Mayor is to be elected, the method of election is in accordance with Schedule 7 of the Local Government (General) Regulation 2005. A Councillor may be nominated without notice for election as Deputy Mayor provided the nomination is made in writing by two or more Councillors (one of whom may be the nominee) and the nominee consents to the nomination in writing. The

nomination is to be delivered or sent to the Returning Officer. A nomination form in respect of a Deputy Mayoral Election is included as an attachment to this Report.

If only one Councillor is nominated for election as Deputy Mayor, that Councillor is elected. If more than one Councillor is nominated, an election shall be held at which the General Manager (or his nominee) is the Returning Officer. The Council must resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting. Historically Council has used the open voting method to elect the Deputy Mayor. To ensure probity of the election process, the counting of votes where necessary is undertaken in the presence of the Returning Officer and at least one other staff member.

It should be noted that any recommendation on the method of election (if any) is dependant to some extent on the number of candidates – see below.

Preferential Ballot

Preferential ballot would only normally be used if there are three or more candidates. Under this system, Councillors indicate their order of preference for all candidates. If a candidate receives more than half the first preference votes (i.e. an absolute majority), he or she is declared elected. If no candidate has an absolute majority, the candidate with the lowest number of votes is excluded and his or her preferences are allocated to the other candidates and so on, until one candidate has more than half the votes. A preference for each candidate standing for election must be indicated on a ballot paper, or the ballot paper will be declared invalid.

Ordinary Ballot

Ordinary ballot would normally apply where there are two or more candidates and Council decides to proceed by secret ballot. If there are only two candidates, the candidate with the higher number of votes is elected. If the two candidates are tied, the one elected is chosen by lot. If there are three or more candidates, the candidate with the lowest number of votes is excluded and a fresh vote is taken and so on, until there are only two candidates. A final vote between the two candidates is then taken and the candidate with the higher number of votes is declared elected. If at any stage during a count up until two candidates are remaining, there is a tie on the lowest number of votes, the one excluded is chosen by lot.

Open Voting

Open voting uses the same system as ordinary ballot, except that voting is by a show of hands or similar means and not by secret ballot. This method of voting has previously been the preferred practice for Hornsby Council.

Choosing by Lot

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the Returning Officer; folded, to prevent the names being seen; mixed and then drawn at random by the Returning Officer. The candidate whose name is on the drawn slip is chosen.

Appointment of Scrutineers and Inspection of Ballot Papers and Progress of Count

Council has previously sought legal advice about the ability of Councillors to inspect ballot papers and the progress of the count as well as the ability of election candidates to appoint scrutineers. In summary, the advice was that candidates are not entitled to appoint scrutineers; an inspection of the ballot papers should not be permitted; the progress of the count should not be revealed; and the ballot

papers (if any) for the Deputy Mayoral election should be destroyed after the election has been declared.

BUDGET

There are no budgetary implications associated with this Report.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

Council needs to consider the contents of this Report and determine whether or not it wishes to elect a Deputy Mayor. If it does decide to elect a Deputy Mayor, Council will also need to determine the term of office and method of voting to be used to elect the Deputy Mayor. It will also need to request the General Manager, or his nominee, to conduct the election.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Acting Manager, Governance and Customer Service – Steve Colburt, who can be contacted on 9847 6761.

STEPHEN COLBURT
Manager, Governance and Customer Service
Corporate Support Division

GLEN MAGUS
Director - Corporate Support
Corporate Support Division

Attachments:

1.  Nomination Form - Deputy Mayor - February 2022

File Reference: F2004/07075

Document Number: D08330119

2 FILLING OF CASUAL COUNCILLOR VACANCIES - 2021 TO 2024 COUNCIL TERM

EXECUTIVE SUMMARY

- Following an Inquiry Into the 2012 Local Government Elections, the NSW Government proposed the introduction of a countback system, modelled on the one currently operating in Victoria, as an option for councils when casual vacancies arise within 18 months of the original election in lieu of a by-election.
- The Government subsequently made an amendment to the Local Government Act which enabled, in certain circumstances, a casual vacancy in the office of councillor to be filled by a candidate determined by a countback of votes rather than a by-election.
- As a consequence of the Government's decision, Council has for the first time been provided with an opportunity at this initial meeting of the new term of Council to determine if it wishes to fill any casual Councillor vacancy which occurs in the first 18 months of the term by a countback election. If Council does not make such a decision, then any casual Councillor vacancy that occurs during the 18-month period will be filled via a traditional by-election.
- At this stage, there are no budgetary implications associated with this Report. It is noted that over the past 30 years, Council has only been required to hold a handful of by-elections, so it is relatively unlikely that one will be required to be held in the first 18 months of this term. Notwithstanding, there is no doubt that there would be less cost associated with the holding of a countback election as opposed to a by-election.
- As a decision on this matter is one for the elected Council, no staff recommendation either for or against the use of countback elections is provided. The Report contains information about the Inquiry undertaken by the Government as well as the provisions that were subsequently included in the Local Government Act and Regulations.

RECOMMENDATION

THAT:

1. The contents of Director's Report No. CS3/22 be received and noted.
2. Council determine its position in respect of the use of a countback election if a casual Councillor vacancy arises within 18 months of the 4 December 2021 election.

PURPOSE

The purpose of this Report is to provide Council with the opportunity to determine its position in respect of the use of a Countback Election to fill any casual vacancy in the position of Councillor within the first 18 months of this Council term.

BACKGROUND

Following an Inquiry Into the 2012 Local Government Elections conducted by the NSW Parliament's Joint Standing Committee on Electoral Matters, one of the recommendations (Recommendation 9) made to the NSW Government in March 2014 was that *"The Committee recommends the introduction of a countback system, modelled on the one currently operating in Victoria, as an option for councils when casual vacancies arise within 18 months of the original election in lieu of a by-election."*

The following points were made in the Committee's report to support the recommendation:

- When a seat in a council becomes vacant, the vacancy is filled by holding a byelection. If this vacancy and by-election occurs shortly after the original election it was seen as a further impost on candidates who may be unable to allocate the time or resources to stand for election again.
- An option presented to the Committee was to implement the system of a countback to fill casual vacancies. In this situation, the vacant seat is filled using the polling figures from the original election and the candidate with the largest vote who did not gain a seat fills the vacancy.
- In support of the countback system, the Committee received evidence that Victoria, Tasmania, and the ACT elect councils by proportional representation in a similar manner to NSW (i.e., where there are two or more councillors to be elected in a council or a ward) and they fill vacancies using a countback.
- Further information on the system used in Victoria is provided by the Victorian Electoral Commission:
 - Countbacks occur for local councils when the vacancy to be filled is in a multi-councillor ward or unsubdivided municipality. It must be six months or more until the next local council election day.
 - Voters do not need to vote again in a countback as the ballot papers from the previous election are used.
 - In a countback, votes for the vacating councillor from the last election are redistributed to unsuccessful candidates according to the voters' preferences. A candidate who receives more than 50% of these votes is declared elected. If no candidate receives more than 50% of the vote, the candidate with the least votes is excluded and their votes are also redistributed. This process continues until a candidate can be declared elected.
- The Committee was further advised of some of the benefits of a countback rather than a by-election. In some cases, it was argued that conducting by-elections can lead to unfair representation, especially for minor parties. If a position becomes vacant that was held by an independent candidate or a candidate representing a minor party, a by-election is held, and the likely outcome is that a party with large support will win the seat. This leaves minor views

- unrepresented. For that reason, it was suggested that a countback is a fairer method of filling a vacancy as the original votes cast will elect the 'replacement' councillor.
- When the issue of conducting a countback rather than holding a by-election was raised with various councils, many were in favour. They told the Committee that by-elections were a very costly process and that electors can suffer from 'election fatigue' due to the number of elections for the different levels of government. Primarily, however, the view of most councils was echoed by Penrith City Council which told the Committee that they would prefer to avoid the costs of a by-election:
 - Given that a by-election could cost \$200,000 to \$300,000, we would be very happy with a countback procedure.
 - Representatives of the Local Government and Shires Association (as it was then known) were also supportive of the introduction of a countback system given that it takes into account the original votes cast. They advised the Committee that:
 - If we go on the countback system, it is still a fair result of whereabouts they might have voted before. So, I think it is a fair result all the way round and I think that the people you have got to think of is not so much the councillors but the community, the cost to them, and their acceptance of what we are trying to do through local government instead of putting more and more impost onto them.
 - Some concerns were raised with the Committee that candidates may no longer wish to stand for election or may no longer be eligible. However, in such circumstances in jurisdictions which operate a countback system, the potential candidates are informed of the vacancy and asked to provide a written declaration that they are still willing and able to hold office.
 - It was also suggested to the Committee that a time limit could be imposed when a countback occurs. The Shires Association recommended that if the vacancy occurs later than '12 months following that election ... the people have the right to go back to the polls'.
 - According to the Shires Association, one of the major reasons for this was to ensure that 'people who may not have been eligible to stand, particularly young people, may after 12 months certainly be reconsidering their positions'. It was highlighted that this was particularly relevant should young people be considering standing for election:
 - That is an important factor, particularly as local government is trying very hard to attract young people and much more diversity to the councils of New South Wales.
 - The Committee notes the amount of time and resources that councils spend on running a by-election should a position become vacant. In the view of the Committee, this is an unnecessary procedure should the vacancy arise within a certain time following the original election. Given that the countback system has been introduced in a number of other jurisdictions and continues to be used, this appears to be a viable option for casual vacancies that arise in local government in NSW.
 - The Committee recognises the concerns that voters, particularly newly eligible voters, may have had an opportunity to reconsider their views and may exercise their vote differently. For this reason, should the vacancy arise 18 months after the original election, it would be preferable to conduct a by-election as is currently the case.

Following its consideration of the Committee's Report and Recommendations, the Government provided the following response in October 2014:

- Recommendation 9 proposes the introduction of a countback system, modelled on the one currently operating in Victoria, as an option for councils when casual vacancies arise within 18 months of the original election in lieu of a by-election.
- The Government acknowledges the resource impacts on councils of having to conduct by-elections and agrees that where vacancies arise within 18 months of an ordinary election, councils should have the option of being able to avoid the cost of a by-election through use of a countback system to fill the vacancy. It is proposed to amend the Act to allow for this.
- The use of a countback system will not be available however where the vacancy arises in the office of a popularly elected Mayor. The Government considers that it is important that the community has an opportunity to directly elect a replacement for popularly elected Mayors at a by-election, given the important community leadership role of that office.
- The use of a countback system will not be available where the original election of the councillor to the vacated office was uncontested meaning that there are no alternative candidates to replace the departing councillor.
- Where, as is proposed, the use of a countback system is to be optional and at the discretion of the council, there is a risk that councils will make a decision on whether to use a countback system to fill a vacancy based on knowledge of the outcome this will yield.
- To safeguard against this, it is intended to require councils to decide by resolution at the start of their term whether vacancies that arise in the 18 months following the election are to be filled by way of a countback system. Councils will not be allowed to change its decision.

In line with the above response, and to other decisions it had made in respect of local government elections, the Government proposed an amendment to the Local Government Act through the Local Government Amendment (Elections) Bill 2014 in October 2014. The amendment relevant to this Report was described in the Overview of the Bill in point (a) as to enable, in certain circumstances, a casual vacancy in the office of councillor to be filled by a candidate determined by a countback of votes rather than a by-election. The Outline of Provisions then went on to say:

Amendment relating to countback elections to fill casual vacancies

Schedule 1 [1] inserts proposed section 291A into the LG Act to give effect to the object set out in paragraph (a) above. The proposed section provides that a casual vacancy in the office of councillor to which the proposed section applies is to be filled by a countback election conducted in accordance with the regulations.

The proposed 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 local government area.
- (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.

The proposed section does not apply 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 (that is, in single member elections).
- (b) In an election without a poll being required to be held.

If a countback election fails or the returning officer is otherwise unable to fill the casual vacancy by a countback election, a by-election must be held to fill the casual vacancy.

The proposed new section 291A was included in Schedule 1 of the Bill. The Bill passed both Houses of the NSW Parliament and was assented to by the Governor in November 2014. Some minor amendments were subsequently made to section 291A in 2016 and 2021 and the use of a countback election to fill a casual vacancy in the position of Councillor within the first 18 months of a Council term is now an option available to Council.

DISCUSSION

Part 5 of Chapter 10 of the Local Government Act deals with the filling of casual vacancies in the position of elected Councillor. Part 5 reads:

Part 5 How are casual vacancies filled?

291 By-elections

If a casual vacancy occurs in a civic office, the office is to be filled by a by-election, subject to this Part.

Note - The circumstances in which casual vacancies occur are specified in Chapter 9.

291 A 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.
 - (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).
 - (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.

- (b) If that is not possible, by the substitute returning officer at that election.
 - (c) If that is not possible, by a returning officer appointed in accordance with this Act.
- (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.
 - (b) A by-election in accordance with this Part must be held to fill the casual vacancy.
- (6) This section does not apply to a casual vacancy in the office of a councillor if the vacancy occurs before the day prescribed for the purposes of this section by the regulations.

292 When is a by-election to be held?

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

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

293 Delayed by-elections

- (1) If the Minister is of the opinion that it would be impractical or inconvenient to hold a by-election as provided by section 292, the Minister may, by order published in the Gazette, appoint a subsequent Saturday for the by-election.
- (2) The subsequent Saturday must not be more than 28 days later than the day when the by-electing should have been held.

294 Dispensing with by-elections

- (1) This section applies if a casual vacancy occurs in the office of a councillor, including a mayor elected by the electors of an area, within 18 months before the date specified for the next ordinary election of the councillors for the area.
- (2) If such a casual vacancy occurs in the office of a councillor (but not the office of a mayor elected by the electors), the Minister may, on the application of the council:
 - (a) Order that the vacancy not be filled.
 - (b) Order the holding on a stated day of a by-election to fill the vacancy and revoke any earlier order made under paragraph (a).
- (3) If such a casual vacancy occurs in the office of a mayor elected by the electors, the casual vacancy is to be filled by the Governor appointing to the vacant office a councillor nominated by the council.

- (4) If the council does not nominate a councillor for the purposes of subsection (3), the Governor may appoint one of the councillors to the vacant office.

294A Casual vacancy not to be filled where councillor numbers reduced

- (1) A casual vacancy in the office of a councillor (but not a mayor elected by the electors) is not to be filled if the Minister has approved an application under section 224A to reduce the number of councillors, but the reduction has not yet taken effect.
- (2) However, subsection (1) does not authorise a vacancy to remain unfilled if the vacancy will result in the council having less councillors than the reduced number approved by the Minister under section 224A.
- (3) Subsection (1) applies to a casual vacancy whether occurring before or after the commencement of this section or before or after the approval of the relevant application under section 224A.

294B Casual vacancy not to be filled where councillor numbers reduced: approved by constitutional referendum

- (1) Despite section 17(2), a casual vacancy in the office of a councillor (but not a mayor elected by the electors) is not to be filled if a constitutional referendum has approved a reduction in the number of councillors, but the reduction has not yet taken effect.
- (2) However, subsection (1) does not authorise a vacancy to remain unfilled if the vacancy will result in the council having less councillors than the reduced number approved by the constitutional referendum.
- (3) Subsection (1) applies to a casual vacancy whether occurring before or after the commencement of this section or before or after the constitutional referendum.

295 Casual vacancy in office of mayor elected by the councillors

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

In respect of subsections (3) and (6) of section 291A, the relevant clause of the Local Government (General) Regulation reads:

393C Countback elections

- (1) A countback election referred to in section 291A of the Act is to be carried out in accordance with Schedule 9A.
- (2) For the purpose of section 291A of the Act, the prescribed day is 12 September 2020.
- (3) If a council resolves, at its first meeting following an ordinary election of councillors for the area, that a countback election is to be held to fill any

casual vacancy that occurs within 18 months after the date of that ordinary election, the general manager is to notify the election manager of the ordinary election within 7 days of the resolution.

A copy of Schedule 9A of the Local Government General Regulation is attached for Council's information. Part 2 of the Schedule deals with the procedures to be followed in respect of a Countback Election and states the following:

7 Casual vacancies to be filled by recount

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

excluded during a recount that election or exclusion has effect for the purposes of the continuation of the recount and for those purposes only.

- (6) If no recount under subsection (1) or (3) results in the election of an eligible candidate—
- (a) The returning officer is to declare that the countback election has failed.
 - (b) Inform the general manager of the relevant council accordingly.

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

Based on the above, Council has for the first time been provided with an opportunity at this initial meeting of the new term of Council to determine if it wishes to fill any casual Councillor vacancy which occurs in the first 18 months of the term by a countback election. If Council does not make such a decision, then any casual Councillor vacancy that occurs during the 18-month period will be filled via a traditional by-election.

If Council decides that countback elections are to be used for casual vacancies during the first 18 months of this Council term, noting that a countback election is required to be completed within 49 days, the following timeline would be followed:

- Council would notify the NSW Electoral Commission (NSWEC) of a casual vacancy within 7 days of it occurring.
- A returning officer would be appointed by the NSWEC within 14 days of the notification to it of the vacancy.
- Within 2 to 14 days of the returning officer being appointed, casual vacancy notices would be issued to all unelected candidates from the previous ordinary election who may still qualify to be elected.
- Where candidate/s are interested in filling the casual vacancy, they would submit a formal application to the returning officer within 10 days of the casual vacancy notices being issued.
- The countback election would then be conducted within 14 days of the vacancy notices being issued.
- It may take up to a month for the results to be declared – noting the requirement for the election to be completed within 49 days.

It is noted that if there were no eligible candidates, an attendance by-election would be required to be held; if there was only one eligible candidate, that candidate would be automatically elected; and if there were multiple eligible candidates, the countback election would be conducted, and the returning officer would:

- Use preference data from ballot papers from the previous local government ordinary election.
- Use the same proportional representation method used in the original election.
- Effectively re-run 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-run the countback until an eligible candidate is elected.
- Notify eligible candidates and the Council of the result.

BUDGET

At this stage, there are no budgetary implications associated with this Report. It is noted that over the past 30 years, Council has only been required to hold a handful of by-elections, so it is relatively unlikely that one will be required to be held in the first 18 months of this term. Notwithstanding, there is no doubt that there would be less cost associated with the holding of a countback election as opposed to a by-election. It is estimated that the cost of a by-election would be in the order of \$250,000.

POLICY

As Council has not previously had an opportunity of this type, Council will be determining policy when it makes a decision about this matter at the February 2022 General Meeting.

CONCLUSION

A decision on this matter is one that should appropriately be made by the elected Council without a staff recommendation for or against the use of countback elections. As such, the Report contains as much detail as possible about the Inquiry undertaken by the Government as well as the provisions that were subsequently included in the Local Government Act and Regulations.

If Council is supportive of the use of countback elections within the first 18 months of its term, an appropriate resolution would be:

THAT:

1. *The contents of Director's Report No. CS3/22 be received and noted.*
2. *Pursuant to section 291A(1)(b) of the Local Government Act, casual vacancies occurring in the office of Councillor within 18 months after the last ordinary election of Councillors for the Council on 4 December 2021, be filled by a countback of the votes cast at that election for the office in accordance with section 291A of the Act.*
3. *The General Manager notify the NSW Electoral Commission of Council's decision within seven days of the decision.*

If Council is not supportive of the use of countback elections within the first 18 months of its term, an appropriate resolution would be:

THAT the contents of Director's Report No. CS3/22 be received and noted.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Acting Manager Governance and Customer Service – Steve Colburt - who can be contacted on 9847 6761.

STEPHEN COLBURT
Manager, Governance and Customer Service
Corporate Support Division

GLEN MAGUS
Director - Corporate Support
Corporate Support Division

ITEM 2

Attachments:

1.  Schedule 9A of the Local Government (General) Regulation

File Reference: F2019/00008

Document Number: D08322805

LOCAL GOVERNMENT NSW - 2022 SPECIAL CONFERENCE - DETERMINATION OF VOTING DELEGATES

EXECUTIVE SUMMARY

- The postponement of local government elections in NSW has had a flow-on effect for the Local Government NSW (LGNSW) Annual Conference. The annual event was split into two components:
 - A one-hour Conference to present LGNSW's annual report and financial reports, which will be conducted online from 9.30am on Monday 29 November 2021; and
 - A Special Conference – including the debate and resolution of motions setting LGNSW's advocacy agenda for 2022 - to be held in-person at the Hyatt Regency Sydney from Monday 28 February to Wednesday 2 March 2022

RECOMMENDATION

THAT:

1. Council determine the nine Councillors who will be Council's voting delegates for Motions at the LGNSW 2022 Special Conference.
2. All Councillors be registered for attendance at the Local Government NSW Special Conference to be held from Monday 28 February to Wednesday 2 March 2022.

PURPOSE

The purpose of this Report is to provide an opportunity for Council to determine its voting delegates for the LGNSW Special Conference.

BACKGROUND

The 2021 LGNSW Annual Conference was scheduled to be held at The Hyatt Regency, Sydney from Sunday 28 to Tuesday 30 November 2021, however the postponement of local government elections in NSW has had a significant effect for LGNSW's Annual Conference.

The annual event was split into two components:

- A one-hour Conference to present LGNSW's annual report and financial reports, which will be conducted online from 9.30am on Monday 29 November 2021; and
- A Special Conference – including the debate and resolution of motions setting LGNSW's advocacy agenda for 2022 - to be held in-person at the Hyatt Regency Sydney from Monday 28 February to Wednesday 2 March 2022.

The Conference provides the opportunity for Council delegates to network and be involved in discussions and consideration of motions about matters which affect local government across NSW.

DISCUSSION

This Report seeks to determine Council's voting delegates for the LGNSW 2022 Special Conference.

LGNSW have advised that Hornsby Shire Council is entitled to nine voting delegates for voting on motions at the Special Conference. LGNSW is to be advised of Councils Voting delegates by Thursday 17 February 2022.

All Councillors have been registered to attend the Conference along with attending the workshop – **"Investing in you – planning your own councillor professional development"** which will be held on 28 February – 1:30pm – 3:00pm.

BUDGET

Funds have been allocated in the 2021/22 budget for attendance by Councillors and relevant staff at the LGNSW Annual Conference.

POLICY

Councillor attendance at LGNSW Annual Conferences is in accordance with the Councillors' Expenses and Facilities Policy.

CONCLUSION

LGNSW has advised that Council is entitled to nine voting delegates for voting on Motions at the LGNSW 2022 Special Conference. Council needs to resolve who those nine voting delegates will be.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Acting Manager Governance and Customer Service – Stephen Colburt, who can be contacted on 9847 6761.

STEPHEN COLBURT
Manager, Governance and Customer Service
Corporate Support Division

GLEN MAGUS
Director - Corporate Support
Corporate Support Division

ITEM 3

Attachments:

There are no attachments for this report.

File Reference: F2021/00005

Document Number: D08326492

4 INFRASTRUCTURE CONTRIBUTIONS REFORM SUBMISSION

EXECUTIVE SUMMARY

- Contributions for local infrastructure, also known as developer contributions, are charged by councils when new development occurs. They are used to provide infrastructure to support development, including open space, parks, community facilities, local roads, footpaths, stormwater drainage and traffic management.
- In 2020, the NSW Productivity Commission undertook a review of the Local Contributions System in NSW and released a report with a package of reforms which impact on local councils' capacity to fund local infrastructure and collect contributions.
- In June 2021, a Bill to progress the reforms recommended by the Productivity Commission was referred for an Upper House Committee inquiry.
- At its meeting on 14 July 2021, Council resolved to make a submission to the Inquiry raising concerns about the potential adverse financial impacts of the proposed Bill for Hornsby Shire.
- In October 2021, in response to the Parliamentary Inquiry and advocacy by councils, amendments and draft regulations were exhibited as part of a Contributions Reform package. The Independent Pricing and Regulatory Tribunal (IPART) also released a draft report on the review of the essential works list and standardised benchmark infrastructure costs.
- At its meeting on 10 November 2021, Council resolved that the General Manager be delegated authority to make technical submissions on the DPIE Infrastructure Reform package and the IPART draft report. It was noted that the new Council would be briefed, and a formal position sought at the first meeting of the new Council in 2022.
- The submissions are attached to this report, and it is recommended that Council endorse the submissions and Council's position on the proposed reforms.

RECOMMENDATION

THAT:

1. Council formally endorse the submissions on Infrastructure Contributions Reform attached to Directors Report No. PC1/22 and confirm Council's position to the Department of Planning, Industry and Environment and the Independent Pricing and Regulatory Tribunal.
2. A copy of Council's submissions be forwarded to local State members of Parliament and be made publicly available.

PURPOSE

The purpose of this Report is to confirm Council's position on Infrastructure Contributions Reform and seek endorsement of the attached submissions raising concerns with aspects of the proposed reforms.

BACKGROUND

Contributions for local infrastructure, also known as developer contributions, are charged by councils when new development occurs. They are used to provide infrastructure to support development, including open space, parks, community facilities, local roads, footpaths, stormwater drainage and traffic management.

There are two forms of local infrastructure contributions. Section 7.11 contributions are charged where there is a demonstrated link between the development and the infrastructure to be funded. Councils prepare contributions plans which specify what infrastructure will be provided and approximately how much it will cost. Section 7.12 levies are an alternative to s7.11 contributions and are charged as a percentage of the estimated cost of the development. For these types of levies, a direct nexus between the development and identified works is not required.

Council contribution plans are generally limited to the costs of providing infrastructure needed to cater for a growing population. The ongoing costs of managing and maintaining infrastructure are not included in these plans and are funded through rates and other income streams. This is increasingly becoming a significant financial challenge for councils.

The development contribution system in NSW is overly complex and an administrative burden for councils. Therefore, when the State Government announced its intention to review the development contributions system, Council indicated its support for a review aimed at reducing complexity and improving the transparency of the current system.

In 2020, the NSW Productivity Commission undertook a holistic review of the Local Contributions System in NSW. The final report on the review was released in November 2020, with a package of reforms which impact on local councils' capacity to fund local infrastructure and collect contributions.

The Commission noted that NSW will face a constrained budgetary position as the recovery from the COVID-19 pandemic progresses, asset recycling winds down and pressures from a growing and ageing population increase. All levels of government will need to reconcile the need for fiscal repair with increasing demands for infrastructure.

In March 2021, the NSW Government confirmed it had accepted all 29 recommendations of the final report. To progress the reforms to the infrastructure contributions system, the Government introduced the *Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* to Parliament on 22 June 2021. However, due to extensive concerns raised about the impacts of the Bill, it was separated from the other State budget bills and referred to an Upper House Committee for further inquiry.

At its meeting on 14 July 2021, Council considered Director's Report No. PC14/21 concerning the implications of the proposed *Infrastructure Contributions Bill* for Hornsby Shire and resolved that:

1. Council make a submission to the *Parliamentary Inquiry into the Environmental Planning and Assessment Amendment (Infrastructure Contributions) Bill 2021* in accordance with the contents of Director's Report No. PC14/21 and raising matters including the following:

- a) *The reforms appear to be inconsistent with Government objectives for jobs creation by reducing the capacity for Council to fund the delivery of community infrastructure with associated construction jobs.*
 - b) *The issue of rate reform should be uncoupled from the review of development contributions to ensure the cost of providing new facilities to meet the needs of a growing population is not shifted to the existing community.*
 - c) *Implementation of the recommendations will potentially have far reaching financial implications for councils and communities requiring further detailed modelling by the State Government at the individual council level.*
 - d) *Clarification is required concerning the definition of “development contingent infrastructure” and what infrastructure will be retained on the Essential Works List.*
 - e) *Recognising that Section 7.12 levies for alterations and additions to residential dwellings in infill areas is an appropriate method of funding the provision of community infrastructure.*
 - f) *The point at which payment of developer contributions is made should be maintained at the submission of construction certificates.*
2. *The General Manager be delegated to carry out further actions to support raising the matter with the State Government during the caretaker period for the upcoming local government elections.*
 3. *A copy of Council’s submission be forwarded to local State Members of Parliament and be made publicly available.*

In accordance with Council’s resolution, a submission was made to the Parliamentary Inquiry and a copy sent to local State Members of Parliament.

On 10 August 2021, the Committee overseeing the Inquiry made a single recommendation that the Bill not proceed until the associated draft regulations have been developed and released for consultation and the reviews into the rate pegging system, benchmarking and the essential works list have been published by the Independent Pricing and Regulatory Tribunal. The recommendation of the Inquiry was generally consistent with Council’s submission that, although some aspects of the reforms may have merit, further detail was required to determine an informed position about the extent of the implications of the changes.

In October 2021, in response to the Parliamentary Inquiry and advocacy by councils, amendments and draft regulations were exhibited as part of a Contributions Reform package. The Independent Pricing and Regulatory Tribunal (IPART) at the same time released a draft report on the review of the essential works list and standardised benchmark infrastructure costs.

At its meeting on 10 November 2021, Council resolved that:

The General Manager be delegated authority to make submissions on the Department of Planning, Infrastructure and Environment’s Infrastructure Reform Package and the draft report from the Independent Pricing and Regulatory Tribunal, which are currently on exhibition.

It was noted that the new Council would be briefed, and a formal position sought at the first meeting of the new Council in 2022.

DISCUSSION

In accordance with Council's resolution, submissions were prepared and sent to the Department of Planning, Industry and Environment and the Independent Pricing and Regulatory Tribunal. The submissions were prepared under the General Manager's delegation and forwarded by the due date of 10 December 2022. However, given the timing of the recent election, DPIE advised it will accept Council endorsed submissions one week after the first meeting of new councils in early 2022.

1. Submission to DPIE on reform package

Council's submission to DPIE on the Infrastructure Reform Package (attached) raises the following issues and concerns:

Regional Infrastructure Contributions (RICs)

- RIC funds should be spent within the District in which they are collected to benefit the communities living in the areas where development is occurring in accordance with the strategic planning priorities in the district and local plans.
- There should be a nexus to the development in the area in which it is proposed.
- If RICs do not have a nexus requirement, the same principle should apply to local contributions to allow more flexibility for councils in line with the expenditure of the RIC.
- A RIC payable in addition to any local development contribution levied for the development would increase the overall costs of development, inconsistent with State Government's aim of addressing housing affordability with the increased development costs likely to be reflected in the end market cost.
- The provision of regional infrastructure should not come at the expense of local development contributions.

Local Contributions (Section 7.11)

- Concern is raised with the proposal to remove the ability to levy contributions for community and indoor recreation facilities and public domain. These works represent 36% of the works program under Council's current Development Contributions Plan. Projects such as library upgrades and streetscape improvements would not be funded under this proposed change.
- Independent financial modelling indicates that, even including additional income due to rates reforms, Council would have a cumulative net income reduction of \$51.3 million by 2040/41 if community facilities, indoor recreation and public domain improvements were excluded from local contributions.
- Community facilities and public domain improvements are essential components of creating liveable, connected and accessible communities and the exclusion of these from funding is inconsistent with the State Government's draft *Design and Place State Environmental Planning Policy* which includes design principles and controls aimed to facilitate the provision of a high quality and diverse public domain spaces in concert with new development.
- It is essential that the interface between the public and private domain be planned and funded as a component of the development process.
- One of the main issues raised by the Hornsby community in community satisfaction surveys is resident concerns about the impacts of increased residential development and the need to ensure that infrastructure supports the development.

- With the changes proposed, Council's capacity to provide this infrastructure and the timeliness of any delivery will be significantly impacted. Consequently, community support (or tolerance) of increased densities to meet State housing obligations will be more difficult to attain as we seek to plan for growth into the future.

Land Value Contributions

- There is no justification for the proposed maximum land value contribution of 20% of the land value uplift.
- An upper limit should not be imposed for the percentage levied for land value contribution.
- Consideration should be given that when a Section 7.11 plan is prepared, detail costings should be supplied by local councils to justify the percentage levied.

Local levy conditions (Section 7.12)

- Charging alterations and additions on a per bedroom rate would increase uncertainty in the assessment process when seeking to determine where an additional room would constitute a bedroom.
- Council instead supports amending the local levy conditions to the maximum percentage that can be levied, up to 3% of the cost for residential development and up to 1% of the cost for non-residential development to provide certainty and transparency.

Deferring payment of contributions to occupation certificate stage

- Concern is raised with the proposal to permanently allow contributions payable at the occupation stage rather than before construction starts.
- This can cause complications with delivering infrastructure in a timely manner and increases the administrative burden on Council as they do not always have control over the full or partial occupation of a building and there is a risk contributions would not be paid.
- The recommendation to include borrowing costs to forward fund infrastructure delivery in the EWL is a cost shifting process as any saving to developers by the delayed payment of contributions would be offset by inclusion of the costs in a developer contributions plan.

Land Use Planning

- The Ministerial Direction that contributions plans are required to be prepared upfront and exhibited with a planning proposal is supported. However:
 - There is concern with the potential additional administrative burden on councils in the case of proponent led proposals.
 - The timeframe for the assessment of planning proposals should be increased to acknowledge the additional process for the preparation and "in principle" support of a draft contributions plan with rezoning proposals.
- The Ministerial Direction encouraging opportunities for shared use of public open space, drainage and public facilities appears to be in contradiction to the proposal to benchmark costs and embellishment at base level as the benchmark costs do not acknowledge that these spaces are often designed and constructed for multi-purpose or shared use.

- To support this Ministerial Direction, flexibility instead of benchmark costings is required to encourage consideration of best practice design in the delivery of the assets and the to meet the demands of various users.

2. Submission to IPART on essential works list and benchmark costs

Council's submission to IPART on the proposal for an essential works list and benchmark costs is attached to this report. In summary, the submission raises the following issues and concerns:

- An essential works list (EWL) should not be introduced for Plans where contributions rates are below the cap threshold.
- Should the EWL be introduced to apply to all contributions plans, community facilities should be included as they are an essential component of planning for future population growth.
- Mandating that only base-level infrastructure can be funded through contributions is not supported. This is likely to disadvantage communities as the facilities may either be overlooked and/or underused due to lack of innovation and quality or there may be a delay in their provision due to the gap-funding required to provide the facility at a level which meets community expectations.
- It should be the responsibility of the council to determine the design quality of infrastructure in consultation with the local community. What is base level can differ between communities and their specific characteristics and needs, which change over time.
- Should standardised benchmarks be set at base level, councils will have difficulty in gap-funding the true costs of facilities over and above the costs set for standardised items.
- Flexibility to allow councils to identify cases when benchmarks are not likely to provide a reasonable cost estimate is required for situations such as:
 - Development of open space at Westleigh for sports ovals and regional open space at Hornsby Quarry has identified significant additional costs beyond standard benchmarks. These costs are in the tens of millions of dollars and include addressing issues of contaminated lands, access and geotechnical issues such as landfilling and stabilisation.
 - Consideration of best practice design in the delivery of open space which is increasingly required to cater for high use for a range of activities.
 - Higher standards (and therefore costs) are likely to be required for infrastructure to withstand the climate extremes expected over their determined life cycle.

Council has advocated in support for reform of the development contribution system in NSW for many years with the aim of reducing complexity, improving transparency and equity and releasing the financial burden placed on councils to provide local infrastructure to support population growth. However, it is our understanding that the NSW Government has committed that no Council will be worse off as a result of the proposed reforms. To ensure that the State Government achieves its commitment that councils will not be worse off, community facilities, indoor recreation and public domain improvements should be able to be levied for under s7.11 contributions where there is nexus with the new development and any standardised benchmark costs should allow flexibility, especially for Plans that are already constrained by the cap.

CONSULTATION

To assist evaluation of the proposed changes to the development contribution system, planning consultants, GLN Planning, were engaged by the Northern Sydney Region Organisation of Councils (NSROC) to undertake a holistic review of the reform impacts on member councils, including rate peg reform impacts. Council's submissions have been prepared in consultation with the other members of NSROC.

BUDGET

There are no budgetary implications associated with this Report. However, should the reforms be progressed by the State Government, financial modelling undertaken by a consultant for Council indicates that even including additional income due to rates reforms, Council would have a cumulative net income reduction of \$51.3 million by 2040/41. In addition, the reforms would have resource and financial implications for Council in the preparation and monitoring of its contributions plans

POLICY

Should the proposed changes for the preparation of Development Contributions Plans, reporting and monitoring be implemented in legislation, they would be required to be implemented by Council and appropriate resources allocated in future budgets and operational plans.

CONCLUSION

The submissions attached to this report were prepared under the General Manager's delegation and forwarded to the Department of Planning, Industry and Environment and the Independent Pricing and Regulatory Tribunal by the due date of 10 December 2022. The submissions advocate for changes to the proposed contributions reforms to ensure that the State Government achieves its commitment that councils will not be worse off as a result.

It is recommended that Council formally endorse the submissions and confirm Council's position to DPIE and IPART.



RESPONSIBLE OFFICER

The officer responsible for the preparation of this report is the Director, Planning and Compliance – James Farrington who can be contacted on 98476750.

JAMES FARRINGTON

Director - Planning and Compliance
Planning and Compliance Division

Attachments:

1.  DPIE Contribution Submission
2.  HSC Submission - IPART

File Reference: F2010/00015-04
Document Number: D08317997

ITEM 4

5 SYDNEY NORTH PLANNING PANEL AND HORNSBY LOCAL PLANNING PANEL - LOCAL AND COMMUNITY PANEL MEMBERS

EXECUTIVE SUMMARY

- Planning Panels were introduced by the State Government with the aim to ensure that the process for the assessment and determination of development applications (DAs) with a high corruption risk, sensitivity or strategic importance is transparent and accountable. As a result, elected Councillors no longer have a role to play in the determination of DAs.
- Council does have a role in determining the appointment of the community representatives on the Hornsby Local Planning Panel (HLPP) and local members on the Sydney North Planning Panel (SNPP). The term of appointment of the current members expires in March 2022.
- The current community representatives on the Local Panel comprise, Brian Scarsbrick AM (A Ward), Jerome Cox (B Ward), Barbra Wynn (C Ward) and alternate John Filocamo. Mr Cox has recently resigned from the Panel as he has been elected as a Councillor for The Hills Council which precludes his continued participation on the Panel.
- The current local membership on the Regional Panel comprises David White as the 'expert local member', Ross Walker 'non-expert local member' and alternate for the 'expert local member', and Felicity Findlay as the alternate for the 'non-expert local member'.
- It is recommended that Council acknowledge the resignation of Mr Cox from the Local Panel and extend the term of appointment for the balance of the local and community members on the SNPP and HLPP until 31 July 2022 to enable an expression of interest process to be undertaken to appoint new panel members for a period of 3 years.

RECOMMENDATION

THAT Council:

1. Acknowledge the resignation of Jerome Cox from the Hornsby Local Planning Panel and thank him for his participation and contribution to planning for Hornsby Shire.
2. Extend the term of appointment for the balance of the community representatives on the Hornsby Local Planning Panel (HLPP) and local members on the Sydney North Planning Panel (SNPP) until 31 July 2022 to enable an expression of interest process to be undertaken to appoint new panel members for a period of 3 years.
3. The Planning Panels Secretariat at the Department of Planning, Industry and Environment be advised of Council's resolution.

PURPOSE

The purpose of this report is to seek Council's endorsement to extend the term of appointment for the current community representatives on the Hornsby Local Planning Panel (HLPP) and local members on the Sydney North Planning Panel (SNPP) until 31 July 2022 to enable sufficient time to undertake an expression of interest process to appoint panel members by the newly elected Council.

BACKGROUND

Planning Panels were introduced by the State Government with the aim to ensure that the process for the assessment and determination of development applications (DAs) with a high corruption risk, sensitivity or strategic importance is transparent and accountable. As a result, elected Councillors no longer have a role to play in the determination of DAs. The background to the Panels is discussed below in terms of both the regional and local panels.

Sydney North Planning Panel

Regional Planning Panels were introduced in NSW in 2009 to strengthen decision making on regionally significant development applications and other planning matters. 'Regionally significant development' is generally development with a capital investment value (CIV) over \$30 million. The Panel is also the determining authority for council and Crown development with a CIV over \$5 million.

There are five Regional Planning Panels that operate for the Greater Sydney Region. Each panel is an independent body that is not subject to the direction of the Minister of Planning and Public Spaces. Hornsby Shire is within the area covered by the Sydney North Regional Panel which also includes the other councils within the North District.

Each Panel consists of five members, with three of the members, including the chair, appointed by the Minister (State members) and two members nominated by the relevant council (council members). At least one council member must have expertise in planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering and/or tourism. Property developers and real estate agents are not eligible to be members of a Panel.

On 15 January 2020, the Minister for Planning and Public Spaces wrote to Council to advise that the term of appointment of the two State appointed members on the SNPP had expired and Julie Savet Ward and Brian Kirk were appointed to the Panel. Peter Debnam continued in his role as the Panel Chair.

The current term of appointment for David White as the 'expert local member', Ross Walker 'non-expert local member' and alternate for the 'expert local member', and Felicity Findlay as the alternate for the 'non-expert local member' is due to expire in March 2021.

Council determines how their local members are selected. In selecting members, councils are required to have regard to any conflict of duties that would be created for a person nominated to the Panel if they are in any way responsible or involved in the assessment of matters to be determined by the Panel or involved in voting or deliberating on matters that come before the Panel. Councils are not restricted to nominating people from the council area. The Department of Planning recommends that councils consider appointing members for the maximum term of three years to ensure the greatest degree of continuity for the Panels.

Hornsby Local Planning Panel

The Hornsby Local Planning Panel was constituted by the then Planning Minister on 1 March 2018. The Panel has the function of determining a range of development applications including, but not limited to, contentious applications where 10 or more unique objections are received, proposals

involving a variation to a development standard greater than 10 per cent, demolition of a heritage item, residential flat buildings, sex service premises, and applications submitted by Council, a Councillor or member of Parliament. The Panel also has an advisory function, providing advice to Council prior to its consideration of changes to Council's Local Environmental Plan.

The Panels consist of a chair and two independent experts appointed by Council from a Minister-endorsed pool of independent, qualified people, plus a community representative.

Independent expert members are required to have expertise in one or more of the following fields: planning, architecture, heritage, the environment, urban design, economics, traffic and transport, law, engineering, tourism, or government and public administration. Panel chairs are required to have expertise in law or government and public administration.

At its meeting on 9 June 2021, Council resolved to re-appoint the current Panel Chair and expert panel members until 29 February 2024. The expert panel members are Ms Juliet Grant; Ms Linda McClure; Mr Garry Fielding; Mr Steven Layman; Ms Mary-Lynne Taylor; Mr Scott Barwick and Ms Alison McCabe. Mr Garry Fielding is the Chair and Ms Jacqueline Townsend, and Ms Penelope Holloway are the alternate Chairs.

Community representatives are not required to have planning expertise. The role of the community representative is to ensure that local insights and knowledge are considered as part of the Panel decision-making. Councillors, property developers and real estate agents are ineligible to be panel members as the State Government states that this undermines the objective of having DAs determined by independent experts.

The current community representatives on the Local Panel comprise, Brian Scarsbrick AM (A Ward), Jerome Cox (B Ward), Barbra Wynn (C Ward) and alternate John Filocamo. Mr Cox has recently resigned from the Panel as he has been elected as a Councillor for The Hills Council which precludes his continued participation on the Panel.

At its meeting on 10 February 2021, Council resolved to extend the term of appointment of the current community members on the Hornsby Local Planning Panel until 31 March 2022. It was intended that this timing would provide an appropriate opportunity for the newly elected Council to consider Panel membership for its term. However, given the delay in local elections from September to December 2021, insufficient time is available to conduct an EOI process and select new members before the end of March. Accordingly, it would be appropriate to extend the term of the current community representatives to facilitate the undertaking of the process.

DISCUSSION

Schedule 2, Part 4 of the Environmental Planning and Assessment Act, 1979 – 'Provisions relating to members of planning bodies' sets out criteria for the period that a panel member may maintain office as follows:

- 1) *A member of a planning body holds office, subject to this Act and the regulations, for such period (not exceeding 3 years) as is specified in the member's instrument of appointment.*
- 2) *That period may be determined by reference to the occurrence of a specified event or the completion of the exercise of particular functions of the planning body.*
- 3) *A member is eligible (if otherwise qualified) for re-appointment.*
- 4) *A member of a local planning panel may not hold office as a member of that panel for more than 6 years in total.*

The current term of appointment for the current community members of the HLPP and local members of the SNPP may be extended in accordance with the Act as their term would be less than 6 years.

Hornsby Local Planning Panel

The current term of appointment for community members of the Hornsby Local Planning Panel expires in March 2022. The appointment of the community representatives remains the responsibility of Council and previously, Council has selected a community representative for each Ward.

The Department's guideline for the selection of community representatives states that the advertising period should be no less than 28 days to give community members appropriate time to apply. Advertising would include, at a minimum, two notifications in local media, advertisement on Council's website and social media, and letters to community groups.

Local community representatives may be selected on the basis that they:

- Are current residents of the Shire
- Understand the Shire and issues of concern to the local community
- Have the capacity to form independent views and to contribute constructively to the determination of applications
- Can demonstrate a basic level of understanding of the planning system (i.e. knowledge of Council's local environmental plan, development control plan, local strategic planning statement and/or community strategic plan)
- Are committed to:
 - Following the Code of Conduct for Local Planning Panel Members and the Local Planning Panels Operational Procedures
 - Attending local planning panel meetings and completing panel business in required timeframes

Following the end of the advertising period, applications are reviewed against the selection criteria, candidates shortlisted, interviews arranged (if required) and recommended candidates reported to Council for endorsement.

Previous experience in the selection of panel members has shown that it takes approximately 6 months to undertake the expression of interest process. Accordingly, it is recommended that the term for the community representatives on the Panel be extended until 31 July 2022 to enable appropriate time for an expression of interest process to be conducted including interviews with candidates as appropriate and reporting to Council.

The Planning Panels Secretariat at the Department of Planning, Industry and Environment must be advised of all appointments to the local planning panel, including any appointments as alternates, or as Ward representatives.

Sydney North Planning Panel

The current term of appointment for the current expert and non-expert local members on the SNPP also expires in March 2022. Extending the term of membership of the current local members would enable expressions of interest to be conducted jointly for local and community members of both the SNPP and HLPP. The advertising and recruitment process would be consistent and coordinated with that proposed for the selection of Local Panel members.

BUDGET

There are no additional budgetary implications. The Minister has made a remuneration determination setting minimum per meeting rates for panel members.

POLICY

There are no policy implications associated with this Report.

CONCLUSION

The current term of office for panel members of the Hornsby Local Planning Panel and the community members of the Sydney North Planning Panel expires in March 2022.

It is recommended that Council extend the current term of membership of community and local panel members to enable an expression of interest process to be conducted by Council.

Council should write to the Minister of Planning advising of the extension of office of the current local members on the Sydney North Planning Panel and community members of the Hornsby Council Local Planning Panel.

RESPONSIBLE OFFICER

The officer responsible for the preparation of this Report is the Director, Planning and Compliance Division – James Farrington who can be contacted on 9847 6750.

JAMES FARRINGTON

Director - Planning and Compliance

Planning and Compliance Division

Attachments:

There are no attachments for this report.

File Reference: F2013/00295-003

Document Number: D08328688