

Additional Item

Item No: 1.4
Title: Administrator Minute - Conduct of Referendum
Department: Administrator

15 June 2021 Ordinary Council Meeting

Reference: F2021/00034 - D14685558

Author: Rik Hart, Administrator



I formally move:

- 1 That Council determine the limited available service providers to undertake election services constitutes extenuating circumstance, and in accordance with Section 55(3)(i) of the Local Government Act 1993 resolve that a constitutional referendum arrangement be entered into by contract for the Australian Election Company to administer a constitutional referendum of the Council on 4 September 2021.*
- 2 That Council advise the NSW Electoral Commission of this Administrator's Minute.*

Background

In December 2019, Council entered into a contract with the NSW Electoral Commission to administer all Council elections, polls and referenda.

At the meeting held 11 May 2021, Council resolved as follows:

- 1 That Council resolve to conduct a Constitutional Referendum on the same day as the conduct of the 2021 Local Government Election being held across New South Wales as follows:*

Do you favour a reduction in the number of Central Coast Councillors, from fifteen to nine? This will result in three Wards with each Ward electing three Councillors.

- 2 That Council advise the NSW Electoral Commission of the conduct of the referendum.*

Council had advised the NSW Electoral Commission in February 2021 of its intention to conduct a referendum for the reduction of the number of Councillors with the 2021 Local Government Election.

Following the resolution of Council on 23 March 2021, Council advised the NSW Electoral Commission of the proposed question. This was subsequently changed by a Rescission Motion, as above, on 11 May 2021 and the NSW Electoral Commission was advised.

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A meeting was held with the NSW Electoral Commission on 20 May 2021 to discuss the conduct of the referendum. Following that meeting a revised cost estimate for the conduct of the referendum was provided by the NSW Electoral Commission on 25 May 2021.

On Monday, 7 June 2021, the NSW Electoral Commission wrote to Council advising that it was no longer possible for the Commission to conduct the referendum for Council on 4 September 2021 when local government elections are being conducted.

The NSW Electoral Commission has advised that it may be able to conduct a stand-alone referendum in March 2022. This option has been seriously considered. However, should the referendum be carried, it will be necessary for work to be undertaken to review ward boundaries (change from five wards to three wards) and this will require community consultation prior to the next Ordinary election. This creates a challenging timeframe for effective community consultation.

Referendum

In the prior Administrator's 30 Day report into the Central Coast Council's financial position he formed the view that that fifteen Councillors is too many for the effective operation of a Council. He stated that this large number does not facilitate collaborative and effective decision making, and often results in an adversarial environment which does not benefit the Central Coast Community.

As a result, the prior Administrator resolved that a referendum be held at the September 2021 Local Government Election to reduce the number of Councillors from 15 to nine.

To pass, the question would need to be supported by a majority of Central Coast electors. Should the referendum be passed, the changes would take effect for the next local government election for the Central Coast likely to be conducted in late 2022.

Financial Considerations

Council has sought a revised quote from the NSW Electoral Commission for the conduct of a referendum in March 2022.

In addition, Council has sought a quote from a commercial provider, Australian Election Company Pty Limited, for the conduct of a referendum in September 2021.

The commercial provider's quote was lower at \$1,774,866.66 excluding GST.

There is only one commercial provider in Australia able to provide this service. As a result, I believe that the limited available service providers to undertake election services constitutes extenuating circumstances, and in accordance with section 55(3)(i) of the *Local Government Act 1993*. This means that Council would be deviating from standard

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procurement practices and not seeking tenders for the provision of this service given the unique service.

Legislative Considerations

At its meeting held 11 March 2019, Council resolved that the 2020 Local Government Election would be administered by the NSW Electoral Commission as follows:

- 171/19 *That Council resolves pursuant to s.296(2) and (3) of the Local Government Act 1993 (NSW) (the Act) that an Election arrangement be entered into by contract for the NSW Electoral Commissioner to administer all Elections of the Council.*
- 172/19 *That Council resolves pursuant to s.296(2) and (3) of the Act, as applied and modified by s.18, that a council poll arrangement be entered into by contract for the NSW Electoral Commissioner to administer all Council polls of the Council.*
- 173/19 *That Council resolves pursuant to s.296(2) and (3) of the Act, as applied and modified by s.18, that a constitutional referendum arrangement be entered into by contract for the NSW Electoral Commissioner to administer all constitutional referenda of the Council.*
- 174/19 *That Council request the Chief Executive Officer to advise the NSW Electoral Commissioner before 12 March 2019 that Council has resolved to enter into an Election arrangement with the NSW Electoral Commissioner to administer all Council's Elections, polls and constitutional referenda.*

Council subsequently entered into a contract with the NSW Electoral Commission in December 2019. Following advice from the NSW Electoral Commission that it would not be able to honour the arrangement for a referendum to be conducted in September 2021, Council sought agreement that the NSW Electoral Commission would not object to Council engaging a third party provider and this was confirmed on 11 June 2021.

The 2020 NSW Local Government elections were delayed to September 2021 due to COVID-19. In April this year, the Minister for Local Government postponed the local government election for Central Coast Council to late 2022 due to the conduct of the Public Inquiry.

The Office of Local Government have advised that there is nothing in the *Local Government Act 1993* which would preclude Council from now resolving to engage a third party provider for the conduct of a referendum on 4 September 2021.

Conclusion

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It is disappointing that the NSW Electoral Commission is not in a position to provide the referendum services as originally planned and costed.

Serious consideration has been given to the suggestion by the NSW Electoral Commission that a referendum be conducted in March 2022. However, should the referendum be carried, this would leave insufficient time for review and consultation of ward boundaries for a potential election in September 2022.

Council has identified an appropriate provider who is able to deliver the referendum service in September 2021 and at a slightly lower cost than the NSW Electoral Commission has quoted.

For these reasons, and to provide the Central Coast community the opportunity to have their say on this important issue, I propose that Council engage the Australian Election Company for the conduct of a Referendum on 4 September 2021 when local government elections are being conducted in NSW.

Attachments

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| 1 Letter from Commissioner to Central Coast Council - referendum -
signed 4 June | D14682195 |
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Mr Rik Hart
Administrator
Central Coast Council
P.O. Box 21
GOSFORD NSW 2250

4 June 2021

Dear Mr Hart

Central Coast Council's resolution to conduct a constitutional referendum

Officers from the NSW Electoral Commission and the Central Coast Council have been in recent discussions about the Council's decision to proceed with a constitutional referendum on 4 September, notwithstanding the recent announcement by the Minister for Local Government that ordinary elections on that date for the Council will be postponed.

Since becoming aware of the Council's decision to continue, the Commission has been carefully exploring options to conduct a referendum for the Council on that date. This review has now concluded and, regrettably, it has demonstrated that it will not be possible. As you would appreciate, to protect the integrity of all elections in NSW, the Commission must comprehensively test all its election systems prior to the conduct of any type of poll. It has not been possible to confirm that, in the present circumstances, the information technology systems of the Commission could deliver key components required for a referendum in one local government area on the same day as state-wide ordinary elections. The Commission's systems have not previously been configured for such a rare scenario, which I note is also not contemplated in our current election agreement. Early indications from testing are that significant problems would arise and it is now too close to 4 September to fully test for and resolve these issues without unacceptably high risks for both parties, and the majority of other councils in the state.

I also note that it is highly unlikely Vote could be able to be made available for a referendum only in the Council's local government area. It is also unclear that the supplementary public funding made available in 2020 to meet councils' election costs, including additional funding to off-set the additional costs of implementing risk mitigation strategies for Covid-19, would be available to run a standalone referendum. If it is not, the costs that would be recoverable from the Council would be considerably higher than our early estimates, given the large size of the local government area and compulsory voting for all enrolled residents in a constitutional referendum.

It is with regret, therefore, that I must formally advise the Council that the NSW Electoral Commission is unable to conduct a standalone referendum on 4 September 2021.

An initial assessment indicates, however, that the Commission may be able to deliver a constitutional referendum in March 2022. The Commission may also be able to deliver a referendum on another Saturday chosen by the Minister for Local Government as the date for holding the further postponed ordinary elections.

The practicability of that option will depend upon the final date chosen and identifying the resources necessary for the Commission to deliver a referendum at the same time it is undertaking critical preparations for the NSW State General election in March 2023. It would also be essential, in light of the current public inquiry into the financial position of the Council and related matters, for the Council to confirm first whether it is entitled to any portion of the supplementary funding provided by the NSW Government to run the 2021 ordinary elections. As noted above, the cost impact for the Council of a standalone referendum will be significantly higher than the approximately \$2 million already estimated.

I appreciate that the Council may wish to consider engaging a commercial election services provider to deliver a referendum either on 4 September or at another time. Should the Council instead wish to explore options for the delivery of a referendum by the Commission on a later date, we would be pleased to participate in further discussions. Please advise us as soon as possible if that is the case. Mr Steve Robb, the Commission's Director, Customer Service and Relationship Management (Elections) continues to be available to discuss the Council's requirements and may be contacted on 9290 5431 and by email at steve.robb@elections.nsw.gov.au.

A copy of this letter has been sent to the Minister for Local Government, the Hon Shelley Hancock, MP.

Yours sincerely,



John Schmidt

Electoral Commissioner