

AMENDED ITEM



Item No: 3.2
Title: Conduct of the 2020 Local Government Elections
Department: Governance

11 February 2019 Ordinary Council Meeting

Trim Reference: F2018/00020-06 - D13428096

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Report Purpose

To allow Council to determine how the September 2020 Local Government election is to be administered.

Recommendation

- 1 That Council, as advised by the Office of Local Government, postpone making a resolution pursuant to s.296(2) and (3) of the Local Government Act 1993 (NSW) (the Act) to enter into an Election arrangement with any provider to administer Council's future Elections, polls and constitutional referenda.**
- 2 That Council request the Chief Executive Officer provide a further report back to Council dealing with the findings of the IPART report to the Minister for Local Government and the Election arrangement for the September 2020 Council Election.**
- 3 That Central Council resolves, pursuant to s.11(3) of the Local Government Act 1993, that the attachments to this report remain confidential as the attachments include "commercial information of a confidential manner".**

Update

At 3.54pm on Friday 8 February 2019, Council received the attached Council Circular from the Office of Local Government (19-02 / 8 February 2019 / A635365) titled "Council Circular 19-02 IPART review of the costs of conducting local government elections and extension of the deadline for councils to make a decision on the administration of their elections" (the Council Circular).

IPART has been requested to report to the Minister for Local Government by 30 August 2019 recommending a costing methodology to be applied in determining the amount the NSW

3.2 Conduct of the 2020 Local Government Elections (contd)

Electoral Commissioner (NSWEC) charges NSW Councils to administer their ordinary elections.

Noting that this timeline is outside of the current legislative cut-off period of 11 March 2019, the Council Circular states that:

As the outcomes of the IPART review may impact on the administration of the September 2020 council elections, it is proposed to introduce legislation in the first parliamentary sitting period of 2019 following the NSW State Election to amend the Local Government Act 1993 (the LGA) to extend the deadline for councils to make a decision on the administration of their elections under sections 296AA and 296. This deadline will be extended to 1 January 2020.

Despite the current legislative deadline under the Act being 11 March 2019 and the proposal to amend this cut-off date after it has expired, all Councils in NSW have received this direction from the Office of Local Government and it would be reasonable for Council to rely on this to postpone making a determination until a further report is provided to Council following the IPART report.

It is also noted that under section 296(5) of the Act, Council can enter into an election arrangement with the NSWEC to administer an ordinary council election less than 15 months before the election if Council has resolved to enter into the election arrangement and the NSWEC is satisfied that there are exceptional circumstances that make it necessary or desirable for the election to be administered by the NSWEC. It is likely that the Council Circular would fall into "exceptional circumstances" under section 296(5) of the Act, which would provide Council with further protection if for whatever reason the proposed amendments were not made to the Act.

Accordingly, the Recommendations have been amended to reflect this.

Context

Section 296AA of the *NSW Local Government Act 1993* (the Act) states that:

- (1) *At least 18 months before the next ordinary election of councillors for a council, the council must resolve:*
 - (a) *to enter into an arrangement with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council (as provided by section 296), or*
 - (b) *that the elections of the council are to be administered by the general manager of the council.*
- (2) *A resolution referred to in subsection (1) (b) must include the following information:*

- (a) *whether the general manager intends to administer elections personally or to engage an electoral services provider,*
 - (b) *if the general manager intends to administer elections personally, whether the general manager has identified any persons to be appointed as the returning officer and substitute returning officer for the next ordinary election of councillors and, if so, the names of those persons,*
 - (c) *if the general manager intends to engage an electoral services provider, whether the general manager has identified an electoral services provider to be engaged for the next ordinary election of councillors and, if so, the name of that provider,*
 - (d) *any other information required by the regulations.*
- (3) *As soon as practicable after the making of a resolution referred to in subsection (1) (b), the general manager of the council must publish a copy of the resolution on the council's website.*
- (4) *If a council fails to comply with subsection (1), the general manager of the council must publish a notice of that failure on the council's website.*

As a result, for the 2020 Local Government Election (the Election) a resolution regarding the administration of the Election needs to be made by Council before 12 March 2019. Council will need to determine whether to engage the NSW Electoral Commission (NSWEC), administer the Election internally, or appoint an agent to administer the Election on behalf of Council.

If Council fails to make a decision on the administration of its Elections, polls and referenda by 11 March 2019, it will not be able to engage the NSWEC to administer its ordinary Election and it will be required to make its own arrangements for the administration of its Elections.

Further, if Council does not make a decision on the administration of its Elections by 11 March 2019, Council will also be required to publish a notice of that failure on the Council's website.

Alternate Provider – tender process

In July 2018 Council was given the opportunity to participate in an "administration of Elections tender process" run by [NSW Regional Procurement](#) (the tender process). There were no 'upfront costs' for Council to participate in the proposed tender process and Council was able to cease to participate in the tender process at any time without penalty.

In order to allow Council to make an informed decision regarding the 2020 Election the decision was made to take part in the tender process. The tender covered the period 1 August 2018 through to 31 July 2023 (five years) with provision for a one time two year extension option.

3.2 Conduct of the 2020 Local Government Elections (contd)

As a result of the tender process, only one tender submission was received, which was from the Australian Election Company, a private company. The tender offering from the Australian Election Company will remain valid until **28 February 2019** and is discussed further below as part of the consideration of options..

Options

The following options are available to Council:

Option One: Resolve to enter into an arrangement with the NSW Electoral Commissioner to administer all Elections of Council (recommended) in the form recommended by the NSWEC.

Option Two: Resolve that the Election be administered by the Chief Executive Officer of Council personally and the Elections be run in house by Council.

Option Three: Resolve that the Election be administered by the Chief Executive Officer of Council and the Australian Election Company be awarded the tender as the Single Source provider of Election services.

The three options are discussed below.

Option One - Enter into an arrangement with the NSW Electoral Commissioner to administer all Elections of Council (recommended).

The NSWEC has been conducting local government Elections and Referendums since 1987 and has the experience, size and reputation to deal with the issues surrounding the Elections in one of the largest councils in Australia. The NSWEC successfully ran the first Election of the Central Coast Council and effectively sets the standard of openness, transparency and accountability that Council should expect from a service provider in the conduct of elections.

While the NSWEC may not represent the lowest cost provider, it is important that any savings achievable in the cost of the conduct of the Election do not come at the expense of the principles of openness, transparency, community confidence and accountability that underpin the arrangements of Elections.

The Election arrangement with the NSWEC is a standardised contract for all councils. The service schedule and costs schedule of the standardised contract will vary between councils given their respective size and requirement. These variations are made by the NSWEC in consultation with each council.

Where a council resolves to engage the NSWEC to administer its Elections, Polls and Referenda, the Election arrangement with the NSWEC will apply to the 2020 Ordinary Election and every Election, Poll and Referendum including any By-Election or countback Election until the contract is automatically terminated 18 months before the next Ordinary Election of Councillors.

Election arrangements with the NSWEC can be terminated, but only after Council's Ordinary Election in 2020. An Election arrangement for the NSWEC to administer all Elections, Polls and Referenda of Council can be terminated by Council or the NSWEC at any time after the Ordinary Election by giving written notice of termination and in accordance with any notification requirements set out in the contract.

The Chief Executive Officer and key staff met with representatives from the NSWEC in late 2018. The NSWEC undertook to provide budget estimates for the cost of the conduct of the 2020 local government election for Central Coast Council by the end of 2018. This information was not provided and the NSWEC subsequently undertook to provide the information by 25 January 2019. The information had not been provided at the time of preparing this report. Should it be received subsequently, it will be provided to Council under separate cover.

The cost of conducting the 2017 election for Central Coast Council was \$1,604,722.

Resolution wording should Council accept the recommendation to engage the NSWEC has been provided by the NSWEC.

Option Two: The Election be administered by the Chief Executive Officer of Council personally.

Council also has the ability to resolve to appoint the Chief Executive Officer to essentially run the Election in house.

Under section 296AA of the Act, where a Council resolves to administer its own Elections, it must include the information specified below in the resolution:

- If the Chief Executive Officer intends to administer Elections personally, whether the Chief Executive Officer has identified any persons to be appointed as the Returning Officer and substitute Returning Officer and, if so, their names.

As soon as practicable after the resolution is made, the Chief Executive Officer must publish a copy of the resolution on Council's website.

The Chief Executive Officer must ensure that the persons they identify for appointment as the Returning Officer and substitute Returning Officer (who exercises the functions of the Returning Officer in that person's absence), is suitably qualified and independent. To ensure the conduct of an Election is seen to be at arms' length from the Council, an employee of Council cannot be appointed as a Returning Officer or substitute Returning Officer for a particular area (section 296A(4) of the Act).

It is also important that electoral officials, including the Returning Officer are, and are seen to be, politically neutral. For example, they must not have current or recent political affiliations with any political party, candidate, councillor or mayor.

Councils conducting their own Elections are required to provide certain information to the NSWEC to support it in the exercise of its statutory functions in connection with the administration of candidate registration and other electoral funding and disclosure requirements and the enforcement of the failure to vote provisions of the Act and Regulation.

Within six months of the Election, the Chief Executive Officer must also prepare a report for the Minister for Local Government on the conduct of each Election. Full and transparent costings for each Election must be disclosed in this report.

The conduct of an election is a specialist area and very few staff have recent, direct experience in the conduct of an election. Council Staff are not confident that there exists within the organization the resources or experience to administer Council's Elections to the same level of service expected from the NSWEC.

A key consideration is the level of community confidence in the conduct of the election.

It is also not possible to give a realistic estimate of the costs that would be associated with the conduct of the election were Council to resolve that the election be administered by the Chief Executive Officer. It is possible that due to Council having to fully fund the sunk costs associated with the conduct of an election that this would represent the most expensive option.

The recommended wording of the resolution wording should Council resolved to pursue Option Two would be as follows:

- 1 *That the 2020 Local Government Elections of Central Coast Council be administered by the Chief Executive Officer of the Council.*
- 2 *That Council provide the NSWEC with formal notification of its intention to have the 2020 Local Government Elections administered by the Chief Executive Officer.*
- 3 *That Council requests the Chief Executive Officer undertake all necessary tasks to prepare for the 2020 Local Government Elections.*

Option Three - The Election be administered by the Chief Executive Officer of Council and the Australian Election Company be awarded the tender as the Single Source provider of Election services.

Under section 296AA of the Act, where a Council resolves to administer its own Elections, it must include the information specified below in the resolution:

- Whether the Chief Executive Officer intends to administer Elections personally or to engage an electoral services provider;

3.2 Conduct of the 2020 Local Government Elections (contd)

In July 2018 [NSW Regional Procurement](#) undertook a tender process for the administration of Elections. The following Councils, including Central Coast Council, joined the tender process: Maitland City, Singleton, Clarence Valley, Richmond Valley, Port Stephens, Kempsey Shire, Nambucca Shire, Coffs Harbour City, Norfolk Island Regional, Wingecarribee Shire, Lismore City, Dungog Shire, Lake Macquarie City, Port Macquarie-Hastings and MidCoast.

As a result of the tender process, only one tender submission was provided, being the [Australian Election Company](#) (AEC).

The tender price matrix for the AEC to administer the Ordinary Election for Council is contained in Confidential Attachments 1 to this report. The AEC reserves the right to increase prices in accordance with potential legislative and regulatory amendments, wage increases, payroll tax, superannuation, postage and other significant cost rises from the time of submitting the tender.

It is important to note that while the Act permits the use of such commercial electoral services providers as the AEC, the Chief Executive Officer would still retain overall responsibility for the administration of the Elections. The Office of Local Government has provided advice that in negotiating arrangements for the administration of their Elections with commercial electoral services providers, Councils need to ensure that:

- there will be an appropriate number of pre-poll and polling places;
- there will be adequate staffing levels;
- the provider uses counting software that is able to undertake counts using the newly prescribed weighted inclusive [Gregory method](#);
- the potential need for the contractor to administer countback Elections in the 18 months following the ordinary Election; and
- that the provider is able to meet the new requirements recommended by the NSW Parliament's [Joint Standing Committee on Electoral Matters](#).

As part of the tender submission, three reference checks were provided and these are contained in Confidential Attachment 2 to this report. Whilst it is acknowledged that the reference checks scored highly, it is noted that only one reference is from a local government entity, being a significantly smaller council than Central Coast Council.

Upon review of this evaluation there is low confidence that the AEC offers the identical level of service to that of the NSWEC. There is also no evidence that the provider has experience providing election services for a Council the size of Central Coast.

The following is the recommended wording of the resolution wording should Council resolve to pursue Option Three:

- 1 *That the Australian Election Company be awarded this tender as the Single Source provider of Election Services for the period 1 April 2019 to 31 March 2024.*

3.2 Conduct of the 2020 Local Government Elections (contd)

- 2 *That provision be made for a two year contract extension based on satisfactory supplier performance which may take the contract through to 31 March 2026 to allow for the 2024 Local Government Election process to be undertaken by this contractor including any By-Elections that may be conducted during this period.*
- 3 *That the Elections of the Central Coast Council will be administered by the Chief Executive Officer of Council for the periods mentioned above under Parts 1 and 2 of this resolution.*
- 4 *That Council provide the NSW Electoral Commissioner with formal notification of its intention to have the 2020 and 2024 Local Government Elections administered by the Chief Executive Officer of Central Coast Council.*

Risk Assessment

Provision of services by NSWEC

It is important to note that any savings in the conduct of the Election should not come at the expense of the principles of openness, transparency, community confidence and accountability that underpin the arrangements of Elections.

In previous Elections the NSW Electoral Commissioner has highlighted that should Council resolve not to contract the NSWEC to administer the Election, then no services or advice would be made available by them, beyond those required by legislation. This is due to the fact that the Commissioner will take full responsibility for the conduct of the Election if the NSWEC administers the Election. However the Commissioner will take partial responsibility should Council administer the Election itself.

The NSWEC has advised that its returning officer training program is customised specifically to complement the NSWEC's own business processes, procedures and IT systems. It combines on-line and face to face training and is centred around training the Returning Officers in using the NSWEC's computer applications. As such, this training program is not transferable to the differing operating environments of individual councils. Similar constraints apply to any manuals or handbooks prepared by the NSWEC.

Council would also not have the benefit of having the NSWEC staffing the hotline used by the public to address a range of elections questions and issues. It is difficult to place a value on this service, which is included when NSWEC is engaged.

The only services the NSWEC would provide to Councils that administer their own Election are enrolment services. This includes the provision of authorised rolls, candidates rolls, an online look-up facility for non-residential electors, a list of general postal voters and enrolment declaration envelopes. These products and services will be provided at cost to Council.

3.2 Conduct of the 2020 Local Government Elections (contd)

It is noted that were Council to engage the NSWEC we would be one of many Councils engaging the NSWEC and as such may not receive focused service or priority. To mitigate this, staff would actively engage with the provider to ensure the best possible outcomes for the Central Coast and would advocate for the highest level of service for Council's elections.

Countback Election

Recent amendments to the [Local Government \(General\) Regulation 2005](#) (the Regulation) have given effect to the 2014 amendments to the [Local Government Act 1993](#) (the Act) to give Councils the option of holding a countback Election to fill casual vacancies in the first 18 months of their terms instead of holding a costly by-Election and have prescribed the administrative requirements for countback Elections.

A countback Election to fill a casual vacancy must be conducted by the Returning Officer who conducted the Election at which the person whose departure created the casual vacancy was elected. If that is not possible, the countback Election must be conducted by the substitute Returning Officer at that Election and if that is not possible, by another Returning Officer appointed in accordance with the Act.

If a Council appoints a Returning Officer and substitute Returning Officer who are employees of a commercial electoral services provider, the Council's option to resolve to enter into an Election arrangement with the NSWEC for the administration of a particular countback Election may be limited by both the Act as well as the contractual arrangements agreed to between the Council and the commercial electoral services provider.

For example, the NSWEC would not be able to administer a countback Election for a Council where it did not administer its ordinary Election if the NSWEC does not have access to the electoral material, data and other information held by the Council or a commercial electoral services provider in relation to the ordinary Election.

To retain the option to engage the NSWEC to conduct a particular countback Election, Councils must ensure (amongst other things) that any contractual arrangement they enter into with commercial electoral services providers to manage their ordinary Election allows them to retain or to have ongoing access to ballots cast and other electoral material, information and data relating to the ordinary Election.

Even where contractual arrangements between the Council and a commercial electoral services provider make provision for the retention of electoral material, information and data, it may still not be possible for the NSWEC to undertake a particular countback Election for a Council because the provider's systems and procedures with respect to electoral material, information and data may not be compatible with the NSWEC systems and procedures.

To exercise the option of filling casual vacancies in the first 18 months using a countback Election, Councils must resolve at their first meeting following the ordinary Election to fill vacancies using countback Elections. A further report to Council will be provided addressing

3.2 Conduct of the 2020 Local Government Elections (contd)

this issue and any further guidance provided by the Office of Local Government closer to the relevant time.

Given the recent amendments, it is considered a significant risk should Council resolve not to engage the NSWEC

Conclusion

Central Coast Council is one of the largest councils in the NSW and in Australia. The Election process is one of the cornerstones of the Council and every attempt must be made to ensure that the principles of openness, transparency, community confidence and accountability are maintained.

Given the potential risks in relation to the conduct of Elections, it is recommended that Council determine to engage the NSWEC to conduct the 2020 Local Government Election.

In addition, the NSWEC has the ability to successfully meet the new requirements in the Regulation regarding counts using the [Gregory method](#), as well as having the ability to administer any potential countback Election in the 18 months following the Election. The NSWEC is also able to meet the new requirements recommended by the NSW Parliament's [Joint Standing Committee on Electoral Matters](#).

Financial Impact

Funds for the conduct of the 2020 Local Government Election will be included in the 2020/21 Budget.

Specific discussion of the financial impact of the conduct of the election is included in the consideration of the options within this report.

Link to Community Strategic Plan

Theme 4: Responsible

Goal G: Good governance and great partnerships

R-G2: Communicate openly and honestly with the community to build a relationship based on transparency, understanding, trust and respect.

Critical Dates or Timeframes

28 February 2019 Date the tender from the Australian Election Company is valid to.

3.2 Conduct of the 2020 Local Government Elections (contd)

- 11 March 2019** Council must make a decision on how the September 2020 Local Government Elections are to be administered.
- 12 March 2019** Council must advise the NSWEC if Council has resolved to enter into an Election arrangement with the NSW Electoral Commissioner to administer all Council's Elections, polls and constitutional referenda.
- 11 June 2019** Should Council resolve to enter into an Election arrangement with the NSWEC, the contract with the NSWEC must be finalised.
- 12 September 2020** NSW Local Government Elections

Attachments

- | | | |
|----------|--|-----------|
| 1 | CONFIDENTIAL: Tender Price Matrix - Australian Election Company - | D13429835 |
| 2 | CONFIDENTIAL: Reference Checks - Australian Election Company - | D13429832 |
| 3 | Council Circular 19-02 IPART review of the costs of conducting local government elections and extension of the deadline for councils to make a decision on the administration of their elections | D13457994 |



Office of
Local Government

Circular to Councils

Circular Details	19-02 / 8 February 2019 / A635365
Previous Circular	18-43 <i>Council decisions on the administration of the September 2020 elections</i>
Who should read this	Councillors / General Managers / Council Governance Staff
Contact	Council Governance Team / 02 4428 4100 / olg@olg.nsw.gov.au
Action required	Information

IPART review of the costs of conducting local government elections and extension of the deadline for councils to make a decision on the administration of their elections

What's new or changing?

- The Government has approved a review by the Independent Pricing and Regulatory Tribunal (IPART) of the costs of conducting local government elections in NSW. The matters for consideration under the review's terms of reference are provided in the attachment to this circular.
- The purpose of IPART's review is to ensure a robust methodology for determining costs is applied, in order to minimise the financial burden on councils and ratepayers and to ensure local government elections are conducted efficiently and cost effectively.
- IPART has been requested to report to the Minister for Local Government recommending a costing methodology to be applied in determining the amount the NSW Electoral Commissioner (NSWEC) charges councils to administer their ordinary elections.
- In undertaking its review, IPART is expected to consult with relevant stakeholders including councils.
- IPART is to report to the Minister for Local Government by **30 August 2019**.
- As the outcomes of the IPART review may impact on the administration of the September 2020 council elections, it is proposed to introduce legislation in the first parliamentary sitting period of 2019 following the NSW State Election to amend the *Local Government Act 1993* (the LGA) to extend the deadline for councils to make a decision on the administration of their elections under sections 296AA and 296. This deadline will be extended to **1 January 2020**.

What this will mean for your council

- Under the proposed amendments, councils will have until **1 January 2020** to resolve to make a decision on the administration of their elections and enter into any arrangements with the NSWEC.

Key points

- Under section 296AA of the LGA, councils must, at least 18 months before each ordinary council election, resolve to either enter into an election arrangement with the NSWEC to administer its elections or that elections are to be administered by the council's general manager.

- Under section 296(3)(b), where a council enters into an election arrangement with the NSWEC, the arrangement must be entered into no later than 15 months before the ordinary council elections.
- Under section 296(5), councils can enter into an election arrangement for the NSWEC to administer an ordinary council election less than 15 months before the election if the council has resolved to enter into the election arrangement and the NSWEC is satisfied that there are exceptional circumstances that make it necessary or desirable for the election to be administered by the NSWEC.

Where to go for further information

- Contact OLG's Council Governance Team by telephone on 02 4428 4100 or by email at olg@olg.nsw.gov.au
- Contact the NSW Electoral Commission by telephone on 02 9290 5999.



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Attachment

Matters for consideration under IPART's terms of reference

Matters for consideration

IPART is requested to provide a report to the Minister for Local Government recommending a costing methodology to be applied in determining the amount the NSWEC charges councils which use the NSWEC to administer their ordinary elections.

The purpose of the IPART's review is to ensure a robust methodology for determining costs is applied, in order to minimise the financial burden on councils and ratepayers and ensure local government elections are conducted efficiently and cost effectively.

In undertaking the review, IPART is to:

- review the NSWEC's existing methodology for determining the amount to be charged to councils which use the NSWEC to conduct their elections
- consider whether it is appropriate for the amount charged to be limited to the direct and unavoidable costs of conducting the council's election
- have regard to the market for electoral services in which the NSWEC operates
- have regard to any differences in the costs involved in conducting elections in metropolitan and regional areas
- have regard to any other matters it considers relevant.

Consultation

IPART should consult with relevant stakeholders and NSW Government agencies as part of its review. It may also hold public hearings and publicly release a draft report.

Reporting

IPART is to submit its final report to the Minister for Local Government by Friday 30 August 2019.