

# Extraordinary Council Meeting

## Business Paper

Maclean - 13 March 2023 - 9:00 AM





# AGENDA

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07.23.029 2024 Election - Appointment of NSW Electoral Commission

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Nil

**ENVIRONMENT & PLANNING**

Nil

**CORPORATE & GOVERNANCE****ITEM 07.23.029 2024 ELECTION - APPOINTMENT OF NSW ELECTORAL COMMISSION**

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|--------------------|---|---------------|
| <b>Meeting</b>     | Extraordinary Council   | 13 March 2023 |
| <b>Directorate</b> | Corporate & Community   |               |
| <b>Prepared by</b> | Governance Officer, Bligh Grant   |               |
| <b>Reviewed by</b> | Director - Corporate & Community, Alex Moar   |               |
| <b>Attachments</b> | A. OLG Circular 22-35-Attachment <a href="#">↓</a><br>B. LGE24 Council Estimate_Clarence Valley Council <a href="#">↓</a> |               |

**SUMMARY**

This report asks that Council appoints the NSW Electoral Commission (NSWEC) to administer the 2024 local government election with the model resolution as outlined in the NSW Office of Local Government (OLG) Circular 22-35 (Attachment A).

**OFFICER RECOMMENDATION**

As guided by the NSW Office of Local Government (OLG) Circular 22-23 (Attachment A. p.1):  
The Clarence Valley Council ('the Council') resolves:

1. 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 Electoral Commissioner to administer all elections of Council.
2. 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 Electoral Commissioner to administer all council polls of Council.
3. pursuant to s. 296(2) and (3) of the Act, as applied and modified by s. 18, that, if required, a constitutional referendum arrangement be entered into by contract for the Electoral Commissioner to administer all constitutional referenda of Council.

**LINKAGE TO OUR COMMUNITY PLAN**

Theme Leadership

Objective We will have a strong, accountable and representative Government

**KEY ISSUES**

Under section 296AA of the *Local Government Act 1993* (the Act) Council is required to decide how their ordinary elections in September 2024 are to be administered by 13 March 2023. Council must resolve to either:

- Enter into an arrangement with the NSWEC to administer Council's elections, polls and (if required) constitutional referenda, or:
- Enter into an arrangement with another electoral services provider for same.

Section 296AA of the Act specifies that there are consequences if Council does not resolve to engage the NSWEC to administer its elections by 13 March 2023, namely: (i) it will not be able to engage the NSWEC; (ii) it must engage another electoral services provider to do so, and (iii) it must publish a notice of the failure not to appoint the NSWEC on Council's website.

It is recommended that Council engage the NSWEC for the provision of these services, noting that OLG Circular 22-23 stipulates that the contract with the NSWEC must be finalised no later than 15 months before the election (i.e., 13 June 2023).

**BACKGROUND**

*Estimated cost of 2024 Clarence Valley Council Election*

On 30 January 2023 the NSWEC (Attachment B) notified Council of the estimated cost of the 2024 election at \$492,571.00. The Commission emphasised that this is expected to rise due to increased costs (see Attachment B for details). Averaging the expected increases across the expenditure categories in Attachment B (e.g., event staffing, transport, IT) it is reasonable to assume the expected increase to be a minimum 10%, totalling approximately \$541,800.00.

*Estimated cost of 2024 Election compared to 2021 Election*

As reported to Council's OCM June 2022 (ITEM 07.22.119) the NSWEC invoice for the 2021 election was \$398,738.79, inclusive of a significant 'COVID/Deferral discount' (although not including staff time). The EC's invoice was further mitigated by approximately \$31,200.00 which the NSWEC paid to Council for hire of Maclean Civic Hall as the Returning Office (RO). Thus calculated, the actual cost of the 2021 election was \$367,539.00.

The NSWEC has determined, despite the strong objections of Council's Executive, that the Returning Office for the 2024 election will be hosted by Richmond Valley Council, with whom Clarence Valley has traditionally had an informal shared service arrangement for the RO. As such, no significant financial mitigation through facilities hire will be applicable.

The estimated increase in the cost for the 2024 Election from 2021 is reasonably projected to be \$174,200.00 or 32%.

*Feasibility of engaging an alternative electoral services provider*

Staff enquired into the possibility of engaging an electoral services provider other than the NSWEC, specifically the Australian Election Company (AEC). AEC informed Council that joint/shared service arrangements (i.e., between several adjacent councils) in regional areas would be considered, but that provision to a single Council was financially unviable. Additionally, communication with other Councils suggested that the administrative burden on the Executive and other officers was significantly higher when a party other than the NSWEC was engaged.

**COUNCIL IMPLICATIONS****Budget/Financial**

The increased cost represents a significant impost on Council's Election Reserve, which currently has a balance of \$100,000 with a projected balance of \$233,333 by the end of FY 2022-23. Based on this balance and now having to cover newly estimated election costs of \$541,800, there will be a shortfall of approximately \$310,000 and as such it is recommended that \$155,000 needs to be placed into the Election Reserve in both 2023/24 and 2024/25 to ensure appropriate funding is available for the 2024 election.

**Asset Management**

As above.

**Policy and Regulation**

The figures above are for an ordinary election of Council. They do not include the costs of conducting a local government poll.

**Consultation**

NSW Office of Local Government; NSW Electoral Commission; CVC Finance

**Legal and Risk Management**

N/A

**Climate Change**

N/A

## FREQUENTLY ASKED QUESTIONS

### Part 1 Decision making on the administration of elections

#### **What decisions must councils make on the administration of their elections?**

Under section 296AA of the *Local Government Act 1993* (the Act), each council must resolve by **13 March 2023** either:

- to engage the NSW Electoral Commissioner (NSWEC) to administer the council's elections, polls and referenda, or
- that the council's elections are to be administered by another electoral services provider.

#### **What happens if a council fails to make a decision on the administration of its elections by 13 March 2023?**

If a council fails to make a decision on the administration of its elections, polls and referenda by 13 March 2023, it will not be able to engage the NSWEC to administer its ordinary election and it will be required to make its own arrangements with another electoral services provider for the administration of its elections.

A council that fails to make a decision on the administration of its elections by 13 March 2023 will also be required to publish a notice of that failure on the council's website.

### Part 2 Election arrangements with the NSWEC

#### **What election arrangements can councils enter into with the NSWEC?**

The election arrangement is a standardised contract for all councils. The service schedule and costs schedule of the standardised contract will vary between councils and 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 2024 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 following ordinary election of councillors.

Where a council resolves to engage the NSWEC to administer its elections, polls and referenda, it should use the model resolutions provided below.

#### **If a council wishes to engage the NSWEC to administer its elections, polls and referenda what form should its resolution take?**

Councils wishing to make a resolution that an election arrangement be entered into for the NSWEC to administer all elections, polls and referenda under section 296(3) of the Act should use the following model resolution:

*The [insert full description of council] ("the Council") resolves:*

1. *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 Electoral Commissioner to administer all elections of the Council.*

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2. 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 Electoral Commissioner to administer all council polls of the Council.
3. 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 Electoral Commissioner to administer all constitutional referenda of the Council.

#### **When must the election arrangements with the NSWEC be finalised?**

Where councils have resolved to enter into an election arrangement with the NSWEC, the contract with the NSWEC must be finalised no later than 15 months before the next ordinary elections (ie **13 June 2023**).

#### **Can election arrangements with the NSWEC be terminated?**

Yes, but only after the council's ordinary election. An election arrangement for the NSWEC to administer all elections, polls and referenda of a council can be terminated by the 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.

If the election arrangement is not terminated by either party, the arrangement is automatically terminated 18 months before the following ordinary election when the council will be required to determine who will conduct its next ordinary election.

#### **If a council does not engage the NSWEC to administer its ordinary election, can it engage the NSWEC to administer a particular by-election, poll or referendum after the ordinary election?**

Yes. Where a council does not enter into an election arrangement with the NSWEC to administer its ordinary election, the council may resolve to enter into an election arrangement with the NSWEC to administer a particular by-election, poll or referendum following the ordinary election.

If councils resolve to engage the NSWEC to administer a particular by-election, poll or referendum after the ordinary election, they should use the model resolutions provided below.

#### **If a council wishes to engage the NSWEC to administer a particular by-election or countback election, what form should its resolution take?**

Councils wishing to engage the NSWEC to administer a particular by-election or countback election after the ordinary election should use the following model resolution:

*The [insert full description of council] ("the Council") resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW) that:*

1. *an election arrangement is to be entered into for the Electoral Commissioner to administer [insert description of the particular election but do not do so by date in case the election date is changed or postponed]; and*
2. *such election arrangement is to be entered into by contract between the Electoral Commissioner and the Council.*

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**Note: Please refer below for additional information concerning limitations with respect to countback elections.**

**If a council wishes to engage the NSWEC to administer a particular poll, what form should its resolution take?**

Councils wishing to engage the NSWEC to administer a particular poll after the ordinary election should use the following model resolution:

*The [insert full description of council] (“the Council”) resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW), as applied and modified by s.18, that:*

1. *a council poll arrangement be entered into for the Electoral Commissioner to administer [insert description of the council poll but do not do so by date in case the poll date is changed or postponed]; and*
2. *such council poll arrangement be entered into by contract between the Electoral Commissioner and the Council.*

**If a council wishes to engage the NSWEC to administer a particular referendum, what form should its resolution take?**

Councils wishing to engage the NSWEC to administer a particular referendum after the ordinary election should use the following model resolution:

*The [insert full description of council] (“the Council”) resolves pursuant to ss. 296(2) and (4) of the Local Government Act 1993 (NSW), as applied and modified by s.18, that:*

1. *a constitutional referendum arrangement be entered into for the Electoral Commissioner to administer [insert description of the constitutional referendum but do not do so by date in case the referendum date is changed or postponed]; and*
2. *such constitutional referendum arrangement be entered into by contract between the Electoral Commissioner and the Council.*

**If a council does not engage the NSWEC to administer its ordinary election, can it engage the NSWEC to administer a countback election following the ordinary election?**

**No.** Under section 291A(b) of the Act, if the council's ordinary election was administered by an electoral services provider other than the NSWEC, a countback election to fill a casual vacancy must be conducted by a returning officer appointed by that electoral services provider.

**Part 3 Election arrangements with other electoral services providers**

**What information must be included in a resolution to engage an electoral services provider other than the NSWEC?**

Under section 296AA, where a council resolves that its elections are to be administered by an electoral services provider other than the NSWEC, the resolution must also state whether the general manager has identified an electoral services provider to be engaged for the next ordinary election and, if so, the name of that provider.

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As soon as practicable after the resolution is made, the general manager must publish a copy of the resolution on the council's website.

### **What should councils consider before making a decision to engage an electoral services provider other than the NSWEC?**

In considering the use of other electoral services providers, it is important to clarify that they can deliver the elections for the council.

Councils need to be satisfied that if the provider claims to be able to obtain all the electoral material, or hire the necessary venues, or arrange the printing of the ballot papers, or conduct the count, that they can demonstrate their successful completion of these tasks in similar circumstances.

A key consideration will be whether the provider is able to administer the complex counts required under the weighted inclusive Gregory method of preference allocation prescribed under the *Local Government (General) Regulation 2021* (the Regulation) for council elections using the proportional system.

It is also a requirement that the method proposed to be used by the provider to conduct the count of the ballot papers (whether through the use of data entry or scanning equipment) can comply with the formality, scrutiny and record keeping provisions contained in the Act and Regulation.

### **If councils decide to use a commercial electoral services provider, is it necessary to go to tender?**

Section 55 of the Act exempts councils from tendering when entering into a contract or arrangement for the NSWEC to administer the council's elections, referendums and polls. This exemption does not apply to contracts or arrangements with any other service provider.

As the amount involved in conducting council elections can be significant it is important to ensure that any commercial organisation is providing value for money. It is also important to ensure that as public funds are being expended, principles of openness, transparency and accountability are not compromised.

Unless the cost of administering the elections is under \$250,000 or any of the other exemptions provided for in section 55 apply, councils will be required to go to tender or to conduct a selective tender when engaging a commercial electoral services provider.

### **What should councils consider when entering into a contract with a commercial electoral services provider?**

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 can undertake counts using the weighted inclusive Gregory method
- the potential need for the provider to administer countback elections in the 18 months following the ordinary election.

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### **What is the appropriate number of polling places?**

The appropriate number of polling places for any one council will depend on its individual characteristics and factors such as the number of electors, the geographic area it covers, available transport options and suitable venues.

While the cost of hiring venues will be a consideration, councils should also consider the following when negotiating the number and type of venues to be used with the electoral service provider:

- How many voters are there in total in the area, and how many voters can each particular venue comfortably handle?
- What venues have been used in the past by either the Australian Electoral Commission for federal elections or the NSWEC for either state or local government elections? What was the previous attendance pattern at these venues?
- Is the venue conveniently located, particularly in light of transport options?
- Is it suitable for the purpose of conducting an election? For example, is there sufficient space for the various tables, voting screens, ballot boxes, throughput of voters? Is there appropriate furniture for electoral officials? For example, if small tables and chairs are used in a primary school these are not appropriate for adults involved in election-related activities.
- Is it easily accessible for all voters and in particular those with a disability, mobility issues, the elderly or frail, parents with prams?
- Are there venues located close to ward boundaries that can issue ballot papers for both the ward in which they are located as well as votes for adjoining ward/s? Or in the case of an undivided council, venues located close to the boundary of another council or councils?
- Is appropriate public liability insurance in place?

It is likely that the more electors a council has, the more polling places it will need.

### **What are the appropriate staffing levels for a council election?**

Determining the appropriate number of staff required for any particular council area depends on the estimated number of votes likely to be cast and the volume for each particular voting option (pre-poll, declared institution, postal and election day) as this will have an impact on the categories of staff recruited. For example, if it is anticipated that there will be a high demand for pre-poll voting it may be necessary to have more office assistants available in the returning officer's office than in an area where it is likely that more votes will be taken on election day at polling places.

Under the legislation, all polling places must have a minimum of two staff, one of whom is the polling place manager.

The NSWEC's polling place staffing formula is based on 450 votes per issuing table (at one election official per table) and the overall projected number of votes for the polling place determines the number of issuing tables. The number of issuing tables determines whether a particular polling place requires a deputy polling place manager, a ballot box guard and/or an enquiry officer.

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**Is it possible to conduct the count and distribution of preferences manually?**

**No.** The weighted inclusive Gregory method used for allocating preferences at elections using the proportional system, uses a fractional transfer system. All ballot papers of the elected candidate are used to distribute the surplus (instead of a sample). The ballot papers are distributed at a reduced rate with each transfer of votes by applying a transfer value, making manual counts impossible.

Councils should ensure that any commercial electoral services provider they engage to conduct their elections is able to undertake a count utilising counting software that allocates preferences using the weighted inclusive Gregory method.

**What arrangements should be made for countback elections?**

Councils have the option of filling vacancies that occur in the 18 months following the September 2024 council elections using a countback of the votes cast at the ordinary election instead of a by-election. Countback elections are not available for elections using the optional preferential voting system (including elections for popularly elected mayors).

In order to fill vacancies using a countback election, councils must resolve at their first meeting following the ordinary election that any casual vacancy is to be filled by a countback election.

If councils are proposing to fill vacancies using a countback election, they should factor this into their contractual arrangements with commercial electoral services providers. Among other things, the contractual arrangements should ensure the following:

- the retention of all electoral material, information and data for the 18 month period following the ordinary election during which countback elections may be used
- the safe storage and security of electoral material, information and data (including from cyber-attack)
- the council has ongoing access to the electoral material, information and data from the ordinary election.

**What other considerations should councils factor into their contractual arrangements with commercial electoral services providers?**

Councils should ensure:

- that the commercial electoral services provider has a formal policy that ensures that scrutineers are given as much opportunity as possible to be involved in the counting process by allowing the examination and comparison of ballot papers, the data entry of votes recorded on ballot papers (whether by manual data entry or digital scanning) and electronic or data entry records
- that the commercial electoral services provider has an audit system in place for checking ballot papers against the information entered into the electronic counting system used by the provider and that scrutineers are permitted to observe the audit process and its results
- that the commercial electoral services provider will make full preference data available for publication

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- that the source code of counting software used by the commercial electoral services provider has been independently audited by an accredited source code auditor.

### **What services will the NSWEC provide to councils that engage an electoral services provider to administer their elections?**

The NSWEC provides enrolment services to electoral services providers such as 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 the relevant councils.

### **What information are councils required to provide to the NSWEC where they engage another electoral services provider to administer their elections?**

Councils that have engaged a provider other than the NSWEC to administer their 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.

### **How should election costs be managed?**

General managers should prepare a budget for all facets of council elections, and record and monitor expenditure to ensure a shortfall does not occur. Activity based costing will need to be applied to ensure that all costs and expenses are identified.

Areas to be covered include:

- wages of all electoral officials and any council staff engaged in election-related work
- recruitment and training
- advertising including the placement of statutory advertisements
- candidate and elector information
- hire of venues, furniture and equipment
- production of all election-related material, including forms, envelopes and cardboard material
- printing of ballot papers including in Braille, if requested
- transportation of election-related materials
- IT software and hardware
- administration expenses such as telephone, postage, courier services, photocopiers and printers
- insurance

A number of key variables will not be known until the close of nominations, namely whether an election will be uncontested, whether there will need to be a by-election due to insufficient nominations, whether candidates will form groups and request group voting squares, and whether as a result, ballot papers will need to be printed to allow 'above the line' and 'below the line' voting.

These factors will have an impact on costs. However given the lead time required to ensure voting can go ahead at the prescribed times, provision for all likely costs has to be made.

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**WORKS & CIVIL**

Nil

**8. CONFIDENTIAL BUSINESS**

**10. CLOSE OF EXTRAORDINARY MEETING**