

82 of the *Environmental Planning and Assessment Act 1979*, or

- (ii) such a deemed refusal arose before the commencement of the caretaker period,
- (c) the appointment or reappointment of a person as the council's general manager (or the removal of a person from that position), other than—
 - (i) an appointment of a person to act as general manager under section 336(1) of the Act, or
 - (ii) a temporary appointment of a person as general manager under section 351(1) of the Act.
- (2) Despite subclause (1), such a function may be exercised in a particular case with the consent of the Minister.
- (3) In this clause—

caretaker period means the period of 4 weeks preceding the date of an ordinary election.

controversial development application means a development application under the *Environmental Planning and Assessment Act 1979* for which at least 25 persons have made submissions under section 79(5) of that Act by way of objection.

Note. See also Division 9A (Provisions relating to activities during regulated periods) of this Part for controls on certain activities during the regulated period before elections.

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.

Division 12 Mayors, county councils and referendums

394 Election of mayors by councillors

If a mayor or deputy mayor is to be elected by the councillors of an area, the election is to be in accordance with Schedule 7.

395 Election of chairpersons of county councils

The chairperson of a county council is to be elected in accordance with Schedule 8.

396 Election of members of county councils

Schedule 9 applies in relation to the election of the members of a county council.

- (3) The council must, upon application made to it by any person, deliver or send to the person a copy of the record of voting, counting and transfers.

Schedule 6 (Repealed)

Schedule 7 Election of mayor by councillors

(Clause 394)

Part 1 Preliminary

1 Returning officer

The general manager (or a person appointed by the general manager) is the returning officer.

2 Nomination

- (1) A councillor may be nominated without notice for election as mayor or deputy mayor.
- (2) The nomination is to be made in writing by 2 or more councillors (one of whom may be the nominee). The nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (3) The nomination is to be delivered or sent to the returning officer.
- (4) The returning officer is to announce the names of the nominees at the council meeting at which the election is to be held.

3 Election

- (1) If only one councillor is nominated, that councillor is elected.
- (2) If more than one councillor is nominated, the council is to resolve whether the election is to proceed by preferential ballot, by ordinary ballot or by open voting.
- (3) The election is to be held at the council meeting at which the council resolves on the method of voting.
- (4) In this clause—
ballot has its normal meaning of secret ballot.
open voting means voting by a show of hands or similar means.

Part 2 Ordinary ballot or open voting

4 Application of Part

This Part applies if the election proceeds by ordinary ballot or by open voting.

5 Marking of ballot-papers

- (1) If the election proceeds by ordinary ballot, the returning officer is to decide the manner in which votes are to be marked on the ballot-papers.

(2) The formality of a ballot-paper under this Part must be determined in accordance with clause 345 of this Regulation as if it were a ballot-paper referred to in that clause.

(3) An informal ballot-paper must be rejected at the count.

6 Count—2 candidates

(1) If there are only 2 candidates, the candidate with the higher number of votes is elected.

(2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

7 Count—3 or more candidates

(1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.

(2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.

(3) If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.

(4) A further vote is to be taken of the 2 remaining candidates.

(5) Clause 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.

(6) If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

Part 3 Preferential ballot

8 Application of Part

This Part applies if the election proceeds by preferential ballot.

9 Ballot-papers and voting

(1) The ballot-papers are to contain the names of all the candidates. The councillors are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preference for all the candidates.

(2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 of this Regulation as if it were a ballot-paper referred to in that clause.

(3) An informal ballot-paper must be rejected at the count.

10 Count

(1) If a candidate has an absolute majority of first preference votes, that candidate is elected.

(2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the unexhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.

- (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter's preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.
- (4) In this clause, *absolute majority*, in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.

11 Tied candidates

- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal—the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
- (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the numbers of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes—the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

Part 4 General

12 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, the slips are folded by the returning officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the returning officer and the candidate whose name is on the drawn slip is chosen.

13 Result

The result of the election (including the name of the candidate elected as mayor or deputy mayor) is—

- (a) to be declared to the councillors at the council meeting at which the election is held by the returning officer, and
- (b) to be delivered or sent to the Secretary and the Chief Executive Officer of Local Government NSW.

Schedule 7A Election of chairpersons of joint organisations

(Clause 397D)

Part 1 Preliminary

1 When election to be held

An election for chairperson of a joint organisation is to be held—

- (a) at the first meeting of the board after the joint organisation is established, and
- (b) at the first meeting of the board after the term of the chairperson expires, and