

# Report on the conduct of the City of Sydney countback election

9 May 2023

Large, decorative curved shapes in teal and grey colors are positioned in the bottom right corner of the page.

The NSW Electoral Commission acknowledges the Traditional Owners of Country throughout New South Wales and their continuing connection to the land, sea and community. Our head office is located on Gadigal land. We pay our respects to Elders past and present.

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# Foreword from the Electoral Commissioner

I am pleased to present my report on the administration of the City of Sydney council's countback election conducted on Tuesday, 9 May 2023 to fill the vacancy created by the resignation of Councillor Jess Scully.

Following the countback, Adam Worling was declared elected on Tuesday, 9 May 2023.

I am grateful to the staff of the NSW Electoral Commission and the participating candidates for the successful conduct of this countback election.

A handwritten signature in black ink that reads "John Schmidt". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

John Schmidt

Electoral Commissioner for New South Wales

# City of Sydney countback in detail

The City of Sydney countback election was conducted to fill one casual vacancy due to the resignation of Councillor Jess Scully.

## Key dates

**Table 1: Key dates for the City of Sydney countback election**

Date	Activity
Monday, 24 April 2023	Casual vacancy notices issued Open of candidate applications
Thursday, 4 May 2023	12 noon: Close of candidate applications 12 noon: Close of roll
Monday, 8 May 2023	Eligible candidates declared
Tuesday, 9 May 2023	Count conducted Results published

## Candidates

The notice of casual vacancy was published on the City of Sydney council and NSW Electoral Commission's websites on Monday, 24 April 2023.

At the 4 December 2021 Local Council elections, nine councillors were elected from 44 candidates. The candidates who were not elected were notified of the countback by the NSW Electoral Commission.

Candidates were checked for eligibility against the residential and non-residential rolls. Six candidates applied to participate in the countback.

Candidates wishing to participate in the countback election were required to complete and lodge an application form by 12 noon on the day of close of applications (Thursday, 4 May 2023). A candidate could withdraw their application by completing and lodging a withdrawal form by 12 noon on the day of close of applications.

**Table 2: Candidates participating in the City of Sydney countback election\***

<b>Candidate name</b>	<b>Affiliation</b>
MCFADDEN John	Independent
MINTON Damien	Labor
SAHAI Chetan	The Greens
SMITH Mark	The Greens
TOBOREK Dejay	The Greens
WORLING Adam	Clover Moore Independent Team

\*In alphabetical order

## **Declaration of results**

Under clause 8(1) of the *Local Government Regulation 2021* Schedule 9A, the returning officer declared Adam Worling elected as councillor on Tuesday, 9 May 2023.

Detailed results for this countback election are published on the NSW Electoral Commission's [website](#).

## **NSW Electoral Commission website information and updates**

The NSW Electoral Commission's website provided a range of information about the City of Sydney countback election, including the key dates, forms for candidates, candidate names and election results.

# Countback elections explained

## Legislative framework

The introduction of countback elections followed the NSW Parliament's Joint Standing Committee on Electoral Matters report on the 2012 *Local Government elections*, which recommended the introduction of a system modelled on that operating in Victoria.

Under the *Local Government (General) Regulation 2021*, councils in New South Wales can choose to fill casual councillor vacancies that occur after the 4 December 2021 NSW Local Government elections using countback.

Countback elections are described in Schedule 9A of the *Local Government (General) Regulation 2021*. Councils that do not resolve to fill vacancies using a countback are required to fill vacancies using an attendance by-election.

Under the *Electoral Funding Act 2018*, a candidate elected at a countback election has additional electoral funding disclosure obligations from the date they are elected for the remainder of their term. These disclosure obligations apply to them as an *elected member* and are in addition to their existing disclosure obligations from being a *candidate* at the ordinary election held in December 2021.

## Countback election background

A countback election is to be held instead of a by-election if:

- a casual vacancy in the office of a councillor occurs within 18 months after the date of the last ordinary election of the councillors for an area, and
- the council for the area has at its first meeting following that ordinary election, 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.

Countback elections cannot be used to fill a casual vacancy for a councillor elected:

- using the optional preferential voting system, that is, where only one councillor was to be elected, including a popularly elected mayor
- in an uncontested election.

## Countback election timeline

1. The NSW Electoral Commissioner is notified of a casual vacancy within seven days of the vacancy occurring.
2. The returning officer for the previous ordinary election is given notice within 14 days of the NSW Electoral Commissioner being notified of the vacancy. If the returning officer is unable to conduct the countback election, the substitute returning officer is given notice of the vacancy. If it is not possible for either the returning officer or substitute returning officer to conduct the countback election, a new returning officer is appointed by the NSW Electoral Commission within 14 days of the notification of the vacancy.
3. The notice of casual vacancy is issued within 14 days of the appointment of the returning officer. The notice is published on the NSW Electoral Commission's website, the council's website, and is sent to all candidates who are eligible to apply for the countback election.

4. Where a candidate wishes to participate in the countback, they must submit a formal application to the returning officer. The application must be lodged before 12 noon on the 10th day after the notice of vacancy was issued. All candidates who submit, and do not subsequently withdraw, an application become eligible candidates.
5. The countback is conducted at least 14 days from when the vacancy notices are issued and no more than 49 days from when the casual vacancy occurred.

## Possible election scenarios

At the close of candidate applications for a countback election several scenarios are possible, with varying election outcomes.

### The number of candidates is equal to the number of vacancies

Where the number of eligible candidate applications equals the number of councillor vacancies, a count is not required to be conducted and the applicants will be declared elected on the day of close of applications.

### More candidates apply than there are positions vacant

If the number of eligible candidates exceeds the number of vacancies, a countback election will be held to determine the elected candidate(s).

### No candidates apply

If the NSW Electoral Commission does not receive any candidate applications, the countback election cannot be conducted and an attendance by-election will be required.

### The number of candidates is less than the number of vacancies

- a. One position vacant - no applications

An attendance by-election will be required to fill the vacancy.

- b. Two or more positions vacant – insufficient applications to fill all vacancies

No count is required. Eligible candidates are elected to the vacancy/vacancies. An attendance by-election will be required to fill the remaining vacancy/vacancies.

### No eligible candidates

If all candidates who stood at the ordinary election have either been elected at the general election or subsequently through a countback election, then there will be no eligible candidates left to apply for a countback. In the absence of any potential candidates, an attendance by-election will need to be held to fill the vacancy.

## How votes are counted

A countback election is conducted using the same ballot papers from, and the same proportional representation voting count system as, the previous general election.

The countback election is run with all ineligible candidates (councillors who have vacated their seat) being disregarded and their preferences reallocated accordingly. That is, each ballot paper with that candidate as a preference is allocated to the candidate with the next highest preference on that ballot paper.



In the case of groups, if the first candidate in a group is vacating their seat, the above the line preferences for that group are allocated to the second candidate in that group, as would any below the line preferences that marked the first candidate in that group as '1' and the second candidate in that group as '2'.

When the countback election is conducted, the same number of candidates are elected as there were vacancies at the general election (because the same voting count system is used). Of these, the first newly elected candidate (who is not a sitting councillor) is the candidate to be elected.

If a non-participating candidate (that is, a candidate who does not want to be considered for election in the countback) is elected, their status is changed to ineligible and the countback is run again. This newly ineligible candidate is disregarded, and their preferences reallocated accordingly. This process is repeated until an eligible candidate is elected.

Eligible candidates and the council are then notified of the result. At a countback election, a sitting councillor cannot be unelected, and ineligible candidates cannot be elected.

