Recount Policy

NSW Local Government Elections

Contents

1. Abbreviations and definitions

Abbreviations

Act	*Local Government Act 1993*
DOP	Distribution of Preferences
Electoral Commissioner	Electoral Commissioner for NSW
Regulation	*Local Government (General) Regulation 2021*
RO	Returning Officer
EO	Election Official

Definitions

Candidate	A person nominated for election in accordance with the Local Government Act.
Election Manager	The Electoral Commissioner, where the election is administered by the Electoral Commissioner
NCAT	NSW Civil and Administrative Tribunal
Returning Officer	In relation to an election administered by the Electoral Commissioner, a person appointed by the Electoral Commissioner to conduct elections for an area

2. Introduction

2.1.   Under s 296(2) of the Act, a council can enter into an arrangement (an election arrangement) with the Electoral Commissioner, by contract or otherwise, for the Electoral Commissioner to administer elections of the council. If such an arrangement is entered into, the Electoral Commissioner is to administer elections of the council in accordance with the arrangement, including appointing a Returning Officer (**RO**) for each area to conduct elections on behalf of, and under the direction of, the Electoral Commissioner: s 296B(2) of the Act.

2.2.   Section 353 of the Regulation provides as follows:

   (1) At any time before the declaration of the poll—

      (a) a candidate may request a recount of the ballot-papers used in the ward or area for which the candidate was nominated, and

      (b) the election manager may direct the Returning Officer to recount any ballot-papers used in the election.

   (2) A request under subsection (1)(a) must—

      (a) be in writing, and

      (b) be signed by the candidate, and

      (c) set out the reasons for the request, and

      (d) be lodged with the Returning Officer within 24 hours after the candidate has been informed by the Returning Officer of the result of the count.

2.3.   Accordingly, there are two ways in which a recount can occur under the Regulation, namely:

- a recount request from a candidate setting out the reasons for the request, accepted by the Electoral Commissioner - s 353(1)(a); or

- on the Electoral Commissioner's own motion – s 353(1)(b).

3. Purpose

3.1.   This policy is designed to provide a consistent approach to the management and evaluation of recount requests in accordance with s 353 of the Regulation.

3.2.   Recount requests will only be considered after the completion of the full Distribution of Preferences (**DOP**); however, all requests must be received, considered, and actioned before the declaration of the poll for which the recount request was received.

4. Scope

Recount requests

4.1.   Any request for a recount must be made by the candidate within 24 hours after the candidate has been informed by the Returning Officer of the result of the count.

4.2.   The 24-hour period commences from the 'Final Results Available' time, as shown on the NSW Electoral Commission's results website page.

4.3.   The NSW Electoral Commission will email candidates advising them that the results are available on the website.

4.4.   The request must set out the reasons why a recount is being requested, identifying the specific error or irregularity that it is alleged could potentially affect the election result.

4.5.   The preferred way to lodge a recount request is by email to

(i)   the relevant council Returning Officer; **and**

(ii)   the NSW Electoral Commission at candidates@elections.nsw.gov.au

4.6.   It is strongly recommended that requestors follow up in person or by telephone with the Returning Officer to confirm their email request has been received.

Consideration of whether a recount will occur

4.7.   The Electoral Commissioner will consider any matter that may be relevant at the time to the exercise of the discretion to order a recount. However, the following factors will be considered for each request:

- the level of detail provided in the request about why there is a need for a recount of specific ballot papers (or class of ballot papers); and/or

- whether any identified counting process errors or irregularities in relation to the identified ballot papers could have potentially changed the result of the election; and/or

- the likelihood that a recount could change the result of the election.

4.8. A small margin of votes between candidates is highly unlikely, of itself, to be considered a sufficient reason for conducting a recount. Counting in a close election, however, will be closely monitored and, based on an assessment of the progress and circumstances surrounding that count, the Electoral Commissioner may determine that a recount of votes is required in a particular case.

4.9. Requests that do not address the factors noted in paragraph 4.2 above are likely to be refused. Examples of requests that are likely to be refused also include where it appears the only reason for seeking a recount is:

- dissatisfaction with the result;

- to avoid forfeiture of a nomination deposit; or

- because the candidate did not have scrutineers in attendance at a particular scrutiny.

4.10. The Electoral Commissioner will also consider the time available to complete the recount and approve the declaration of the result prior to the Council's first meeting.

Recount process

4.11. The Electoral Commissioner determines whether the relevant RO or an appointed Election Official (**EO**) will conduct a recount.

4.12. All candidates for the relevant election will be advised that a recount is to be undertaken and the arrangements for the recount.

4.13. The Electoral Commissioner may stipulate for a recount:

(i) checking of all ballot papers previously scrutinised; or

(ii) that only a particular candidate's or group's ballot papers, the informal ballot papers, or the ballot papers from a particular polling place or count are to be rechecked and recounted.

4.14. If the Electoral Commissioner agrees to a recount after the request of a candidate, only one recount will be conducted with respect to that request.

4.15. The officer conducting the recount may, or at the request of a scrutineer will, reserve a ballot paper for the Electoral Commissioner to decide how any preference or mark on the ballot paper is to be data entered into the computer count system or, in the case of a manual count, whether a ballot paper is formal or informal.

4.16. In a fully computerised count, the formality of a ballot paper is determined within the computer count system based on the preferences data entered.

Challenges to election results

4.17. Any person may apply to the NSW Civil and Administrative Tribunal (**NCAT**) for an order to have a person dismissed from civic office.[1] The NCAT may exercise its power to dismiss a person from civic office if it finds that there has been an 'irregularity' in the election of a person.

4.18. Proceedings based on the ground that there has been an irregularity in the manner in which a person has been elected or appointed to civic office may not be commenced more than 3 months after the date of the person's election or appointment to that office.

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[1] See, generally, Part 9 of Chapter 10 of the *Local Government Act 1993.*

5. Policy details

Guiding principles

5.1. The NSW Electoral Commission exercises its compliance and enforcement powers independently from executive government, in the public interest and with reference to the objects of legislation under which the Electoral Commissioner conducts elections.

5.2. Relevant objects include, but are not limited to:

- facilitating and protecting the integrity of representative government in New South Wales; and

- facilitating the fair and transparent conduct of elections in New South Wales to provide for governing bodies of councils that are democratically elected.[2]

6. Roles and responsibilities

The following table outlines the nature of the commitment expected from NSW Electoral Commission staff and the way that commitment should be implemented:

Who	Commitment	How
Electoral Commissioner	Determine whether a recount in accordance with the Regulation is to take place.	• Considering all available information and determine if a recount should occur. • Determine how the recount is to be conducted. • Direct the RO/EO to conduct the recount. • Decide how any preference or mark on a ballot paper reserved by the RO/EO is to be data entered into the computer count system or in the case of a manual count whether it is formal or informal.
Results Management Team	• Provide analytical data in relation to any count the Electoral Commissioner is considering for a recount. • Support the RO/EO nominated by the Electoral Commissioner to conduct the recount.	• Prepare reports to assist the Electoral Commissioner in the decision process. • Ensure the computer count system(s) are ready for the conduct of the recount. • Update the virtual tally room to reflect a recount is in progress.

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[2] See s 7(c) of the *Local Government Act 1993*.

Who	Commitment	How
		• Provide advice and support to the RO/EO conducting the recount.
Candidates Team	• Advise relevant candidates if a recount is to take place.	• Advise all candidates who nominated for the electoral contest being recounted.
Officer conducting the recount	• Conduct a recount as directed by the Electoral Commissioner.	• Conduct a check count in accordance with the directions of the Electoral Commissioner and Standard Operating Procedures and Manuals. • Reserve for the Electoral Commissioner's decision any ballot paper of which they are unsure or which a scrutineer requests be reserved. • Conduct the Distribution of Preferences using the computer count system or, in the case of a manual count, conduct a manual Distribution of Preferences. • Immediately after the completion of the recount, notify the Electoral Commissioner of the result.

7. Monitoring, evaluation and review

7.1.   This Policy is to be reviewed by the date being 3 years from the date of approval unless reviewed earlier in response to post-implementation feedback or as necessary prior to an election.

8. Associated documents

• Determination of Election Results policy – Local Government elections LG.565

• Counting and Results Recount manual LG.011

9. Relevant legislation

- *Local Government Act 1993*
- *Local Government (General) Regulation 2021*

10. Document control

Document management

Approved by:	Signature:	Date approved:
John Schmidt Electoral Commissioner	Approved electronically	8 December 2023
Executive Director Review:	**Signature:**	**Date approved:**
Andrea Summerell Executive Director, Elections	Approved electronically	8 December 2023
Director Review:	**Signature:**	**Date approved:**
Gareth Robson Director, Election Operations	Approved electronically	8 December 2023

Publication details

Document type:	☒ Policy ☐ Standard ☐ Procedure ☐ Guidelines	
Responsible Business Unit: Elections Division – Election Operations	**Author:** Diana Kosseifi Manager, Counting and Results	**Publication:** ☐ Not for publication ☐ Internal catalogue ☐ Intranet only ☒ Intranet and website

Revision record

Date	Version	Revision description
December 2023	1.0	First version of policy