

Report on the conduct of the Hay Shire Council countback election

26 August 2022



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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NSW Electoral Commission
231 Elizabeth St, Sydney NSW 2000
GPO Box 832
Sydney NSW 2001
Monday-Friday, 9am-5pm

elections.nsw.gov.au

Contents

Foreword from the Electoral Commissioner	2
Hay Shire Council countback	3
Election summary	3
Key dates	3
Candidates	3
Declaration of results	4
NSW Electoral Commission website information and updates	4
Countback elections explained	5
Legislative framework	5
Countback election background	5
Countback election timeline	6
How votes are counted	6

Foreword from the Electoral Commissioner

Prior to the ordinary local government elections held in December 2021, amendments to legislation enabled councils in New South Wales to choose for the first time to use countback elections, instead of by-elections, to fill any councillor vacancies arising after the ordinary elections.

Of the 128 local councils in New South Wales, 99 have decided to use countback elections. Four councils did not conduct ordinary elections in 2021 and therefore countback is not yet an option for them. The remaining 25 councils will continue to conduct an attendance by-election should a casual vacancy occur.

Hay Shire Council voted at its first meeting following the 4 December 2021 ordinary election to use countback to fill any vacancies.

I am pleased to present my report on the administration of the Hay Shire Council countback election conducted on Friday, 26 August 2022 to fill the vacancy created by the resignation of Councillor Peter Dwyer.

Following the countback election, Mr Darren Clarke was declared elected on Friday, 26 August 2022.

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



John Schmidt

Electoral Commissioner for New South Wales

Hay Shire Council countback

Election summary

The Hay Shire Council countback election was conducted to fill one casual vacancy due to the resignation of Councillor Peter Dwyer.

Key dates

Table 1: Key dates for the Hay Shire Council countback election

Date	Activity
Monday, 18 July 2022	Electoral Commissioner notified of vacancy
Friday, 12 August 2022	Casual vacancy notices issued Candidate applications open
Monday, 22 August 2022	12 noon: Candidate applications close 12 noon: Rolls close
Wednesday, 24 August 2022	Eligible candidates declared
Friday, 26 August 2022	Count conducted Results declared

Candidates

The notice of casual vacancy was published on the Hay Shire Council and NSW Electoral Commission's websites on Friday, 12 August 2022.

At the 4 December 2021 Local Council elections, eight councillors were elected from 13 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. All were eligible to stand for election and four applied to participate.

Candidates wishing to participate in the countback election were required to complete the application form and lodge it by 12 noon on the day of close of applications on Monday, 22 August 2022. 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 Hay Shire Council countback election

Candidate name	Affiliation
Darren CLARKE	No affiliation
Beverley MCRAE	Independent
John PERRY	Independent
David TOWNSEND	Independent

Declaration of results

Under clause 8(1) of the *Local Government Regulation 2021* Schedule 9A, the returning officer declared Darren Clarke elected as councillor on Friday, 26 August 2022.

Detailed results 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 Hay Shire Council countback election, including the key dates, forms for candidates, candidate names and election results.

Countback elections explained

Legislative framework

In December 2018, the NSW Government amended the then *Local Government (General) Regulation 2005* to give effect to 2014 amendments to the *Local Government Act 1993* that enabled councils to choose countback elections to fill casual vacancies during the first 18 months of a council's term. 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.

Following amendments to the *Local Government (General) Regulation 2021* (which replaced the 2005 Regulation), 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 will continue to fill vacancies using an attendance by-election (section 291A of the *Local Government Act 1993*).

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 is interested, they must submit a formal application to the returning officer. The application period closes after 10 days of the notices being issued. All candidates who submit and do not withdraw their 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.

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.

NSW Electoral Commission

231 Elizabeth Street Sydney NSW 2000 | GPO Box 832 Sydney NSW 2001
T 1300 135 736 | F 02 9290 5991 | elections.nsw.gov.au