



City of **Ipswich**

AGENDA

COUNCIL MEETING

Thursday, 5 September 2024
at 8:45 AM

Council Chambers, Level 8
1 Nicholas Street, Ipswich

SONIA COOPER
Chief Executive Officer

The purpose of the meeting is to consider:

1. Filling a Councillor Vacancy in Division 4

BUSINESS

- 1. OPENING OF MEETING:
- 2. WELCOME TO COUNTRY OR ACKNOWLEDGEMENT OF COUNTRY:
- 3. OPENING PRAYER:
- 4. APOLOGIES AND LEAVE OF ABSENCE:
- 5. DECLARATIONS OF INTEREST IN MATTERS ON THE AGENDA:
- 6. OFFICERS' REPORTS:
 - 6.1 Filling a Councillor Vacancy in Division 4 5

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ITEM: 6.1
SUBJECT: FILLING A COUNCILLOR VACANCY IN DIVISION 4
AUTHOR: MANAGER, EXECUTIVE SERVICES
DATE: 2 SEPTEMBER 2024

EXECUTIVE SUMMARY

This is a report concerning the decision required by Council on how they wish to fill the Councillor vacancy as a result of the recent resignation of Councillor David Cullen.

RECOMMENDATION/S

That the vacancy in the office of Councillor for Division 4 be filled in a way determined by the Council.

RELATED PARTIES

Section 150EO of the *Local Government Act 2009* (the Act) outlines interests that are not declarable conflicts of interest. A Councillor who has a conflict of interest in a matter does not have a declarable conflict of interest in the matter where a conflict of interest arises solely because the Councillor has been elected or appointed at the same time, or has held office during the same period, as another Councillor.

IFUTURE THEME

A Trusted and Leading Organisation

PURPOSE OF REPORT/BACKGROUND

Following the resignation of Councillor David Cullen on 30 August 2024, Council is now required to make a decision on how the vacancy in the office of a councillor is to be filled.

The *Local Government Act 2009* (LGA) outlines when the term of a Councillor starts and finishes and what is required to occur.

When a Councillor resigns from office, it triggers a requirement for the local government to take steps to fill that vacancy. The way in which the vacancy is to be filled depends on when during the term the Councillor's office becomes vacant.

As we are still within what is considered the beginning of the local government's term, the beginning being considered the first twelve (12) months following the completion of the 2024 quadrennial elections, the local government is required to decide the way in which the vacancy is filled.

The local government must resolve to either:

- a) hold a by-election; or
- b) fill the vacancy by asking the Electoral Commission Queensland (ECQ) to follow a procedure outlined in the *Local Government Act 2009* (LGA).

The procedure to be followed for b) above would generally be referred to as the appointment of the runner-up, however the process is more involved and is detailed in the attached legislative summary (Attachment 1).

LEGAL IMPLICATIONS

This report and its recommendations are consistent with the following legislative provisions:
Local Government Act 2009

POLICY IMPLICATIONS

There are no policy implications as a result of this report.

RISK MANAGEMENT IMPLICATIONS

Council is required to commence a process to have the vacancy in Division 4 filled within two (2) months or a person may be appointed by the Minister to fill the vacancy.

FINANCIAL/RESOURCE IMPLICATIONS

Where Council decides to fill the vacancy by requesting ECQ to follow a procedure under s166A of the LGA, Council are of the understanding that the minimal internal operational costs of the exercise would not be recovered from Ipswich City Council in addition to the costs for the 2024 quadrennial elections.

Where Council decides that the vacancy is to be filled by a by-election, the cost has been estimated and advised in writing by the ECQ to be within a range of \$320,000 to \$550,000 dependent on the exact delivery model chosen for any by-election.

The ECQ has advised: Should Council resolve to ask the ECQ to conduct a by-election, a cost of between \$320,000 up to \$550,000 is estimated to deliver electoral services for the around 35,700 division 4 electors. In that circumstance, the ECQ will provide Council with a more detailed cost estimate which will consider service design and timing. In the meantime, it would be reasonable to work toward an average cost of around \$11.00 per elector or \$393,000.

COMMUNITY AND OTHER CONSULTATION

Advice has been sought from ECQ.

No consultation has been undertaken to inform the contents of this report.

The requirement for Council to make a decision is prescribed in the relevant legislation.


CONCLUSION

To fill the vacancy in the office of Councillor for Division 4 that has been left following the resignation of Councillor David Cullen, the Council must decide how the vacancy is to be filled.

HUMAN RIGHTS IMPLICATIONS

HUMAN RIGHTS IMPACTS
NON-DISCRETIONARY DECISION
The Recommendation states that Council must determine the way the vacancy in the office of another Councillor is to be filled. Council has no ability to act differently/make a different decision because of the requirement prescribed under s166 of the <i>Local Government Act 2009</i> that requires Council to decide. Therefore, while the proposed decision may not be compatible with human rights Council's decision will not be unlawful under the <i>Human Rights Act 2019</i> .

ATTACHMENTS AND CONFIDENTIAL BACKGROUND PAPERS

1.	Legislative Requirements Summary ↓ 
2.	Letter of Resignation - Cr David Cullen ↓ 

Wade Wilson

MANAGER, EXECUTIVE SERVICES

I concur with the recommendations contained in this report.

Sonia Cooper

CHIEF EXECUTIVE OFFICER

“Together, we proudly enhance the quality of life for our community”

Legislative Requirements summary(extract ONLY) – End of Councillor Term

Division 3 Vacancies in councillor's office

160 When a councillor's term ends

(d) when the councillor's office becomes otherwise vacant.

161 What this division is about

- (1) This division is about when a councillor's office becomes vacant, and the way in which the vacancy is to be filled.
- (2) The way in which a vacancy is to be filled depends on—
 - (a) whether the vacancy is in the office of mayor or of another councillor; and
 - (b) whether the office becomes vacant during the beginning, middle or final part of the local government's term.
- (3) The beginning of the local government's term is the period of 12 months that—
 - (a) starts on the day when the last quadrennial elections were held; and
 - (b) ends on the day before the first anniversary of the last quadrennial elections.

162 When a councillor's office becomes vacant

- (1) A councillor's office becomes vacant if the councillor-
 - (f) resigns as a councillor by signed notice of resignation given to the chief executive officer;

163 When a vacancy in an office must be filled

- (2) If a councillor's office, other than a mayor's office, becomes vacant 3 months or more before quadrennial elections are required to be held, the local government must fill the vacant office.
- (3) The local government must fill the vacant office within 2 months after the office becomes vacant.

166 Filling vacancy in office of another councillor

- (1) A vacancy in the office of a councillor, other than the mayor, must be filled—
 - (a) if the office becomes vacant during the beginning of the local government's term—in the way decided by the local government under subsection (2); or
 - (2) For subsection (1)(a), **the local government must decide, by resolution**, whether the vacancy is to be filled—
 - (a) by a by-election; or
 - (b) by following the procedure under section 166A.

166A Filling particular vacancies arising during beginning of local government's term

- (1) This section applies if, under section 166(1)(a), a local government is to fill the vacant office of a councillor (the former councillor) by following the procedure under this section.
- (2) The chief executive officer must ask the electoral commission to comply with subsection (3).
- (3) The electoral commission must—
 - (a) give a vacancy notice to the runner-up who is first in the order of priority; and

- (b) if consent is not given by the runner-up on or before the deadline, give a vacancy notice to the runner-up who is next in the order of priority; and
- (c) if consent is not given by the runner-up who is next in the order of priority on or before the deadline, repeat the step mentioned in paragraph (b) until a runner-up consents to the appointment on or before the deadline for the runner-up.
- (4) If a runner-up consents to the appointment on or before the deadline for the runner-up—
 - (a) the electoral commission must notify the chief executive officer that the runner-up has consented; and
 - (b) the local government must fill the vacant office by appointing the runner-up.
- (5) If there are no runners-up remaining, the vacant office must be filled by a by-election.
- (6) The electoral commission may agree to extend the day and time stated in a vacancy notice if the electoral commission considers it reasonable to do so in the circumstances.
- (7) For deciding the order of priority, if 2 or more runners-up in a quadrennial election have an equal number of votes—
 - (a) the electoral commission must, in the presence of 2 witnesses, follow the process stated in the Local Government Electoral Act, section 98(7)(a) to (g) and (8) for the runners-up; and
 - (b) the runner-up whose name is recorded as mentioned in section 98(7)(g) of that Act is taken to be higher in the order of priority; and
 - (c) the process mentioned in paragraph (a) must be repeated until the order of priority for each runner-up has been decided.
- (8) The electoral commission must allow each runner-up mentioned in subsection (7), or their representative, to be present for the process mentioned in that subsection.
- (9) In this section—
 - deadline, in relation to a runner-up giving consent, means—
 - (a) the day and time stated in a vacancy notice given to the runner-up; or
 - (b) if the day and time is extended under subsection (6)—the day and time as extended.
 - order of priority, for runners-up in a quadrennial election, means the order of runners-up ranked according to the number of votes received by each runner-up in the election, starting with the runner-up who received the highest number of votes in the election.
 - runner-up, for a vacant office of a councillor, means a person who was a candidate for the office in the last quadrennial election, other than—
 - (a) the former councillor; or
 - (b) a person who holds office as a councillor (including as the mayor) when the office becomes vacant.
 - vacancy notice, in relation to a runner-up, means a notice stating—
 - (a) that the office of a councillor is vacant; and
 - (b) if the runner-up is qualified to be a councillor, the runner-up may consent to being appointed to the vacant office; and
 - (c) the day and time by which consent must be given to the electoral commission.



Cr David Cullen
Division 4

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28 August 2024

Chief Executive Officer
Ipswich City Council
Sonia Cooper

Dear Sonia

I am writing to formally resign from my position as a Councillor for Division 4 of Ipswich City Council, effective Friday, 30 August 2024.

This decision was not made lightly, and I have given it considerable thought. I have thoroughly enjoyed my tenure and I am especially grateful for the support, guidance, and collaboration I have experienced while working with you and the rest of the council team.

I thank the people of Ipswich for the opportunity to serve as a councillor.

Yours Sincerely

David Cullen