



City of Belmont

Tabled Attachments

Special Council Meeting

**Held
23 October 2017**





Special Council Meeting 23/10/17

Item 3 refers

Tabled Attachment 1

**Report of the Returning Officer
Biennial Election 2017**



City of Belmont Ordinary Elections – 21 October 2017

Returning Officers Report

Pre-election Activity

In July of 2017 I was pleased to learn of my reappointment by the Electoral Commissioner to the position of Returning Officer for the City of Belmont for the Ordinary Election to be held on 21 October, 2015.

As Returning Officer I attended a regional seminar for prospective councilors held at the Midland Town Hall on Saturday 26 August; and met with local government (City of Belmont) staff on 7 September. During this meeting we discussed the general conduct of the election and the use of council facilities for the election period.

Subsequently I was provided with an office at the City of Belmont and a laptop computer for use for the duration of the election, which was of considerable assistance to me throughout the election period.

Candidate Nominations

A total of 18 valid nominations were received in the nomination period from 7 September to 14 September 2015. Most nominations were made through the Electoral Commission's nomination builder system, although I assisted several candidates in finalizing these nominations through the portal. This system performed very well during the nomination process and enhancements made it a very effective tool in most circumstances.

All prospective candidates met with me during the nomination period during which the election timeline and process was explained, with key dates outlined. During these briefings particular emphasis given on electoral offences and the campaign requirements of candidates during the election period.

Only very minor changes were required to most draft candidate profiles and all candidates were co-operative in relation to these minor changes.

On the advice of the Electoral Commission I advised one candidate however to modify the draft election profile by removing reference to promises to donate to several schools in the area if elected. These undertakings were considered outside the realm of 'biographical information or statements of belief and policies'. The Candidate was co-operative in making these changes prior to acceptance.

Candidates were each provided with a USB drive containing an electronic copy of the Residents Roll for their particular ward of nomination; and a copy of the Owner and Occupiers Roll. These USB drives also contained relevant documents and forms for use during the election period.

Close of Nominations

At the close of nominations at 4.00 pm on 14 September, 4 valid nominations had been received for the single vacancy in East Ward; 6 for the 2 positions representing South Ward; and 8 valid nominations had been received for the 2 vacancies in West Ward.

After the draw for ballot paper positions held at approximately 4.30 PM that afternoon in the Council Chambers, the following ballot paper orders were decided:

East Ward:

Walter, Debra
Scharfenstein, Bella
Ryan, Bernie
Nairn, David

South Ward:

Newton-Faas, Elizabeth
Powell, Janet
Kassem, Maher
Gee, Janet
Davis, Jenny
Miller, Giles

West Ward:

Michael, Henry
Marques, Newton
Luzi, Mark
Sekulla, George
Cayoun, Lauren
Kulczycki,, Christopher
Hulm, David
Sessions, Deborah

Replacement and provisional packages

After election packages were sent to electors from Monday 2 October (later than expected by several candidates due to delayed lodgment with Australia Post), City of Belmont staff issued 41 replacement packages and 1 provisional election package to electors.

The provisional package issued was for the East Ward. This is considered a very low rate of replacement issue. The corresponding numbers in the 2015 Ordinary Elections were 122 replacement packages and 2 provisional election packages; and in the 2013 Ordinary Elections 112 replacements and 1 provisional.

A breakdown by Ward follows:

East Ward - 13
South Ward - 15
West Ward - 13

The provisional package issued was for the East Ward.

Election Day

During Election Day 186 packages returned directly to the City of Belmont Offices were processed by me as follows:

East Ward - 41
South Ward - 81
West Ward - 64

Processing of these packages concluded at approximately 6.25 pm; and following receipt of centrally processed ballot papers in ballot boxes during the afternoon, the ballot papers were added to the count according to established process.

The poll was formally closed at 6.00 pm by public announcement in the Council Offices.

Counting of Ballot Papers

Due to the complexity of the larger scale counting requirements for this election, the Returning Officer attended the City of Belmont the previous day to set up the counting area in the City of Belmont Function Room adjacent to the Council Chamber; and provide more detailed training on manual count processes.

From 6.30 pm ballot boxes were moved to the Function Room and all count staff were given a final briefing on the general process and instructed as to their duties. The scrutineers present (16) were also briefed on their rights and my expectations of them as close observers of the counts and representatives of their candidates.

Three electoral officials (two and one supervisor) were allocated to the East Ward count, whilst five and one supervisor, and seven electoral officials and a supervisor were allocated to South and West Wards counts respectively.

Scrutineers were briefed separately, instructed to remain within the areas designated for their particular wards and requested not to interfere in any way with the count process. Scrutineers were also advised that they would be consulted during the identification of informal ballot papers and that they should direct any concerns with process or questions of ballot paper formality to myself for final determination.

Scrutineers were also shown packages of 'unscannable' and 'rejected' election packages received by the WAEC for the City of Belmont and the reasons for rejection from the count were discussed in some detail.

All present were also reminded of restrictions on photography inside the counting area and public gallery.

Counting for each ward commenced soon after, at approximately 6.45 pm.

The Manager of Governance undertook the role of scribe and was responsible for entering results into the WAEC provided results spreadsheet; whilst the Governance Coordinator was used as a back-up resource to the count staff, moving across multiple counts as required.

Staff numbers were adequate to the task and the additional space within the Function Room (when compared to the Council Chambers) was appreciated. Upon completion of the more simple counts for East Ward, staff were redeployed to assist in the other counts for South and West Wards as required.

All staff performed their tasks calmly, diligently and with accuracy. Special mention should be made of the table supervisors, Sue, Mary-Ann and Erin, who each did an excellent job.

Election Results

East Ward results

With a possible 5 combinations of admitted ballot papers, this count was relatively simple and was completed slightly quicker than the more complex, multi-vacancy ward counts.

Progressive results were available at approximately 8.40 pm and all ballot paper bundles were rechecked and verified. The count proceeded after a short break for staff, full reconciliation was achieved and the poll was declared at approximately 9:10 pm.

The final results for East Ward were announced as follows:

Walter, Debra - 512
 Scharfenstein, Bella - 152
 Ryan, Bernie - 1116
 Nairn, David – 632

Total Valid Votes – 2412
 Informal – 23
 Total Votes – 2435
 Formal Ballot Papers - 2412

On this basis, Bernie Ryan was declared elected to the position of East Ward Councillor, with a term to expire on 16 October 2021.

South Ward results

With 22 possible combinations for admitted ballot papers, the count for South Ward was considerably more complex than for East Ward and took more time.

Progressive results were available and displayed at approximately 8.50 pm and a short break was taken by staff. After rechecking of bundles and full reconciliation with the expected number of ballot papers confirmed, the count was completed and declared at approximately 9.30 pm.

The final results for South Ward were announced as follows:

Newton-Faas, Elizabeth - 308
 Powell, Janet - 1164
 Kassem, Maher - 885
 Gee, Janet - 639
 Davis, Jenny - 1030
 Miller, Giles - 909

Total Valid Votes – 4935
 Informal – 9
 Total Votes – 4944
 Formal Ballot Papers - 2868

On this basis, Janet Powell and Jenny Davis were declared elected to the positions of South Ward Councillor, with terms to expire on 16th October 2021.

West Ward results

The count for West Ward was the most complex and time-consuming of all three counts due to the number of candidates standing. 37 individual parcels required tallying because of the number of voting combinations possible for a two-vacancy count.

The counting for West Ward was completed at approximately 9:45 pm, following progressive results being displayed at around 9:00 pm. I declared the poll at approximately 9:55 pm once re-checking and full reconciliation of ballot papers had been achieved.

The final results for the West Ward were announced as follows:

Michael, Henry - 362
Marques, Newton - 299
Luzi, Mark - 423
Sekulla, George - 788
Cayoun, Lauren - 1279
Kulczycki, Christopher -529
Hulm, David - 315
Sessions, Deborah - 587

Total Valid Votes – 4582
Informal – 17
Total Votes – 4599
Formal Ballot Papers - 2540

On this basis Lauren Cayoun and George Sekulla were declared elected to the positions of West Ward Councillor, with terms expiring on 16th October 2021.

In concluding the formal part of the evening I thanked those present, and congratulated the successful candidates and those other candidates who had made the commitment to stand for election. I also acknowledged the very fine performance of count staff and other staff from the City of Belmont during the election period.

Post-count processes

At the conclusion of the election event, results were presented to the Acting CEO of the City of Belmont, Mr. Robin Garrett. As Returning Officer, I conveyed my thanks to Mr. Garrett on behalf of the Electoral Commission for the support provided to me by staff and the City of Belmont.

Once formalities had ended, I entered the results for all three wards into the WAEC election management system and sent photographs of the LG19B results sheets through to the Electoral Commission. I posted copies of the result notices for public view and left the City of Belmont premises at approximately 10:30 pm.

Electoral Complaints

Complaints and related enquiries were received in relation to the following matters:

- Placement of election materials
- Removal of signage by unauthorized persons, including a named Belmont resident
- Alleged verbal threats made to a candidate by that same Belmont resident
- Alleged misleading behavior through distribution of materials in an envelope marked 'City of Belmont'
- Alleged discrepancy in package deliveries and processing
- Allegation of mail theft of election packages (referred to me on the day of the election).

As Returning Officer, I referred each complaint to the Electoral Commission and in some cases the City of Belmont for advice before responding to the individuals.

Although there were several complaint matters raised, generally speaking I do not consider these to have been more numerous or more serious than other election events I have experienced as a Returning Officer or electoral official.

The two exceptions to this is in my opinion were complaints received relating to 'misleading behavior' of a candidate in circulating materials in an envelope labelled 'City of Belmont'. In this case several persons also saw fit to send a copy of their complaint directly to either the Electoral Commission the Minister for Local Government.

Clearly this was an issue keenly felt by many electors and candidates. In each case – including with this issue - the Electoral Commission was responsive and supportive of my actions as Returning Officer and full documentation of these matters has been provided to the Commission.

The second complaint issue worthy of particular note is the allegation of mail theft. This matter has been referred to the Electoral Commission and is unresolved at the time of compiling this report.

I do believe however that – as recommended in my last report as Returning Officer (19th October 2015) – that by supplying pre-written summaries and answers of likely complaint issues, delays in responding to complaints could be reduced.

Please see Appendix A for further detail of major complaints received.

Recommendations to improve the election process

Generally speaking, the election event was well organised and executed professionally by the WA Electoral Commission. Supplies were delivered in ample quantity and in a timely way; and ballot papers were delivered to the local government offices promptly for tallying.

There was a perceived delay in delivery of election packages and I believe better communication between the commission and its Returning Officers could have helped to manage candidate expectations more adequately. It was not until the day that packages were expected (a Friday) that I was informed that packages would in fact be delivered from the Monday following.

Having been involved closely in local government elections for over ten years I can fully appreciate and understand the complexity of printing and distributing ballot papers and packages to the record number of electors and local governments undertaking postal elections. I also understand that in an event of this size, priority needs to be given to outlying districts and that indeed, not all packages can be reasonably expected to be lodged at the same time.

Having said this however, I also believe that earlier advice to me as Returning Officer would have helped to inform candidates and 'calm the waters' more effectively. I believe that closer communication between myself, my liaison officer and WAEC project teams could have assisted in this situation.

Further, pro-forma complaint handling resources to enable Returning Officers to resolve some of the more 'legalistic' complaints 'on the spot' would improve the process and the perception of responsiveness to candidates and electors alike.

Conclusion

Of the four ordinary elections I have completed for the City of Belmont, from an operational view, this election event was probably the most efficient in which I have been involved. In broad terms, I found the process more streamlined and ample resources and support were provided by both the Electoral Commission and the City of Belmont. Although there were several serious complaints and campaigns were in some cases "vigorously contested", I considered the election in general to be relatively incident-free.

In closing, I would like to thank the candidates, the City of Belmont and the WA Electoral Commission.

Mark Ducksbury
Returning Officer
City of Belmont
22 October 2017

Appendix A – Electoral Complaints

1) Complaints relating to placement of election materials.

Several complaints were received from candidates and residents concerning the location and authorization of campaign materials.

In each case these were investigated either by myself or the local government and where an issue with either electoral regulations or the local planning policy was found, corrective actions were taken.

2) Complaints relating to behavior of a certain Belmont resident in relation to removal of campaign materials.

It was alleged by several candidates that a named Belmont resident was taking it upon himself to remove and destroy campaign posters he had determined to be 'unauthorised'.

Complainants (including several candidates) were requested to advise the police of any instances of trespass or destruction of property. I understand at least one candidate took this advice and a police complaint was made. The resident was requested by me to desist and particularly, not to interfere in matters which were more appropriately the concern of property owners and leasees.

In relation to complaints regarding election materials generally, I issued the following advice to all candidates:

Dear Candidates,

I have been provided with the following details on electoral signage from the City of Belmont. This supports information already provided to Candidates at public seminars, briefings and in face-to-face nomination meetings we have had.

I am informed the Council's rangers will be monitoring adherence with the policy and I will be referring any related issues received by me to the City of Belmont for their further action where appropriate.

I am aware of several complaints already regarding election signage and it is highly recommended that all candidates are aware of the requirements as the Rangers will be monitoring that they are being adhered to.

Planning approval is not required for election signage, however, the City's Local Planning Policy No. 12 (LPP12) provides a set of standards that Election Signs must adhere to. The standards include (but are not limited to):

- A sign may only be placed on private property and only where permission is given for the display by the owner and occupier;
- Only one election sign or poster is permitted per property. Signs can be either single-sided or double-sided and, where double-sided, will count as one sign;
- Signs should not exceed an area of 6sqm;
- Not pose a threat to public safety or health and shall not have any sharp or pointed projections below a height of 2.7m from ground level;
- Not be placed such that they compromise the safety of the travelling public by obscuring the view of drivers, pedestrians or cyclists;
- Not permitted in or on a commercial vehicle, trailer or caravan parked at the same location for more than twenty-four (24) hours;

- Not be illuminated (internally or indirectly), move, flash, rotate or reflect so as to be an undue distraction to drivers;
- Not be self-adhesive, affixed under any circumstances to trees, shrubs, or other plants, erected on power poles or towers carrying transmission lines,
- Not compete with or reduce the effectiveness of other signs and traffic control devices, resemble a traffic control device, or be mistaken by road users as a traffic control device,
- Not be placed any higher than 6 metres from the ground.
- The person or party responsible for the election sign must maintain the sign and ensure that safety is maintained while the sign is being installed or removed.

A full copy of LPP 12 can be found at the web link below, Clauses 3.2 and 3.18 of the Policy outline the relevant provisions:

<http://www.belmont.wa.gov.au/Services/Planning/Documents/Local%20Planning%20Policy%202012%20-%20Sign%20Applications%20and%20Sign%20Application%20Checklist.pdf>

3) Complaint concerning an alleged verbal threat made by a resident to a candidate.

Complainant (a candidate) brought 'threatening telephone messages' left by a resident – the same resident as in the previous complaint - to my attention.

It was suggested that the complainant immediately report the matter to police.

I received the following advice from the Electoral Commission:

Under the *Local Government Act 1995* a Returning Officer only has authority in relation to 'peace and order' at a polling place on Election Day. The Act provides no authority in relation to wider issues of 'public order' during an election period, nor over removal or damage to campaign signage. Phone treats, aggression and theft or destruction of property are essentially matters for Police.

Section 4.85 of the Act covers "undue influence" but this can only be resolved through court action, generally following declaration of an election result, and probably necessitates Police involvement anyway due to evidentiary requirements of any potential prosecution. Prosecution by a Returning Officer requires councils to pay costs of any legal action, and proof beyond reasonable doubt in such cases can be difficult.

Both myself and Electoral Commission staff spoke with the complainant regarding this matter. I am unaware of whether or not the candidate took the step of notifying police over this matter.

4) Complaints over alleged misleading election materials through distribution of materials in an envelope marked 'City of Belmont'.

I received 4 complaints from candidates, 1 from a sitting City of Belmont councilor and another from a Belmont resident regarding this issue. I note that in several instances copies of the complaint were sent to the Electoral Commission and in at least 2 cases, the Minister for Local Government.

On receipt of advice from both the Electoral Commission and the City of Belmont, the following response was sent to the sitting councilor and similar responses sent to each of the other complainants:

Good morning Cr XXXX,

I write with reference to your complaint regarding addressing of an envelope containing electoral material authorized by Candidate XXXXXXXXXXXXXXXX and further to our discussion of last week concerning this issue. Firstly, I regret any distress this matter may have caused for your mother or any other elderly residents.

Please note that I became aware of this matter last week and once informed, referred the issue to the Electoral Commission and the City of Belmont for their views and comment. I advise receipt of the following.

The response from the legislative team at the Electoral Commission:

'Pragmatically any election envelope would arguably be covered by any authorisation inside, especially if the envelope itself doesn't meet the 'intended or calculated' test. Council IP is a matter for council.

That said, candidates are standing for council, so it's essentially impossible for them to avoid references or imagery referring to council, particularly given freedom of political communication, where conventional commercial legalities are often viewed differently by courts. Images in the public domain have a 'fair dealing' test under copyright law. Again, intentions are relevant.'

The response from the City of Belmont:

'The use of the City's Logo, Crest or words depicting "City of Opportunity" were specifically denied to candidates by the City, due to trademarking, as part of the information provided to candidates. The use of the words "City of Belmont" are more generic, and all candidates have been using those words in some form or another in their campaigning – both electronic and paper.

The flyers contained in the envelope appear to comply with the electoral requirements, so it is only the wording on the envelope that presents any issue. Any envelopes produced and distributed to residents by the City have a blue, corporate styled, curved "City of Opportunity Belmont" in the top left corner. Written as it is, it is significantly different from the corporate style and forms a part of the addressing of the envelope. While it does appear to have been used to "get past" the initial response to electoral paraphernalia, the City cannot immediately identify a direct breach of any Council Policy or Code of Conduct obligations by the Councillor/candidate.'

Returning Officer's additional comment and suggestions:

As advised to all candidates during individual briefings and in materials circulated, the ultimate test of whether or not the materials are considered misleading in terms of the Local Government Act 1995 or the Local Government (Elections) Regulations 1997, must be determined by legal process.

Electoral Offences are outlined in Division 11 of the Local Government Act 1995. Section 4.88 outlines provisions relating to the distribution of 'misleading or deceptive material'. On the advice of the parties, the materials are not considered by either the Electoral

Commission or the City of Belmont to be 'misleading' for the purposes of The Act.

Where any person feels that the matter has had a significant impact on the result of the election (when known) it is open to them to lodge an invalidity complaint to a Magistrates Court sitting as a Court of Disputed Return. Please see Division 10 of The Act for details. Additional information is available in Part 15 of the Local Government (Elections) Regulations 1997. As a suggestion, should an invalidity complaint be a course of action contemplated, I would recommend that private legal advice be obtained.

Please further note that I have forwarded a copy of my response to your complaint to the Electoral Commission for further action or advice to me as they consider appropriate.

5) Complaint/enquiry over an alleged discrepancy in package deliveries and processing.

I received one enquiry concerning an apparent discrepancy in packages received from West Ward electors at the Electoral Commission count centre.

After investigation by Electoral Commission staff, I sent the following response:

Good afternoon XXXXX, further to the issue raised by you last week.

This matter was raised with the Manager of Local Government Elections who has checked deliveries with Australia Post. They have assured the electoral commission that all packages for West Ward have been forwarded to the Commission. The WAEC has also confirmed to me that there are no significant bundles of West Ward certificate envelopes awaiting processing at the count centre.

In noting the zero deliveries for the West Ward on the 6th I also note that receipts for the next working day – 9th October - were significantly higher than other wards as follows:

West 969
South 679
East 664

This considerably higher volume on the Monday (9th) suggests to me that for some reason – an operational reason perhaps on the part of the postal service – that delivery of West Ward returns were simply not made on the previous Friday 6th October and were held back for delivery the next working day.

As of today, the voting percentages for West Ward are trending towards the level you correctly suggest as being normal. I expect this trend to continue until polling closes at 6.00pm on Saturday. Although still lower for the West Ward than other wards as a percentage of electors, there may be other reasons why this is the case – or indeed the volume of returns for West might in fact rise to a similar level by the time the poll is closed.

I hope this response is of use and allays any fears that ballot papers may have been misplaced or otherwise handled inappropriately. Please also rest assured I will monitor the returns closely for the remainder of the election period. On the basis of the facts provided however I can see no further avenue to investigate at this point in time.

6) Allegation of mail theft of election packages (referred to me on the day of the election).

A resident of Kewdale presented at the local government offices on Election Day seeking a replacement package for himself and his wife. Records indicated however that both had already voted and no replacement could be issued.

As the residents had been absent interstate during the election period it appears that their election packages (and for their daughter, also resident at the Kewdale address), may have been obtained and votes lodged in their names.

Although unsubstantiated, it could be that election packages were taken from their mailbox. The resident indicated that mail theft was a known problem in their street and has undertaken to investigate further by asking neighbors and other residents if they encountered the same issue. This matter has been referred to the Electoral Commission and further action is pending.

....End of Appendix A....