
Extraordinary Council Meeting Agenda

6 May 2024 at 5.00pm



To All Councillors

You are hereby notified of an extraordinary meeting of Upper Hunter Shire Council to be held on Monday, 6 May 2024 in the COUNCIL CHAMBERS, SCONE commencing at 5.00PM, for the purpose of transacting the undermentioned business.

This meeting will be recorded and those in attendance should refrain from making any defamatory statements.

There are to be no other recordings of this meeting without the prior authorisation of Council.

**GREG MCDONALD
GENERAL MANAGER**

1. PRAYER
2. ACKNOWLEDGEMENT OF COUNTRY
3. STATEMENT OF ETHICAL OBLIGATIONS

The Mayor and Councillors are reminded that they remain bound by the Oath or Affirmation of Office made at the beginning of the Council term to undertake their civic duties in the best interests of the people of the Upper Hunter Shire community and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in them under the Local Government Act or any other Act, to the best of their ability and judgement.

Council Officials are also reminded of the requirement to declare and appropriately manage any conflicts of interest they may have in relation to matters considered at this meeting in accordance with the Code of Conduct and Code of Meeting Practice.

4. APPLICATIONS FOR ATTENDING MEETING VIA VIDEO LINK
5. APOLOGIES / APPLICATIONS FOR LEAVE OF ABSENCE BY COUNCILLORS
6. PUBLIC PARTICIPATION
7. DISCLOSURES OF INTEREST
8. AGENDA ITEMS

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General Manager's Unit

GENERAL ADMINISTRATION REPORTS

G.05.1 *APPLICATION TO MINISTER TO DISPENSE WITH BY-ELECTION FOLLOWING COUNCILLOR VACANCY*

RESPONSIBLE OFFICER: Greg McDonald - General Manager

AUTHOR: Robyn Cox - Executive Assistant

PURPOSE

The purpose of this report is to consider making application to the Minister for Local Government to dispense with the need for a by-election to fill the casual vacancy created by Councillor Elizabeth Flaherty's as a result of her absence from three consecutive ordinary Council meetings.

RECOMMENDATION

That Council make application to the Minister for Local Government to dispense with the need for a by-election to fill the casual vacancy created by Councillor Elizabeth Flaherty as a result of her absence from three consecutive ordinary Council meetings.

BACKGROUND

Councillor Elizabeth Flaherty was elected Councillor for Upper Hunter Shire at the January 2020 Local Government Elections.

REPORT/PROPOSAL

In accordance with section 234 of the Local Government Act, a civic office becomes vacant if the holder is absent from three consecutive ordinary meetings of the council:

- (1) *A civic office becomes vacant if the holder--*
 - (a) *dies, or*
 - (b) *resigns the office by writing addressed to the general manager, or*
 - (c) *is disqualified from holding civic office, or*
 - (d) *is absent from 3 consecutive ordinary meetings of the council (unless the holder is absent because he or she has been suspended from office under this Act or because the council has been suspended under this Act or as a consequence of a compliance order under section 438HA) without--*
 - (i) *prior leave of the council, or*
 - (ii) *leave granted by the council at any of the meetings concerned, or*
 - (e) *becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or*
 - (f) *becomes a mentally incapacitated person, or*
 - (g) *is dismissed from civic office, or*
 - (g1) *in the case of the office of a councillor, is elected as mayor by the electors, or*
 - (h) *ceases to hold the office for any other reason.*

Note : See [section 275](#) for the circumstances in which a person is disqualified from holding civic office.

General Manager's Unit

- (2) *For the purposes of subsection (1)(d), a councillor applying for a leave of absence from a meeting of a council does not need to make the application in person and the council may grant such leave in the absence of that councillor.*
- (3) *If the holder of a civic office attends a council meeting (whether or not an ordinary meeting) despite having been granted leave of absence, the leave of absence is taken to have been rescinded as regards any future council meeting.*
- (4) *Subsection (3) does not prevent the council from granting further leave of absence in respect of any future council meeting.*
- (5) *The office of a mayor elected by councillors becomes vacant if the mayor ceases to hold office as a councillor.*

Cr Flaherty's role as Councillor has become vacant in accordance with Section 234(1)(d) as a result of her absence from the last three consecutive ordinary meetings of Council (February, March and April 2024) without a leave of absence from Council.

In regard to seeking leave, the Code of Meeting Practice is clear that an apology does not constitute a leave of absence.

- 5.4 *Where a councillor is unable to attend one or more ordinary meetings of the council, the councillor should request that the council grant them a leave of absence from those meetings. This clause does not prevent a councillor from making an apology if they are unable to attend a meeting. However, the acceptance of such an apology does not constitute the granting of a leave of absence for the purposes of this code and the Act.*

After seeking confirmation from the Office of Local Government, Council was advised that neither Council nor the Office of Local Government have the discretion to overturn this part of the legislation and was required to advise Cr Flaherty that her role as Councillor has become vacant.

As required under Clause 285 of the *Local Government (General) Regulation 2021*, notification was provided to Office of Local Government, the NSW Electoral Commissioner and Local Government NSW of the vacancy occurring.

The Local Government Act prescribes that casual vacancies are to be filled via a by-election however, it also provides that, on application by a council, the Minister for Local Government may order the vacancy not be filled if it occurs within 18 months of the next ordinary election. The next local government election is scheduled for 14 September 2024, just over 4 months away and well within the 18 month period for Ministerial consideration.

In deciding how to deal with a casual vacancy, beyond the constraints of the Local Government Act, Council must consider levels of community representation against the significant cost to Council and impost to the community of holding a by-election to replace one Councillor position. Council staff estimate a by-election would cost Council in the vicinity of \$125,000 and do not consider this to be a responsible use of Council resources, particularly given that the vacancy will be filled at the next ordinary Local Government election scheduled to be held on 14 September 2024.

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OPTIONS

1. To make application to the Minister for Local Government to dispense with the need for a by-election to fill the casual vacancy.
2. Not make application to the Minister for Local Government to dispense with the need for a by-election to fill the casual vacancy.

CONSULTATION

- Office of Local Government
- General Manager

STRATEGIC LINKS

a. Community Strategic Plan 2032

This report links to the Community Strategic Plan 2032 as follows:

Responsible Governance

Providing efficient and responsible governance in order to effectively serve the community.

5.1 Effectively and efficiently management the business of Council, while encouraging an open and participatory Council with an emphasis on transparency, community engagement, action and response.

b. Delivery Program

- Support for the Mayor and Councillors to fulfil their respective roles
- Leadership that reviews Council operations and Council wide continuous service improvement

c. Other Plans

Nil

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

There are no negative financial implications related to the recommendation. Should a by-election be required, it is estimated that the cost would be approximately \$125,000.

c. Legislative Implications

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

General Manager's Unit

d. Risk Implications

Nil

e. Sustainability Implications

Nil

f. Other Implications

Nil

CONCLUSION

Due to the absence from three consecutive ordinary Council meetings (February, March and April 2024), without a leave of absence from Council, Councillor Elizabeth Flaherty's role of Councillor has become vacant. Council has advised the Office of Local Government, the NSW Electoral Commission and Local Government NSW.

The recommendation eliminates the significant cost to Council and impost to the community of holding a by-election to replace one Councillor position.

ATTACHMENTS

There are no enclosures for this report

General Manager's Unit

G.05.2

COMMITTEE MEMBER NOMINATIONS

RESPONSIBLE OFFICER: Greg McDonald - General Manager

AUTHOR: Robyn Cox - Executive Assistant

PURPOSE

The purpose of this report is to appoint Councillor members to the vacant positions of Council Committees created by the departure of former Councillor, Elizabeth Flaherty.

RECOMMENDATION

That Council appoint a Councillor member to each of the following Committees:

1. Corporate Services Standing Committee;
2. Environmental & Community Services Standing Committee;
3. Murrurundi District Community Advisory Committee.

BACKGROUND

Following the departure of former Councillor, Elizabeth Flaherty, there are currently vacancies on three committees; Corporate Services Standing Committee, Environmental & Community Services Standing Committee and Murrurundi District Community Advisory Committee.

REPORT/PROPOSAL

Vacancies on the Corporate Services Standing Committee, Environmental & Community Services Standing Committee and Murrurundi District Community Advisory Committee are required to be filled.

The present Committee representation is detailed in table 1 and shows the vacancies resulting from former Cr Flaherty's departure.

Committee	Membership
Corporate Services	Crs Burns, McKenzie and Williamson; (one vacancy)
Environmental & Community Services	Crs Campbell, McPhee and Watts; (one vacancy)
Community Advisory Committee – Murrurundi District	Crs Burns and McKenzie; (one vacancy)

Table 1

OPTIONS

1. Appoint Councillor members to the vacant Committees.

CONSULTATION

- General Manager
- Councillors

General Manager's Unit

STRATEGIC LINKS

a. Community Strategic Plan 2032

This report links to the Community Strategic Plan 2032 as follows:

Responsible Governance

Providing efficient and responsible governance in order to effectively serve the community.

5.5 Community is effectively engaged, can provide opinion and contribute to decisions that plan for the present and future of the Upper Hunter Shire.

b. Delivery Program

- Support for the Mayor and Councillors to fulfil their respective roles

c. Other Plans

N/A

IMPLICATIONS

a. Policy and Procedural Implications

Nil

b. Financial Implications

Nil

c. Legislative Implications

Nil

d. Risk Implications

Nil

e. Sustainability Implications

Nil

f. Other Implications

Nil

CONCLUSION

Vacancies on Council Committees created by former Councillor Elizabeth Flaherty's departure are required to be filled to allow the Committees to perform their functions.

ATTACHMENTS

There are no enclosures for this report