
Local government election and term of chairperson and deputy chairperson

Responsible Officer: Group Manager People & Performance (Helen McNeil)

Recommendation

That Council receive the information contained in this report and note:

1. That the terms of Council's chairperson and deputy chairperson, each elected on 21 October 2020, will become vacant on 4 December 2021 in accordance with Council's Code of Meeting Practice and the *Local Government Act 1993 (NSW)*.
2. That the scheduled 15 December 2021 Council meeting will not be held due to the timing and conduct of the local government election on 4 December 2021.

Background

In May 2021, the NSW Parliament passed amendments to the *Local Government Act 1993 (NSW)* (LG Act) which effected a change in the term of a chairperson of a county council to two (2) years,¹ overwriting the previously stipulated one (1) year term.

At this time, a technical amendment was also made to clarify that the terms of chairpersons of county councils expire on the election day of their member councils.²

In July 2021, the Minister for Local Government by order in the Gazette postponed all council elections to 4 December 2021.³

Term of office – chairperson – LG Act

In accordance with the new section 391(3)(b)(iii) of the LG Act, Cr Keith Williams' term as chairperson of Rous County Council ('Council'), having been elected at Council's ordinary meeting held 21 October 2020, will conclude on 4 December 2021, being the date of the ordinary council elections.

Term of Office – deputy chairperson – local rule

In the absence of legislative provision and for administrative convenience, Council adopts a local rule contained within its Code of Meeting Practice ('CoMP') for the election of a deputy chairperson on the following terms –

"The election of the deputy chairperson will be conducted at the same time and in the same manner as the annual election of the chairperson".⁴

In interpreting the above, the reference to 'annual' is taken to be omitted to reflect the abovementioned amendments to the LG Act and to give effect to the intention that the election of the deputy chairperson should ordinarily occur at the same time and in the same manner as that of the chairperson so that the terms of each position are in alignment.

¹ [Section 391\(2\) Local Government Act 1993 \(NSW\)](#)

² [Section 391\(3\)\(b\)\(iii\) Ibid](#)

³ Refer to Office of Local Government Circular [21-20 'Postponement of the local government elections to 4 December 2021'](#)

⁴ Clause 6.1 Rous County Council '[Code of Meeting Practice](#)' adopted 19 June 2019

Further, section 392(1) of the LG Act can be applied to the term of Council's deputy chairperson in the same way that the new section 391(3)(b)(iii) of the LG Act applies to shorten the tenure of Council's chairperson despite now prescribing a two-year term.

As a member of Council vacates office on ceasing to be a councillor of a member council,⁵ any requirement to hold an election for deputy chairperson prior to the ordinary councillor elections in December 2021 may render the result of any earlier election redundant.

Accordingly, having been elected to the position at Council's ordinary meeting held 21 October 2020, Cr Sharon Cadwallader's term as deputy chairperson will conclude on 4 December 2021.

Governance

- **Finance**

The 'Chairperson and member fees' policy continues to apply.

- **Legal**

Clause 3.1 of Council's CoMP provides that a meeting is to be held in the third week of December each year. However, the deferral of the council elections will mean that Council's constituent councils are unlikely to have held the relevant election of members to Council's governing body in accordance with schedule 9 of the *Local Government (General) Regulation 2021 (NSW)* ('LG Regulation') by this time. In these circumstances, the quorum requirements set out in clause 5.9 of Council's CoMP will not have been met, however the statutory obligation to meet at least four (4) times each year⁶ will have already been satisfied.

Accordingly, a December 2021 Council meeting will not be held and the election for the positions of chairperson and deputy chairperson will be held, in accordance with Schedule 8 of the LG Regulation, at Council's first meeting of the new council term, anticipated to be February 2022.

A further report will be tendered to Council at this time.

It is noted that the next term of council will be for a shortened period of three years and, therefore, the chairperson and deputy chairperson elected at the December 2023 Council meeting will hold office for a shortened term expiring on the date of the ordinary councillor elections which are expected to revert to September 2024.

Consultation

Not applicable.

Conclusion

Council previously elected a chairperson and deputy chairperson each year. As a result of amendments made to the LG Act, Council will now elect a chairperson and deputy chairperson at the expiry of each two-year period from the date of election.

As a result of the postponement of the ordinary councillor elections, the current chairperson and the deputy chairperson will not serve a two-year term. These positions will become vacant on the date of the ordinary councillor elections, being 4 December 2021.

⁵ [Section 392](#)(1) *Local Government Act 1993 (NSW)*

⁶ [Section 396](#) *Ibid.*