



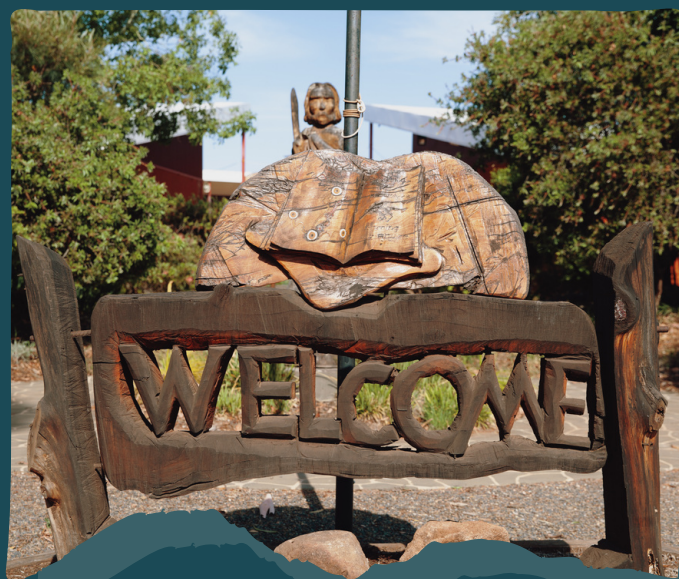
**I hereby give notice that an Extraordinary Meeting of Council will be held on:**

**Date: Wednesday, 3 April 2024**  
**Time: 2:00 PM**  
**Location: Condobolin Council Chambers**

# **BUSINESS PAPER**

**Extraordinary Council Meeting**

**3 April 2024**



## ACKNOWLEDGEMENT OF COUNTRY

Lachlan Shire Council acknowledges the Wiradjuri people as the Traditional custodians of this land.

We recognise their strength and resilience and pay respect to Elders past, present, and emerging and to all Aboriginal and Torres Strait Islander people who are part of the Lachlan Shire community.

## *Lachlan Shire –THE HEART OF NSW*



### *Our Vision:*

*For the Lachlan Shire to be a resilient community providing economic and social growth, through evolving, agricultural, business and mineral activities*

### *Mission:*

*To engage the community, providing and delivering progressive services whilst implementing a long term strategic plan leading to the social and economic benefit of the community*

**Order Of Business**

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**1 WEBCASTING**

Please note that today's meeting, other than the confidential sessions, are being recorded and will be placed on council's website. All in attendance should refrain from making defamatory statements. Council takes all care when maintaining privacy, however members of the public gallery and those addressing council should be aware that you may be recorded.

**2 ACKNOWLEDGEMENT OF COUNTRY AND ELDERS****3 APOLOGIES AND REQUEST FOR LEAVE OF ABSENCE**

Clause 254A of the NSW Local Government Act 1993 state...

**254A Circumstances in which annual fees may be withheld-**

*(1) Despite this Division, a council may resolve that an annual fee will not be paid to a councillor or that a councillor will be paid a reduced annual fee determined by the council—*

*(a) for any period of not more than 3 months for which the councillor is absent, with or without leave, from an ordinary meeting or ordinary meetings of the council, or*

*(b) in any other circumstances prescribed by the regulations.*

*(2) Despite this Division, if a councillor is absent, with or without leave of the council, from ordinary meetings of the council for any period of more than 3 months, the council must not pay any annual fee, or part of an annual fee, to that councillor that relates to the period of absence that is in excess of 3 months."*

Councillor	18/10/2023	29/11/2023	13/12/2023	21/02/2024	20/03/2024	17/04/2024	15/05/2024	19/06/2024	17/07/2024	21/08/2024
John Medcalf OAM	P	P	P	P	P					
Paul Phillips	P	P	P	P	P					
Megan Mortimer	P	P	P	P	P					
Melissa Blewitt	P	P	P	P	P					
Melissa Rees	A	P	P	P	NA					
Peter Harris	P	P	P	P	P					
Dennis Brady	LoA	P	P	P	P					
Judith Bartholomew	P	P	NA	P	P					
Robyn Turner	P	P	P	P	P					
P - Present										
A - Apology										
LoA - Leave of Absence										
NA - No Apology										

**4 PUBLIC FORUM****5 DISCLOSURE OF INTEREST****6 DECISION REPORTS**

## 6.1 GENERAL MANAGER

### 6.1.1 REQUEST TO DISPENSE WITH BY-ELECTION

**TRIM Number:** R24/81

**Author:** General Manager

#### RECOMMENDATION

That:

1. The General Manager Report No. R24/81 be received and noted.
2. Council request the Minister for Local Government to make an order that the current Councillor vacancy not be filled in accordance with the Local Government Act 1993 Chapter 10, Part 5, Section 294 – Dispensing with By-elections.

#### PURPOSE

To obtain a Council resolution to request that the Minister for Local Government make an order to dispense with the need to hold a by-election for the C Ward Councillor vacancy, as the vacancy has occurred within 18 months of the date for the next Local Government general election.

#### SUPPORTING INFORMATION

Nil

#### BACKGROUND

A casual vacancy in civic office has occurred in C Ward of Lachlan Shire Council due to the absence of the incumbent Councillor from 3 consecutive ordinary Council meetings without leave of absence being granted.

Section 234(1)(d) of the NSW Local Government Act 1993 (the Act) states;

**234 When does a vacancy occur in a civic office?**

*(1) A civic office becomes vacant if the holder—*

*... (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...*

Section 285 of the Local Government (General) Regulation 2021 (the Regulation) requires;

**285 Notification of vacancy**

*When a civic office in an area becomes vacant, the general manager of the council of the area is to give notice of the vacancy within 7 days—*

*(a) to the Secretary and the Chief Executive Officer of Local Government NSW if the vacancy is in the office of a mayor elected by councillors, or*

*(b) to the Electoral Commissioner, the Secretary and the Chief Executive Officer of Local Government NSW in any other case.*

The required notifications have been provided.

Sections 291 and 292 of the Act states;

**291 By-elections**

*If a casual vacancy occurs in a civic office, the office is to be filled by a by-election, subject to this Part.*

**292 When is a by-election to be held?**

*A by-election to fill a casual vacancy in the office of a councillor or a mayor elected by the electors of an area is to be held on a Saturday that—*

*(a) falls not later than 3 months after the vacancy occurs, and*

*(b) is fixed by the general manager (in relation to an election administered by the general manager) or the Electoral Commissioner (in relation to an election administered by the Electoral Commissioner).*

**ISSUES AND COMMENTS**

The requirement to hold a by-election within 3 months of the casual vacancy occurring is a mandatory provision of the Act unless the Minister of Local Government, on application of the Council, order that the vacancy not be filled. This exemption is available under Section 294 of the Act states;

**294 Dispensing with by-elections**

*(1) This section applies if a casual vacancy occurs in the office of a councillor, including a mayor elected by the electors of an area, within 18 months before the date specified for the next ordinary election of the councillors for the area.*

*(2) If such a casual vacancy occurs in the office of a councillor (but not the office of a mayor elected by the electors), the Minister may, on the application of the council—*

*(a) order that the vacancy not be filled, or*

*(b) order the holding on a stated day of a by-election to fill the vacancy and revoke any earlier order made under paragraph (a).*

*(3) If such a casual vacancy occurs in the office of a mayor elected by the electors, the casual vacancy is to be filled by the Governor appointing to the vacant office a councillor nominated by the council.*

*(4) If the council does not nominate a councillor for the purposes of subsection (3), the Governor may appoint one of the councillors to the vacant office.*

As the next Local Government general election will be held on Saturday 14 September 2024 Council can request that the Minister dispense with the by-election and that the vacancy not be filled. The decision to make this request is a non-delegable function to the General Manager and must be determined by a resolution of Council.

**FINANCIAL AND RESOURCE IMPLICATIONS**

Should Council not resolve to ask the Minister to dispense with the requirement to hold a by-election the cost of the by-election would be in the vicinity of \$35,000.

While the Election Reserve has a current balance of approximately \$55,000, with a further transfer of \$25,000 to the reserve recommended in the FY24.25 budget, the cost of the September 2024 general election is expected to be approximately \$75,000.

Therefore, there are insufficient funds in the Election Reserve to fund a by-election without a specific allocation of funds for that purpose.

**LEGAL IMPLICATIONS**

NSW Local Government Act 1993

NSW Local Government Regulation 2021

**RISK IMPLICATIONS**

A reduction in Councillor representation could create reputational risk for Council within the community.

**STAKEHOLDER CONSULTATION**

NSW Office of Local Government

Local Government NSW

NSW Electoral Commission

**OPTIONS**

- 1) Request the Minister for Local Government to dispense with the requirement to hold a by-election for the casual councillor vacancy as the next Local Government general elections are scheduled for 14 September 2024.
- 2) Resolve to engage the NSW Electoral Commission to conduct a by-election for the casual C Ward vacancy by 20 June 2024.

**CONCLUSION**

A casual Councillor vacancy in C Ward has been created due to the incumbent Councillor missing 3 consecutive ordinary Council meetings. A by-election must be held within 3 months of the vacancy occurring. Council can resolve to ask the Minister for Local Government to dispense with the requirement to hold a by-election if the vacancy is created not more than 18 months before the next Local Government general election. The next general election is scheduled for 14 September 2024.

**LINK TO POLICY AND / OR COMMUNITY STRATEGIC PLAN**

CSP No. 4.2 Strong Effective Responsive Council.

DP No. 4.2.2 Council's decision making is equitable and ethical.

Decision making and operational activities meet legislative compliance.



**ATTACHMENTS**

Nil