



Special Council

Business Paper for August 6, 2020

Thursday 6 August 2020
Civic Centre

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alicesprings.nt.gov.au



**ALICE SPRINGS TOWN COUNCIL
ORDER OF PROCEEDINGS
FOR THE
SPECIAL MEETING OF THE THIRTEENTH COUNCIL
TO BE HELD ON THURSDAY 6TH AUGUST 2020
AT 5.30PM VIA ZOOM, ALICE SPRINGS**

1. OPENING BY CEO ROBERT JENNINGS
2. APPOINTMENT OF MEETING CHAIR
3. APOLOGIES
4. DISCLOSURE OF INTEREST
5. REPORTS OF OFFICERS
 - 5.1 [Elected Member Vacancies – Selection of Principal Member as a Result of the Northern Territory Government August 2020 Election Report No. 190/20 cncI](#)
6. ADJOURNMENT OF SPECIAL MEETING

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Robert Jennings

CHIEF EXECUTIVE OFFICER

4 August 2020

REPORT

Report No. 190/20 cncf

TO: SPECIAL MEETING – THURSDAY 6 AUGUST 2020
SUBJECT: ELECTED MEMBER VACANCIES AS A RESULT OF THE NORTHERN TERRITORY GOVERNMENT AUGUST 2020 ELECTION
AUTHOR: CHIEF EXECUTIVE OFFICER, ROBERT JENNINGS

EXECUTIVE SUMMARY

This report provides advice to Council on the requirements and process for appointing a Mayor (Principal Member) and Deputy Mayor (Deputy Principal Member) who have both resigned to contest the Territory Election on 22 August 2020.

The below recommendation was voted (3 in favour 2 against) at the Ordinary Council meeting on 27 July 2020. However, a mover and seconder were not called at that time and should consequently be reconsidered by Council at this meeting

Under by-law 15(1) of the Alice Springs (Council Meetings and Procedures) By-Laws 1987, a motion or an amendment to a motion shall not be debated at a meeting of the council unless or until the motion or the amendment, as the case may be, is seconded.

Further, by-law 17(1) stipulates that a motion or amendment to a motion shall be moved and seconded by members present at the meeting at which the motion or amendment is considered before the motion or amendment is put to the vote.

RECOMMENDATION

It is a recommendation that:

- A. The Council resolve to appoint an Elected Member to the role of Principal Member under section 46(4)(a) of the Local Government Act 2008 at this Special Meeting of Council on 6 August 2020, who will remain in the role unless and until Mr Ryan successfully applies to the Chief Executive Officer to be reinstated to Council in accordance with section 39(6) of the Local Government Act 2008, except in circumstances where:**
- i. Mr Ryan is successfully elected to the Northern Territory Legislative Assembly, in which case the newly appointed Principal Member will remain appointed as the Principal Member for the remainder of this Council term pursuant to section 46(5)(c) of the Local Government Act 2008, effective seven days after declaration of the Northern Territory Legislative Assembly election results; or**
 - ii. Mr Ryan does not apply for reinstatement to Council by close of business Monday 14 September 2020, or otherwise the day that is seven days after declaration of the Northern Territory Legislative Assembly election results, in which case Council should resolve that the Principal Member is appointed from Tuesday 15 September 2020 for the remaining term of this Council pursuant to section 46(5)(c) of the Local Government Act 2008.**
- B. Council resolve to defer the Committee Elections, which includes appointment of the Deputy Mayor, and extend the current Committee appointments to the 28**

September 2020 Ordinary meeting when a new Deputy Mayor will also be appointed.

- C. Council resolve to amend the Appointment of Deputy Mayor Policy to accord with recommendation B.**

REPORT

1. BACKGROUND

The Mayor, Mr Damien Ryan, and Deputy Mayor, Mr Matt Paterson, have been pre-selected by their respective political parties to run in the Territory Legislative Assembly Election (Territory Election), scheduled to take place on Saturday 22 August 2020 and have now resigned from their respective positions.

The Local Government Act 2008 (Act) creates a process whereby Mr Ryan and Mr Paterson can be reinstated to Council if they are unsuccessful in the Territory Election.

Council must now decide how to fill the role of the Mayor and Deputy Mayor, for the duration of Mr Ryan's and Mr Paterson's resignations (and beyond, if one or both are successful in the Territory Election).

There is no factual precedent covering the scenario of both an elected Mayor (Principal Member) and Deputy Mayor (Deputy Principal Member) resigning from Council to contest a Territory election at the same time. The Act does not provide guidance on appointing a new Principal Member where the Deputy Principal Member in circumstances where, as here, both of those officers have resigned.

2. DISCUSSION

Actions required are strictly subject to:

1. whether the Mayor and Deputy Mayor resign within the qualifying period for reinstatement; and
2. whether the Mayor is unsuccessful in the Territory Election.

Resignation and Eligibility for Reinstatement

To be eligible to nominate as a candidate for the Territory Election, the Mayor and Deputy Mayor (and any other Elected Member) must first resign from Council in accordance with section 21(1) of the Northern Territory (Self-Government) Act 1978 (Cth). They have both done so.

To be eligible for reinstatement to Council following the Territory Election, the Mayor and Deputy Mayor (and any other Elected Member) must resign not more than 28 days before the close of nominations for the NT Legislative Assembly elections (Qualifying Period). The Qualifying Period commenced on Thursday 9 July 2020.

The nomination period for the Territory Election opened on 30 July 2020 and closed at 12 noon on Thursday 6 August 2020.

The CEO has been provided with written notice of resignation, the resignation cannot be withdrawn and takes effect on the date the notice is given or on a date stated in the notice which can be no later than 14 days from the date of the notice. Upon resignation, the former councillor is no longer entitled to remuneration or allowances including vehicles and devices.

Pursuant to section 39(6) of the Act, if the Mayor and Deputy Mayor:

1. resign within the Qualifying Period for the express purpose of standing as a candidate for the General Election;
2. are unsuccessful at the Territory Election; and
3. wish to be reinstated to Council,

they may apply in writing to the CEO to be reinstated as a member within 7 days after the result of the election is known (which is likely to be by close of business 14 September 2020) (Reinstatement Date).

Appointment of Principal Member

The Mayor and Deputy Mayor have resigned within the Qualifying Period, and Council is meeting on 6 August 2020 to appoint an Elected Member to act in the role of Principal Member.

Due to the circumstances of the resignation of Mayor Ryan and Deputy Mayor Paterson, this appointment will not be one made under the normal "acting Principal Member" provision of the Act (section 43(3)). Rather, pursuant to section 46(4)(a) of the Act, Council may make "any appointment necessary" to fill a casual vacancy in the office of the Principal Member.

The voting process for the appointment of the Principal Member could not occur until the resignations of the Principal Member and Deputy Principal Member took effect.

Nominations for the casual vacancy in the Principal Member will be made at the special meeting of Council, to be convened by the CEO on 6 August, 2020. In accordance with Council policy, where there is more than one nomination, the election will be conducted by secret ballot. The procedure for electing members where there are more nominees than vacancies is:

1. An election of the nominees for is taken by secret ballot.
2. Each Elected Member casts one vote for a nominee per vacancy.
3. The nominee with the highest number of votes fills that vacancy.
4. The CEO will tally the votes and announce only the name of the successful nominee.

The Principal Member should, however, be treated as if they are an Acting Principal Member for the purposes of Local Government Guideline 2 for the period up to the reinstatement date. The daily Acting Principal Member Allowance may only be claimed for a maximum of 90 days (including weekends and public holidays) per member in a financial year. The estimated period of resignation to contest the Territory election would be less than 60 days.

Appointment of Deputy Principal Member

If the Deputy Mayor resigns within the Qualifying Period, there is no requirement (or need) to appoint a new Deputy Mayor immediately to accompany the new Principal Member.

Rather, it is preferable that the new Deputy Mayor be appointed for a specific term up to the full remaining term of Council during the Committee Election in accordance with usual process under the Appointment of Deputy Mayor Policy (Attachment A).

The recommendation to defer Committee Elections to September is due to the allowable timeframe for Mr Ryan and/or Mr Paterson to be reinstated by the Reinstatement Date.

Council will need to resolve to amend the Appointment of Deputy Mayor Policy if it is to accept this recommendation (Attachment B).

It is noted that if a Deputy Mayor was to be appointed prior to the deferred Committee Elections, and Mr Ryan was to be reinstated as Mayor, then the appointed Principal Member would need to step down and would have no opportunity to be appointed as Deputy Mayor. A description of the roles of the Mayor and Deputy Mayor are provided at (Attachment C).

Casual Vacancies after the Reinstatement Date

If one or both of Mr Ryan and Mr Paterson:

- are elected in the Territory Election; or
- does not seek reinstatement to Council; or
- or does not qualify for reinstatement,

then their position will be considered a casual vacancy.

Casual vacancies for Principal and Deputy Principal Members are covered under section 46 of the Act (unlike other Elected Members, to whom the rules under section 39(5) apply).

Under section 46(5)(c) of the Act, if Council does not fill a casual vacancy of an elected Principal Member, it may appoint any of its existing members to be its principal member for the remainder of its term.

It is therefore recommended that, if Mr Ryan is successful at the election or does not apply for reinstatement, the Principal Member should be appointed as the Principal Member for the remaining term of this Council under section 46(5)(c) of the Act.

Under section 46(4)(b), the Council may make any appointment necessary to fill a vacancy in the role of Deputy Principal Member occurring at the end of the Deputy's term. Mr Paterson's term was to end on 31 August 2020. Accordingly, it is recommended that a new Deputy Mayor is appointed at the Committee Elections in accordance with the relevant Policy and as outlined elsewhere in this report.

Further Casual Vacancies

The above discussion regarding the reinstatement provisions of the Act under sections 39(6) and 39(7) of the Act will apply to any other Elected Members who resign for this reason.

In the event that any other Elected Members resign and are not reinstated, the normal rules for casual vacancies of Elected Members under s 39(5) of the Act will apply.

It is important to note that there is no legislated minimum number of Elected Members. Section 34(a) of the Act states that the validity of an act or decision of Council is unaffected by a vacancy in the office of a member.

The rules regarding casual vacancy are that:

- (a) if a casual vacancy occurs within 18 months or less before the next general election, the council may (in accordance with its policy) co-opt a person to fill the vacancy until the next general election;
- (b) if a casual vacancy occurs more than 18 months before the next general election, a by-election is to be held to fill the vacancy.

The next local government elections are scheduled to occur on 28 August 2021 (i.e. (b) will not apply).

It will be open to Council to co-opt a person to fill the casual vacancy until the next election.

The process for "co-opting" a person is not expressly defined under the Act, nor the Interpretation Act. "Co-opt" will therefore be given its ordinary meaning, which under the Macquarie Dictionary is "*to elect into a body by the votes of the existing members*". If this process ultimately becomes both desirable and necessary (i.e. where several members resign and Council does not wish to hold a by-election), Council may consider co-opting an appropriately qualified person.

Alternatively, Council may prefer to:

- leave the casual vacancies vacant; or
- conduct a by-election.

Electoral representation for Council is nine (9) members including the Mayor.

Under section 61(2) of the Act, a quorum at a Council meeting consists of a majority of Council members.

The following considerations are relevant to the recommendation against holding one or more by-elections:

1. Voter fatigue is also an important consideration when deciding whether to go to a by-election. In this instance, a Territory Election will have just been held.
2. The cost of past by-elections has been significant: \$95K in 2013 and \$70K in 2015.

Public expectation and perception of what is appropriate representation would need to be managed and communicated appropriately. The cost vs benefit as outlined above would be sufficient to support a minimum number of five (5) members for the remainder of the Council term should further members leave office.

3. POLICY AND LEGISLATIVE IMPACTS

Local Government Act 2008:

As noted above, the Act does not directly contemplate circumstances in which both the Mayor and Deputy Mayor have resigned.

Accordingly, the most legally sound approach will be to make the appointment of the new Principal member under section 46(4)(a) in the first instance, with the term of that appointment to be made contingent upon the reinstatement of Mr Ryan or otherwise.

4. FINANCIAL IMPACTS

Financial impact will depend on whether Council wish to go to by-election, in which case the cost could be approx. \$75K-90K.

5. SOCIAL IMPACTS

Social impacts of elected members resigning and not being replaced are not definable as it may or may not impact the decisions of Council, which may have voted differently had their votes been there.

6. ENVIRONMENTAL IMPACTS

Nil

7. PUBLIC RELATIONS

It is expected that Media will have strong interest in how Council manages these resignations and appointments. They will also be interested in how Council responds during the election given the resignation of the Mayor and Deputy Mayor and the associated uncertainty until the results of the Territory Election are known.

8. ATTACHMENTS

Attachment A: Appointment of Deputy Mayor Policy adopted 27 August 2018

Attachment B: Proposed Amended Appointment of Deputy Mayor Policy

Attachment C: Description of the roles of the Mayor and Deputy Mayor

A handwritten signature in black ink, appearing to read 'R. Jennings', with a large, sweeping underline.

Robert Jennings

CHIEF EXECUTIVE OFFICER

This report was compiled by the CEO with thanks to a number of authors



ELECTED MEMBER POLICY

Title	APPOINTMENT OF DEPUTY MAYOR		
Responsible Director	Director, Corporate and Community Services		
Adoption Date	27/08/2018	Review Date	2022

1 Purpose

The purpose of this policy is to define the process and timeline for the appointment of Deputy Mayor.

2 Statement of policy

For the purpose of appointing a Deputy Mayor pursuant to Sections 45 and 46 of the Local Government Act, Council shall at its August ordinary meeting in each year, conduct an election for that position for a term of 12 months ending at the August ordinary meeting of the following year.

When there is more than one nomination, election shall be by secret ballot and the Chief Executive Office shall act as Returning Officer.

The election shall be on the basis of the Mayor and Elected Members each casting a vote for one candidate only.

The candidate with the majority of votes cast shall be declared elected.

If two or more candidates receive the same number of votes, the names of those candidates shall be placed in a container and the name drawn first by the Mayor will be elected Deputy Mayor.

3 Council policy superseded

This policy supersedes all previous versions of policy 208 Deputy Mayor – Appointment of.



ELECTED MEMBER POLICY

Title	APPOINTMENT OF DEPUTY MAYOR		
Responsible Director	Director Corporate Services		
Adoption Date	XXXX	Review Date	XXXX

1 Purpose

The purpose of this policy is to define the process and timeline for the appointment of Deputy Mayor.

2 Statement of policy

For the purpose of appointing a Deputy Mayor pursuant to Sections 45 and 46 of the Local Government Act, Council shall, at its August ordinary meeting in each year, conduct an election for that position for a term of 12 months ending at the August ordinary meeting of the following year.

In a situation where one or more Elected Member(s) have resigned to contest a Northern Territory or Federal election, and the possible reinstatement of the Elected Member(s), pursuant to section 39(6) of the *Local Government Act 2008*, is pending at the time of the August ordinary meeting, Council will conduct the election for Deputy Mayor at the September ordinary meeting. In this situation, the incumbent Deputy Mayor will retain their position until this later election is completed.

When there is more than one nomination, election shall be by secret ballot and the Chief Executive Office shall act as Returning Officer.

The election shall be on the basis of the Mayor and Elected Members each casting a vote for one candidate only.

The candidate with the majority of votes cast shall be declared elected.

If two or more candidates receive the same number of votes, the names of those candidates shall be placed in a container and the name drawn first by the Mayor will be elected Deputy Mayor.

3 Council policy superseded

This policy supersedes all previous versions of policy 208 Deputy Mayor – Appointment of.

ATTACHMENT C

Role and responsibilities of the Mayor

The Mayor is the principal member of council and the civic leader. S43 of *the Act* states the role of the principal member is:

- to chair meetings of council; and
- to speak on behalf of the council as the council's principal representative; and
- to carry out the civic and ceremonial functions of the principal member.

The Mayor represents and advocates the decisions of council through media liaison and public relations and presiding as host of civic and ceremonial activities.

As the chair, it is the Mayor's responsibility to ensure the meetings of council operate effectively and efficiently, that all councillors are part of the decision-making process and are well and equally informed; achieving a balance of opinion and outcomes that demonstrates leadership by Council in the community.

Role and responsibilities of the Deputy Mayor

S43 of *the Act* states the role of the deputy principal member, the Deputy Mayor, is to carry out any of the principal members functions when the principal member:

- delegates the functions to the deputy; or
- is absent from official duties because of illness or for some other pressing reason; or
- is on leave