

Agenda for an emergency meeting of the Waikato District Council to be held in the Council Chambers, District Office, 15 Galileo Street, Ngaruawahia on **TUESDAY 24 MARCH** commencing at **1.00pm.**

Information and recommendations are included in the reports to assist the Council in the decision making process and may not constitute Council's decision or policy until considered.

I. APOLOGIES AND LEAVE OF ABSENCE

2. CONFIRMATION OF STATUS OF AGENDA

3. DISCLOSURES OF INTEREST

4. REPORTS

4.1 Emergency Delegations for COVID-19

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GJ Ion
CHIEF EXECUTIVE

Chairperson:	His Worship the Mayor
Deputy Chairperson:	Deputy Mayor
Membership:	The Mayor and all Councilors
Meeting frequency:	Six weekly – or as required
Quorum:	Half of the members (including vacancies)

Purpose

1. To provide leadership to, and advocacy on behalf of, the people of the Waikato District.
2. To define and represent the total communities' interests, ensuring ongoing community and economic development, the effective stewardship of existing assets, sustainable management of the environment, and the prudent management of the communities' financial resources.

Terms of Reference

The Council's terms of reference include the following powers which cannot be delegated to committees, subcommittees, officers or any other subordinate decision-making body:

1. The power to make a rate.
2. The power to make a bylaw.
3. The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long-Term Plan.
4. The power to adopt a Long-Term Plan, Annual Plan, or Annual Report.
5. The power to appoint a Chief Executive.
6. The power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the Long-term Plan or developed for the purpose of the local governance statement, including the Council's Infrastructure Strategy.
7. The power to adopt a remuneration and employment policy.
8. The power to approve or amend the Council's Standing Orders.
9. The power to approve or amend the Code of Conduct for elected members, and consider any recommendations made in relation to a complaint lodged under the Code.
10. The power to appoint and discharge:
 - a. members (including chairpersons) of Council committees and subordinate decision-making bodies, subject to the Mayor's powers under section 41A Local Government Act 2002; and
 - b. elected member representatives on external organisations.
11. The power to establish a joint committee with another local authority or other public body, and appoint elected members as representatives on such committees or bodies.
12. The power to make the final decision on a recommendation from the Ombudsman where it is proposed that Council not accept the Ombudsman's recommendation.

13. The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
14. The power to amend or replace the delegations in Council's Delegations Register (except where expressly permitted in the Delegations Register).

To exercise the following powers and responsibilities of Council, which the Council chooses to retain:

1. To approve a proposed policy statement or plan under the Resource Management Act 1991.
2. To approve changes to boundaries of the District under the Resource Management Act 1991 or any other legislation.
3. In respect of District Plan decisions:
 - a. To appoint independent commissioners to a panel for hearings of a Proposed District Plan;
 - b. To approve the recommendation of hearings commissioners on a proposed plan, plan change or variation (including private plan change); and
 - c. To approve a proposed plan or a change to a district plan under Clause 17, Schedule 1 of the Resource Management Act 1991.
4. To adopt governance level strategies, plans and policies which advance Council's vision and strategic goals (e.g. Hamilton to Auckland rail), other than where expressly delegated to a committee.
5. To approve Council's recommendation to the Remuneration Authority for the remuneration of elected members.
6. To approve the Triennial Agreement.
7. To approve resolutions required to be made by a local authority under the Local Electoral Act 2001, including the appointment of an electoral officer and reviewing representation arrangements.
8. To approve any changes to the nature and delegations of any Council committees or subordinate-decision making bodies.
9. To approve the Local Governance Statement.
10. To approve any funding decisions required for the Watercare Services contract.
11. To receive six-monthly reports from each Community Board on its activities and projects.

Open Meeting

To	Waikato District Council
From	Gavin Ion
Date	Chief Executive
Prepared by	24 March 2020
Chief Executive Approved	Brendan Stringer
Reference #	Democracy Manager
Report Title	Y
Chief Executive Approved	GOV1301
Report Title	Emergency Delegations for COVID-19

I. EXECUTIVE SUMMARY

The purpose of this report is to propose changes to Council decision-making processes to ensure that the Council can continue to make decisions and function appropriately throughout the COVID-19 pandemic.

By law, the required number of elected members must be physically present in a meeting when a Council or committee decision is made in order for a quorum to be achieved. A quorum for Council meetings is seven members. This presents challenges for Council decision-making in light of COVID-19 and the risks associated with gatherings of certain numbers and the directive of central government that the COVID-19 Alert Level will be raised to level 4 from 11:59pm on Wednesday 24 March 2020.

This report recommends a tiered contingency delegation model to ensure that urgent decisions can be made, even if it is impractical or impossible for a reduced Committee quorum to be physically present at the time of a decision. The delegation model is as follows:

- a. Establishing an Emergency Committee comprising the Economic Development Advisory Group members, with a quorum of two members.
- b. If it is impossible or impractical to convene a meeting of the Emergency Committee (as will be the case under COVID-19 Alert Level 4), to delegate to any two members of the Emergency Committee the powers, responsibilities and duties of the Council that can be lawfully delegated.
- c. If the two delegated members are unable to exercise the delegated powers, the Chief Executive (or the Deputy Chief Executive if the Chief Executive is unavailable), in consultation with the Mayor (or Deputy Mayor if the Mayor is unavailable; or the relevant Committee Chairperson if the Deputy Mayor is unavailable; or the relevant Committee Deputy Chairperson if the Committee Chairperson is unavailable) is

delegated (to the extent lawfully possible) the Council's powers responsibilities and delegations.

The above delegations are subject to the provisions detailed in the recommendation below.

In addition, it is proposed that for the duration of the COVID-19 emergency, the Chief Executive's financial delegation be increased to \$1.5 million to allow for unanticipated urgent expenditure. The Chief Executive would be required to report back to the Emergency Committee any exercise of this increased financial delegation.

2. RECOMMENDATION

THAT the report from the Chief Executive be received;

Delegation to the Emergency Committee

AND THAT the Council establishes an Emergency Committee, the membership for which comprises:

**His Worship the Mayor;
Deputy Mayor
Infrastructure Committee Chairperson
Policy & Regulatory Committee Chairperson
Strategy & Finance Committee Chairperson
Regulatory Subcommittee Chairperson,**

AND FURTHER THAT the Council approves the Emergency Committee's Terms of Reference, attached to the staff report.

AND FURTHER THAT for the duration of the COVID-19 emergency, delegates to His Worship the Mayor, in conjunction with the Deputy Mayor, the authority to activate the Emergency Committee and, by resolution of the Emergency Committee, suspend all other committees and community boards of the Council.

Contingency Delegation

AND FURTHER THAT the Council delegates to any two members of the Emergency Committee all responsibilities, duties and powers of Council, Council committees or subcommittees or community boards (except any decisions that cannot be delegated by law), provided that such delegation will only take effect if the Chief Executive (or Deputy Chief Executive, should the Chief Executive be unavailable), in consultation with His Worship the Mayor (or Deputy Mayor, should the Mayor be unavailable) determines:

- i. **that an urgent decision to enable the proper performance of Council functions is required by the Council, a Council committee subcommittee or community board; and**

- ii. that in the circumstances it is not possible or is impractical to convene a meeting or obtain a quorum for the Emergency Committee, due to the COVID-19 pandemic.

AND FURTHER THAT Council agrees that:

- i. any decision made pursuant to the delegation set out above will be binding on the Council;
- ii. decisions made under these delegations will be circulated to all Councillors and the public (unless publicly excluded) as soon as possible and be reported at the earliest possible full Council meeting.

Chief Executive Delegation

AND FURTHER THAT the Council delegates to the Chief Executive (or the Deputy Chief Executive, if the Chief Executive is unavailable) all of the Council's powers, duties, and responsibilities that the Council can lawfully delegate to officers. These powers, duties, and responsibilities include the ability to enter into any contract or to authorise any level of expenditure. They do not include the powers, duties, and responsibilities that the Council has already delegated to the Chief Executive (and Deputy Chief Executive) under delegations in force at this time, or any authority to make any Council decisions under the Civil Defence Emergency Management Act 2002 (which shall be dealt with in accordance with that Act).

This delegation is subject to the following conditions:

- i. the delegated powers, duties, and responsibilities may be exercised only in circumstances where:
 - the Council, or its committees or subcommittees (including the Emergency Committee), or its community boards are unable or unavailable to hold meetings that comply with the requirements of the Local Government Act 2002 and the Local Government Official Information and Meetings Act 1987;
 - the Contingency Delegation noted above is not available or the delegated members are unable to exercise the delegated powers, responsibilities and duties due to COVID-19;
- ii. the Chief Executive (or the Deputy Chief Executive) must exercise the delegated powers, duties, and responsibilities in consultation with the Mayor (or, if the Mayor is unavailable, the Deputy Mayor or, if the Deputy Mayor is unavailable, the Chairperson of the relevant committee or, if the Chairperson of the relevant committee is unavailable, any Deputy Chairperson of the relevant committee);
- iii. the Deputy Chief Executive may exercise the delegated powers, duties, and responsibilities only in the event that the Chief Executive is unavailable; and
- iv. any decisions made and documents executed in exercising the delegated powers, duties, and responsibilities must be reported to the next

Emergency Committee meeting or ordinary meeting of the Council (whichever comes first).

This delegation may be revoked at any time by the Council or the Emergency Committee. In the event there is any inconsistency between this delegation and any other delegations made by the Council, this delegation takes precedence.

AND FURTHER THAT for the duration of the COVID-19 emergency, approves the Chief Executive's financial delegation be set at \$1.5 million, to allow for any unanticipated urgent expenditure. Any such unanticipated expenditure is to be reported back to the Emergency Committee.

AND FURTHER THAT the Council notes and agrees to the following line of delegated authority (in deescalating order) in the event that the Chief Executive, or Deputy Chief Executive, is unable to fulfil any delegated powers, duties and responsibilities due to COVID-19:

General Manager Customer Support

General Manager Infrastructure

General Manager Community Growth

General

AND FURTHER THAT the Council notes that the delegations above are intended to:

- i. be used as a contingency and to ensure that Council can continue to undertake its proper functions through the COVID-19 pandemic;
- ii. discontinue in the event that the COVID-19 Alert Level enables ordinary Council and committee meetings to recommence, as determined by the Chief Executive in consultation with His Worship the Mayor (or Deputy Mayor, as the case may be), and

the Council also notes that other than as set out in this report, the Chief Executive and officer delegations that are currently in place, and delegations that cannot be delegated by law, are unaffected by this resolution and will remain with the Chief Executive, officers or Council as applicable.

3. BACKGROUND

As the COVID-19 situation continues to evolve, our approach is to focus on the health and wellbeing of our people, as our first priority, and to take an informed approach that is sensible, balanced and respectful of our diverse community. We are doing this by ensuring our approach is based on the expert medical advice of the Ministry of Health.

As of 20 March 2020, public gatherings of more than 100 people are restricted, and New Zealand's borders are now closed to anyone other than New Zealand citizens and residents.

On 21 March 2020, alert levels for COVID-19 were introduced. New Zealand is currently at Alert Level 3 and moving to Alert Level 4 by midnight, Wednesday 25 March 2020.

As things change rapidly in New Zealand, the Council is closely monitoring further advice from the Government and preparing for a possible COVID-19 outbreak in the District. At Level 4, Council and Council committee meetings will not be able to be held.

Legislative constraints

The Local Government Act 2002 (LGA) requires Council to have a quorum for all meetings of Council and Committees where decisions are made. The Act requires meeting attendees to physically be present in the room in order to achieve a quorum. Clause 23 (2) of Schedule 7 of the LGA states:

Business may not be transacted at any meeting unless at least a quorum of members is present during the whole of the time at which the business is transacted.

Although the LGA allows for attendance by members at meetings by audio or audiovisual links, and the Council's standing orders provide for this to occur, those attending by these links do not count toward the quorum (LGA, clause 25A(4) of Schedule 7).

Given it is possible that smaller gatherings (which may include Council/Committee meetings) may also be prohibited by Government, and there is a possibility that elected members may be affected by the outbreak and therefore unable to attend Council/committee meetings, officers recommend that alternative decision-making processes are implemented.

This situation is not unique to Waikato District Council – all councils across the country are grappling with these issues and a range of solutions are being worked on by Local Government NZ (LGNZ) and the NZ Society of Local Government Management (SOLGM).

Representatives of LGNZ and SOLGM are liaising with the Department of Internal Affairs with a view to progressing an amendment to the LGA which would allow a quorum to be obtained via audio or audio-visual link. If this law change occurred then it would be possible for Council's regular decision-making processes to be implemented remotely.

However, the Chief Advisor of SOLGM has advised that any such law change is likely to take weeks, if not longer, to progress. It is unclear what other legislative changes would be proposed.

Under the Epidemic Preparedness Act 2006, Orders in Council could be obtained which would modify a restriction or requirement in the LGA. Given the announcements on 23 March 2020, staff await notification if the steps have been triggered to give effect to such modification.

The challenge for the Council is that swift action is required to put plans in place in order to ensure that Council can make decisions as necessary. Some urgent decisions may relate directly to the response to COVID-19, while others may be necessary for the continued operation of Council services.

4. DISCUSSION AND ANALYSIS OF OPTIONS

4.1 DISCUSSION

There are several options that can be implemented to ensure the Council can continue to make urgent decisions during the pandemic. These are each discussed below.

Establishing an Emergency Committee

By law, Council's quorum cannot be reduced. Therefore it is recommended that all responsibilities, duties and powers currently retained by Council, Council committees and subcommittees (as detailed in the Council's Governance Structure), and Community Boards be delegated (to the extent permitted by law) to a new Emergency Committee.

In the interest of effective and timely decision making in an emergency environment, it is proposed the Emergency Committee's membership comprises the members of the Economic Development Advisory Group:

- His Worship the Mayor
- Deputy Mayor
- Infrastructure Committee Chairperson
- Policy & Regulatory Committee Chairperson
- Strategy & Finance Committee Chairperson
- Regulatory Subcommittee Chairperson,

with a quorum of two members. Under current legislation, this means that two Committee members must be physically present at the venue of the meeting in order for the meeting to be validly constituted.

The proposed terms of reference and delegations of the Emergency Committee are attached for approval.

By law, some decisions cannot be delegated and must remain with Council. These include:

- The power to make a rate
- The power to make a bylaw
- The power to adopt a Long-term Plan, Annual Plan, or Annual Report, including adopting changes to fees and charges
- The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.

Where a meeting of the Emergency Committee has been called, all elected members will be notified details by email. Agendas and minutes of the Emergency Committee's meetings will also be circulated to all Councillors. Where an urgent decision relates to a matter that would normally be considered by one of the three principal Council committees, it has been discussed that the Chairperson and Deputy Chairperson for that Committee will discuss and seek feedback from other Councillors on the decision required prior to any Emergency Committee meeting, where possible.

After the event for which the Emergency Committee has been established, Council will receive a report summarising the Committee's activities and any decisions made over the period. At that point it will be recommended that Council revoke the Emergency Committee and the Chief Executive's emergency delegations (see below).

Contingency delegation

Given the nature of COVID-19, there is a possibility that it may become impossible or impracticable for a quorum of 2 of the Emergency Committee to be physically present during a decision. This would mean that decisions required urgently could not be progressed. It is therefore recommended that a delegation be granted to specified elected members to ensure that governance decision-making can continue in all circumstances.

Officers envisage that this delegation would be used only as a contingency and only for the purposes of decision-making during the COVID-19 pandemic. Additionally, officers propose that, in order for such a delegation to take effect, both the Chief Executive and two delegates would need to agree that:

- i. an urgent decision to enable the proper performance of Council functions is required by a Council committee or subcommittee; and
- ii. in the circumstances it is not possible or is impractical to proceed with a meeting or to obtain a quorum of members physically present for the Emergency Committee.

It is proposed that any two members of the Emergency Committee hold these delegations.

All decisions made under this delegation will be circulated to all councillors as soon as possible and be reported back to a full Council meeting at the earliest possible time. This is to ensure public transparency around decision-making using this mechanism.

Reasonable steps should be taken by officers and the delegated decision-makers to keep elected members informed of any decision-making that takes place under these delegations.

Council can by resolution, revoke the delegation:

- when the emergency situation relating to COVID-19 has clearly passed; or
- if clause 25A of Schedule 7 of the LGA is amended either via urgent legislation, or via the process in the Epidemic Preparedness Act 2006, to enable a quorum for the purposes of Council/committee meetings to include local authority members attending by audio link or audio-visual link.

Chief Executive Delegations

In the event that the contingency delegation above cannot be exercised, it is proposed that the Chief Executive (or the Deputy Chief Executive, in the event that the Chief Executive is not available) be delegated all of the Council's powers, duties and responsibilities that the Council can lawfully delegate to officers. This is similar to the framework that was put in place during the election period and is intended as a final 'back stop'.

Financial Delegated Authority

Given the pending COVID-19 Alert Level 4, a situation may arise where payment or procurement of unexpected work or purchase of items may be required. Council's approval is therefore sought to ensure appropriate financial delegations are in place to enable the Chief Executive to respond immediately during these unprecedented times. Any such expenditure will be communicated to the Chair and Deputy Chair of the Emergency Committee and reported formally through the Emergency Committee

It is proposed that the Chief Executive's financial delegated authority be increased from \$1 million to \$1.5 million during the period of the COVID-19 pandemic.

In the unlikely event that the Chief Executive is unable to undertake his responsibilities due to COVID-19, Council is asked to resolve the recommended delegation chain among the Group Managers as detailed in the Recommendation.

Options

Council can agree to any of the recommended options.

If Council agrees to all recommendations, then urgent Council decision-making will be able to continue, even in the case that two delegated elected members of the Emergency Committee cannot meet. Decision-making power in specific circumstances would be vested with a smaller group of elected members.

If Council decides to continue with the status quo then decision-making power would be retained via the current delegations and the quorums that apply to Council and Committee meetings would remain as they are currently. Urgent decisions would not be able to be made if those quorums were not able to be met due to restrictions on public gatherings and public movements attaching to Alert Level 4, or if the health of members prevented them from attending in person.

Next Steps

New meeting arrangements and information will be published on our website with the public advised on how to access recordings of meetings. Members of the various committees and community boards will be advised of meeting cancellations or how to participate in meetings as required.

If advice is received on the modification of LGA 2002 quorum requirements, this will be put into effect immediately and elected members informed.

5. CONSIDERATION

5.1 FINANCIAL

Current year and future budget implications are uncertain in relation to changes to emergency governance requirements or the Chief Executive delegation arrangements in response to COVID -19 precautions.

5.2 LEGAL

The legal position in relation to delegations is set out earlier in this report.

5.3 ASSESSMENT OF SIGNIFICANCE AND ENGAGEMENT POLICY AND OF EXTERNAL STAKEHOLDERS

Having considered the Significance & Engagement Policy, staff consider the decisions required in this report have low level of significance. Key stakeholders have been informed of the proposed approach to be taken by the organisation in this regard.

Highest levels of engagement	Inform	Consult	Involve	Collaborate	Empower
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>Tick the appropriate box/boxes and specify what it involves by providing a brief explanation of the tools which will be used to engage (refer to the project engagement plan if applicable).</i>	Type here if applicable				

State below which external stakeholders have been or will be engaged with:

Planned	In Progress	Complete	
	✓		Internal
	✓		Community Boards/Community Committees
			Waikato-Tainui/Local iwi (provide evidence / description of engagement and response)
			Households
			Business
			Other Please Specify

6. CONCLUSION

With the recent developments of COVID-19, the Council needs to consider and approve a framework for urgent decisions to be continued in the event that ordinary Council and committee meetings cannot continue.

7. ATTACHMENTS

Emergency Committee – Terms of Reference

EMERGENCY COMMITTEE

Reports to:	The Council
Chairperson:	His Worship the Mayor
Deputy Chairperson:	Cr Aksel Bech
Membership:	Chairperson – Infrastructure Committee Chairperson – Policy & Regulatory Committee Chairperson – Strategy & Finance Committee Chairperson – Regulatory Subcommittee
Meeting frequency:	As required
Quorum:	Two members.

Purpose:

The Emergency Committee is to determine matters within the authority of Council, Council committees or subcommittees, or community boards where an urgent decision is required and a full meeting of Council is precluded due to any pandemic or state of emergency.

Terms of Reference and Delegations

1. To exercise all powers, responsibilities and duties of the Council, Council committees or subcommittees, or community boards except for those that:
 - Have been delegated to staff; and
 - Cannot be delegated pursuant to clause 32, Schedule 7 of the Local Government Act 2020, or under any other legislation.
2. The Emergency Committee is activated by resolution of Council for specific events, or where resolution by Council is not possible, on the joint authority of the Mayor and Deputy Mayor.

Explanatory Note

3. Agendas and minutes for the Committee will be circulated to all Councillors.
4. For clarity, Councillors who are not members of the Emergency Committee may still attend a Committee meeting, though cannot participate in voting.