

Emergency Committee, Delegations and Meeting Arrangements for COVID-19**Author:** Bede Carran, Chief Executive**Authoriser:** Bede Carran, Chief Executive**Recommendation**

That Council:

1. Either – Establishes an Emergency Committee with a membership of all Councillors;
2. Or - Establishes an Emergency Committee with a membership of three, consisting of the Mayor, the Deputy Mayor, and if available the Committee Chair, whose portfolio aligns to the matter of urgency in the first instance; or in the second instance, the relevant Deputy Committee Chair; or in the third instance a Committee Chair who is available; and
3. Agrees the Emergency Committee require a quorum of two members; and
4. Adopts the Emergency Committee's Terms of Reference; and
5. For the purposes of the COVID-19 emergency, delegates to the Mayor, or in the Mayor's absence, the Deputy Mayor, the authority to activate the Emergency Committee, and by resolution of the Emergency Committee, suspend all other committees of Council; and
6. For the purposes of the COVID-19, approves the Chief Executive's financial delegations be increased to \$1,000,000, to allow for any unanticipated urgent expenditure. Any such unanticipated expenditure is to be reported back to the Emergency Committee; and
7. Delegates the authority and powers of the Chief Executive to the Chief Executive's appointed representative in the event that the Chief Executive is unable to fulfil his duties due to COVID-19; and
8. Amends the Timaru District Council Standing Orders to reduce the quorum requirement to two members for the Commercial and Strategy Committee; Community Services Committee; Environmental Services Committee; Infrastructure Committee; and
9. Approves all necessary amendments to the Timaru District Council Delegations Manual and Standing Orders as outlined in the report to reflect the resolutions of Council on the emergency committee, delegations and meeting arrangements for COVID-19.

Purpose of Report

1. To present Council with a proposal to establish an Emergency Committee and to amend Council's Standing Orders and Delegations Manual accordingly, to ensure Council is able to maintain all appropriate and necessary decision-making ability in light of the rapidly evolving COVID-19 situation.

Assessment of Significance

2. The proposals are considered of low significance in accordance with Council's Significance and Engagement Policy. Some decisions which may be made by the proposed Emergency Committee, and the Chief Executive under delegated authority may be of higher significance. If

such instances arise, Council will work to ensure appropriate consideration is given to the Significance and Engagement Policy, while recognising Council's ability to make timely decisions is essential in this rapidly evolving situation.

Background

3. As the COVID-19 situation evolves, Council's approach is to focus on the health and wellbeing of our community and Council employees, and to take an informed approach that is sensible, balanced and evidence-based. Council is ensuring this approach is based on the expert medical advice of the Ministry of Health (MoH) and as directed by the Prime Minister and government.
4. This balanced approach aims to take into account the health and wellbeing impacts of COVID-19 itself, and the secondary consequences of any response taken by Council. This includes impacts on our national and local health system and the ability to provide care to those that need it, minimising disruption of our key functional services to our community, and the potentially damaging economic and social impacts on our community.
5. Council's Crisis Management Team has been activated and has reviewed and updated the TDC Pandemic Plan. This is a high-level document which guides how Council will respond to pandemics and is aligned to the alert levels provided by the MoH. It is designed to be flexible to meet rapidly evolving situations, as we are currently facing with COVID-19.
6. The Pandemic Plan is complemented with Business Continuity Plans for each unit within Council. The aim of these plans is to prepare all units across Council to cope with the effects of an emergency or period of significant disruption to day-to-day activities. The plans describe the critical functions and core activities of Council which must be continued as normal, or increased if necessary through an emergency, or resume soon after an emergency, to ensure Council is able to meet our legislative requirements and purpose. These plans are currently being updated by Unit and Group Managers.
7. The latest update to our Pandemic Plan aligns with the government's announcement of a four-level COVID-19 alert system. These alert levels specify the health and social measures to be taken across the country. New Zealand at the date of this report is at COVID-19 Alert Level 2 - Reduce.
8. Alert Level 2 means that COVID-19 is contained but the risk of community transmission is growing because there are more known cases. This level is focused on slowing the spread by reducing contact with one another. The Level 2 measures are:
 - 8.1. New Zealand's borders are closed to almost all travellers.
 - 8.2. There are restrictions on mass gatherings and events.
 - 8.3. Physical distancing is advised on public transport.
 - 8.4. People are advised to limit non-essential travel around New Zealand, which means cutting non-essential domestic travel to help the government track and contain any spread of COVID-19.
 - 8.5. Advising employers to start implementing alternative ways of working if possible, for example, remote working, shift-based working, physical distancing within the workplace, staggering meal breaks, flexible leave arrangements and activating business continuity plans.
 - 8.6. People over 70 years of age, people who have compromised immunity, or people who have underlying respiratory conditions are advised to stay at home as much as they can.

- 8.7. Schools will be closed if there is a case that affects a school.
9. Council has advised and will continue working to enable all staff to adhere to the requirements of Alert Level 2. Where possible staff will be working from home, and all those over 70 or with pre-existing conditions have been instructed to stay home.
10. As of the government's announcement on March 21, Council is not closing community facilities including CBay, libraries, the Museum and the Art Gallery. However, the Crisis Management Team will review this on a regular basis to ensure that if, and when the situation changes, we are ready to take action.

Discussion

11. In this challenging and rapidly evolving situation, it is essential that Council is able to respond in a timely manner that is compliant with existing legislation on meeting and decision-making requirements, and Council's financial and operational delegations.
12. The Local Government Act 2002 (LGA) (reflected in the current Timaru District Council Standing Orders) currently requires that:
- (1) A meeting is duly constituted if a quorum is present, whether or not all of the members are voting or entitled to vote.
 - (2) Business may not be transacted at any meeting unless at least a quorum of members is present during the whole time at which the business is transacted.
 - (3) The quorum at a meeting of -
 - (a) A local authority or joint committee consists of –
 - (i) Half of the members if the number of members (including vacancies) is even; or
 - (ii) A majority of members if the number of members (including vacancies) is odd.
- (Clause 23 (1) schedule 7, LGA)
13. While the LGA and Standing Orders allow for members to attend meetings, and vote via audio/audio visual link, the clause 25A, schedule 7 of the LGA states that "a member of the local authority who is not physically present at the meeting is not to be counted as present for the purposes of clause 23 (detailed above)".
14. For the purposes of meetings of Timaru District Council, Council business may not be transacted unless the meeting is constituted of a quorum of five members who are physically present. The quorum requirements are the same for Council Standing Committees.
15. However, it is important to note that members attending to the meetings via audio/audio visual link are able to vote on matters under consideration.
16. As the situation evolves, and the national COVID-19 Alert Levels change, it may become increasingly difficult, or impossible for Council to have a quorum at meetings, and therefore to undertake an essential business that may arise. The Department of Internal Affairs, Local Government New Zealand, the Society of Local Government Managers and the National Emergency Management Agency have established a Central/Local Government COVID-19 Response Unit. Council has been advised that this unit is canvassing and working through the immediate and longer-term challenges COVID-19 poses for the local government sector and will provide support for councils. The Unit has a dedicated workstream to ensure local government can continue to make decisions and meet legislative requirements.

17. However, in the immediate absence of any changes to quorum requirements in the LGA, the Unit has advised local authorities that the establishment of an Emergency Committee is a useful framework to facilitate ongoing governance and decision-making capabilities, at least in the short-term should it be required.
18. This report recommends the establishment of an Emergency Committee in line with this advice. There are also other recommendations to assist us over this period, including increasing the financial delegation to the Chief Executive, and amending Council's Standing Orders, to ensure Council's decision-making capabilities are appropriate and responsive to the changing situation.

Establishing an Emergency Committee

19. Emergency, or Executive Committees have been established by local authorities in New Zealand and internationally, often to respond to specific local emergencies, where emergency legislation is enacted or to undertake Council business where the urgency of the matters precludes a full meeting of Council.
20. To prepare for the event of further national and local restrictions in response to COVID-19, it is advisable that an Emergency Committee be created to ensure decisions can be made as quickly as possible where required.
21. The draft Terms of Reference (attached) for the proposed committee have been modelled on various councils across New Zealand, and with full consideration to the current legislative requirements.
22. In the interests of effective and timely decision-making, it is proposed the membership consists of all members of Council, with a quorum of two.
23. A second option Council may wish to consider a Committee membership with three named members: the Mayor, the Deputy Mayor, and the Committee Chair the matter of urgency falls under. Contingency council be built into the Terms of Reference to ensure that where one of the members is unable to fulfil their duties for whatever reason, the Deputy Committee Chair or an alternate Committee Chair will be required to undertake the role of that member. The quorum of this Committee would be two members.
24. The LGA allows that a committee of council can have a quorum of not fewer than two members, as determined by the local authority.
25. The draft Terms of Reference state that the Committee will be activated by resolution of Council for specific events (e.g. the Covid-19 emergency), or where resolution by Council is not possible, on the joint authority of the Mayor and Deputy Mayor.
26. It is recommended that the Emergency Committee be delegated all powers currently held by Council, and Standing Committees that cannot be exercised by Council using its standard processes and procedures due to COVID-19, except for those that have been delegated to staff, or cannot be delegated pursuant to clause 32, schedule 7 of the LGA, or pursuant to any other legislation.¹
27. In accordance with clause 32, schedule 7 of the LGA, the Emergency Committee will not have delegated authority to:
 - 27.1. Make a rate; or
 - 27.2. Make a bylaw; or

¹ Clause 32, schedule 7, LGA details the explicit

- 27.3. Borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan;
 - 27.4. Adopt a Long Term Plan, Annual Plan or Annual Report; or
 - 27.5. Appoint a Chief Executive; or
 - 27.6. Adopt policies required to be adopted or consulted on under the LGA in association with the Long Term Plan, or developed for the purpose of the local governance statement; or
 - 27.7. Adopt a remuneration and employment policy.
28. At the earliest possible time after the event for which the Emergency Committee has been called, or at appropriate times if possible during the event, Council will receive a report summarising the Committee's activity and any decisions made over the period. This is to ensure public transparency around decision-making using this mechanism.
29. When considered appropriate, the Emergency Committee will recommend to Council that the Committee be deactivated and the Chief Executive's emergency financial delegations be removed.

Adjustment to Standing Orders

30. It is also proposed that Council's Standing Orders be amended to more clearly define the requirements of calling an Emergency Meeting (that applies to all of Council). These proposed amendments are in line with the LGA. The relevant sections of the Standing Orders have been marked up to highlight the proposed amendments (attached).
31. Where an Emergency Meeting has been called all Councillors will be notified of the details by email. Agendas and Minutes of the Emergency Meeting will also be circulated to Councillors and made available to the public in accordance with the Local Government Official Information and Meetings Act (LGOIMA), and amended Standing Orders as detailed in the attachment.
32. It is also recommended that the quorum requirements be set at two members for the following Standing Committees:
- 32.1. Commercial and Strategy Committee
 - 32.2. Community Services Committee
 - 32.3. Environmental Services Committee
 - 32.4. Infrastructure Committee.
33. This will allow these Committees to continue to transact core Council business during this period of time, allowing the proposed Emergency Committee to focus on Council's response to COVID-19.
34. In accordance with the clause 27, schedule 7 of the LGA, an amendment to the Standing Orders requires a vote of not less than 75% of the members present.

Chief Executive's Emergency Financial Delegations

35. In anticipation of a COVID-19 nation-wide lockdown, a situation may arise where payment or procurement of unexpected work or the purchase of goods 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.
36. Any such expenditure will be communicated to the Mayor and reported formally through the Emergency Committee.

Acting Chief Executive Delegations

37. In the event that the Chief Executive is unable to undertake his responsibilities due to COVID-19, Council is asked to approve the recommended delegation to the Chief Executive's nominated representative.

Options and Preferred Option

38. Option One (*preferred option*): Make the changes described above to assist decision-making over this period, including:

38.1. Establish an Emergency Committee as detailed above, in accordance with the proposed Terms of Reference;

38.2. Change Standing Orders to set a quorum of two members for the detailed Standing Committees, and to include Emergency Meetings;

38.3. Extend the Chief Executive's emergency financial delegations; and

38.4. Provide clear powers for an Acting Chief Executive

39. This option will allow for all essential Council business to continue to be transacted in the event that further restriction, enforced in response to COVID-19, making normal business impossible.

40. Option Two: Maintain Status Quo, including not enabling the measures described above.

This option may leave Council vulnerable to undertake timely and essential decisions if a quorum of Council is not available as a result of COVID-19 restrictions. By not extending the Chief Executive's emergency financial delegations the Chief Executive may be unable to respond with the necessary urgency Council's response to COVID-19 may require.

41. There are other options available for the membership of the Emergency Committee which Council may wish to consider:

41.1. Appoint all members of Council to the Emergency Committee and provide for a quorum of two members. Clause 23, schedule 7 of the LGA permits a quorum for a Committee of Council this small. This option would allow for greater contingency should members be unable to physically attend a meeting.

41.2. A named group of Councillors from which an Emergency Committee can be formed. This membership may differ from that which has been discussed in this report.

Consultation

42. No specific consultation has been undertaken on this matter, however Council staff have received advice on the establishment of an Emergency Committee from the Central/Local Government COVID-19 Response Unit.

Relevant Legislation, Council Policy and Plans

43. Local Government Act 2002 – Sets the meeting and decision-making requirements of local government, including quorum requirements.

44. Timaru District Council Standing Orders – Detail Council's approach to meeting requirements, in line with the Local Government Act.

45. Timaru District Council Delegations Manual – Sets out the legislative, financial and operational delegations from Council to Committees of Council, the Chief Executive and other staff.

Financial and Funding Implications

46. There are no foreseen current year and future budget implications for the proposal to establish an Emergency Committee or extending the Chief Executive's emergency financial delegations. Any emergency expenditure which may arise during the course of Council's response to COVID-19 will be considered as appropriate. The Chief Executive will formally report on any committed emergency expenditure to the Emergency Committee with full consideration for any financial and funding implications.

Other Considerations

47. Staff will continue to monitor the advice provided by the Central/Local Government COVID-19 Response Unit and the progress of any legislative amendments which may allow for the implementation of alternative decision-making processes.

Attachments

1. **Draft Terms of Reference for Timaru District Council Emergency Committee**
2. **Proposed Adjustments to Standing Orders - March 2020**