

Notice of Meeting:

I hereby give notice that an ordinary Meeting of the Council will be held on:

Date: Wednesday 25 March 2020
Time: 9.30am
Meeting Room: Council Chamber
Venue: Municipal Building, Garden Place, Hamilton

Richard Briggs
Chief Executive

Extraordinary Council OPEN LATE AGENDA

Membership

Chairperson	Mayor P Southgate
Deputy Chairperson	Deputy Mayor G Taylor
Members	Cr M Bunting
	Cr M Forsyth
	Cr M Gallagher
	Cr R Hamilton
	Cr D Macpherson
	Cr K Naidoo-Rauf
	Cr A O'Leary
	Cr R Pascoe
	Cr S Thomson
	Cr M van Oosten
	Cr E Wilson

Quorum: A majority of members (including vacancies)

Meeting Frequency: Monthly – or as required

Becca Brooke
Governance Manager

24 March 2020

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Purpose

The Council is responsible for:

1. Providing leadership to, and advocacy on behalf of, the people of Hamilton.
2. Ensuring that all functions and powers required of a local authority under legislation, and all decisions required by legislation to be made by local authority resolution, are carried out effectively and efficiently, either by the Council or through delegation.

Terms of Reference

1. To exercise those powers and responsibilities which cannot legally be delegated by Council:
 - a) The power to make a rate.
 - b) The power to make a bylaw.
 - c) The power to borrow money, or purchase or dispose of assets, other than in accordance with the Long Term Plan.
 - d) The power to adopt a Long Term Plan or Annual Plan, or Annual Report.
 - e) The power to appoint a Chief Executive.
 - f) 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 Council's governance statement, including the 30-Year Infrastructure Strategy.
 - g) The power to adopt a remuneration and employment policy.
 - h) The power to approve or change the District Plan, or any part of that Plan, in accordance with the Resource Management Act 1991.
 - i) The power to approve or amend the Council's Standing Orders.
 - j) The power to approve or amend the Code of Conduct for Elected Members.
 - k) The power to appoint and discharge members of committees.
 - l) The power to establish a joint committee with another local authority or other public body.
 - m) The power to make the final decision on a recommendation from the Parliamentary Ombudsman, where it is proposed that Council not accept the recommendation.
 - n) The power to amend or replace the delegations in Council's *Delegations to Positions Policy*.
2. To exercise the following powers and responsibilities of Council, which the Council chooses to retain:
 - a) 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.
 - b) Approval of any changes to Council's vision, and oversight of that vision by providing direction on strategic priorities and receiving regular reports on its overall achievement.
 - c) Approval of any changes to city boundaries under the Resource Management Act.
 - d) Adoption of governance level strategies plans and policies which advance Council's vision and strategic goals.
 - e) Approval of the Triennial Agreement.
 - f) Approval of the local governance statement required under the Local Government Act 2002.

- g) Approval of a proposal to the Remuneration Authority for the remuneration of Elected Members.
- h) Approval of any changes to the nature and delegations of the Committees.
- i) Approval of all Council and Committee Advisory Groups and their terms of reference.
- j) Appointments to, and removals from, CCO CCTO and CO boards;
- k) Approval of proposed major transactions or constitutional adjustments of CCOs, CCTOs and COs.
- l) Approval or otherwise of any proposal to establish, wind-up or dispose of any holding in, a CCO, CCTO or CO.
- m) Approval of city boundary changes, including in respect of Strategic Boundary Land Use Agreements.
- n) Approval Activity Management Plans.

Oversight of Policies and Bylaws:

- *Corporate Hospitality and Entertainment Policy*
- *Delegations to Positions Policy*
- *Elected Members Support Policy*
- *Significance and Engagement Policy*

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1 Apologies

2 Confirmation of Agenda

The Council to confirm the agenda.

3 Declaration of Interest

Members are reminded of the need to be vigilant to stand aside from decision making when a conflict arises between their role as an elected representative and any private or other external interest they might have.

4 Public Forum

As per Hamilton City Council's Standing Orders, a period of up to 30 minutes has been set aside for a public forum. Each speaker during the public forum section of this meeting may speak for five minutes or longer at the discretion of the Mayor.

Please note that the public forum is to be confined to those items falling within the terms of the reference of this meeting.

Speakers will be put on a Public Forum speaking list on a first come first served basis in the Council Chamber prior to the start of the Meeting. A member of the Governance Team will be available to co-ordinate this. As many speakers as possible will be heard within the allocated time.

If you have any questions regarding Public Forum please contact Governance by telephoning 07 838 6727.

Council Report

Committee: Council **Date:** 26 March 2020
Author: Mothla Majeed **Authoriser:** Jen Baird
Position: Legal Services Manager **Position:** General Manager City Growth
Report Name: Decision-making during Covid-19

Report Status	<i>Open</i>
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Purpose

1. To seek approval from the Council to delegate all of its functions (except those which cannot be delegated under legislation) until Council next meets, in light of disruptions to business arising from New Zealand's response to Covid-19.
2. To seek approval from the Council for Standing Order 14.2 (relating to audiovisual participation in Council meetings and quorum requirements) to be suspended until further notice.

Staff Recommendation

OPTION ONE (RECOMMENDED)

3. That the Council extends the Chief Executive's current delegations (detailed in the Council's *Delegations to Positions Policy*) to include all of Council's responsibilities, duties, and powers currently retained by Council or delegated to Council's standing committees (except the District Licensing Committee) (**Extended CE Delegations**), subject to the following requirements:
 - a. The Extended CE Delegations will have effect only for the period from the date of this meeting until Council next meets at which time the Extended Delegations will automatically be revoked unless Council resolves otherwise at that meeting.
 - b. The Extended CE Delegations do not include a delegation of any Council powers, duties and functions which are prohibited by law from delegation - including, without limitation, those set out in clause 32(1) of the Seventh Schedule to the Local Government Act 2002.
4. That the Council approves, for the avoidance of doubt, that the Extended CE Delegations include the power to cancel Council and committee meetings currently scheduled which, in the reasonable opinion of the Chief Executive, should be cancelled to comply with the current central government Covid-19 alert level.
5. That the Council approves, for the avoidance of doubt, that the Extended CE Delegations may and will be exercised by an acting Chief Executive, appointed from time to time by the Chief Executive, in the event the Chief Executive is unable to act.
6. That the Council notes that the Chief Executive has committed to exercising the Extended CE Delegations in accordance with the following guideline process:
 - a. The Chief Executive will exercise any one or all of the Extended CE Delegations from time

- to time only after first consulting with the Mayor (or Deputy Mayor) and Chair (or Deputy Chair) of the relevant committee (if any) where reasonably practicable and subject to their availability.
- b. The Chief Executive will not exercise the Extended CE Delegations unless he has first made all reasonable endeavors to achieve the consultation measures identified in paragraph 6(a) above.
 - c. Where, in the reasonable opinion of the Chief Executive, a decision requiring the exercise of the Extended CE Delegations could be deferred without any material consequences, the Chief Executive may elect to not exercise the Extended CE Delegations, and instead defer the decision until the next full Council meeting.
 - d. The Chief Executive will advise Elected Members, Maangai Maaori and any external appointees to the relevant committee of each decision to exercise of the Extended CE Delegations as soon as reasonably possible once it has been made.
 - e. The Chief Executive shall keep a running record of all occasions where the Extended CE Delegations have been exercised and shall remain accountable to elected members for the proper and prudent exercise of the Extended CE Delegations.
 - f. The Chief Executive shall provide an overall report of the exercise of the Extended CE Delegations at the next full meeting of Council as described in paragraph 2(a) above.
7. That the Council agrees that before providing their views to the Chief Executive as described in paragraph 6(a) above, the Mayor (or Deputy Mayor) and Chair (or Deputy Chair) of the relevant committee (if any) will carry out the following steps:
 - a. Seek the views of other elected members, Maangai Maaori and any external appointees to the relevant committee (if any) on the proposed decision where reasonably practicable and subject to their availability.
 - b. Whether the step described at paragraph 6(a) above is reasonably practicable is at the discretion of the Mayor Deputy Mayor) and Chair (or Deputy Chair) of the relevant committee (if any) in consultation with the Chief Executive, depending on the urgency and significance of the decision at hand.
 8. That the Council approves the suspension until further notice of Standing Order 14.2 (providing attendance by audiovisual link does not count for quorum purposes), in order to allow remote Council meetings to take place in the event the legislative requirement for physical attendance is also suspended.

OR

OPTION TWO

9. That the Council delegates all of Council's responsibilities, duties, and powers currently retained by Council or delegated to Council's standing committees (except the District Licensing Committee) to the Mayor (or Deputy Mayor), Chair (or Deputy Chair) of the relevant committee (if any), and the Chief Executive (together, the **Delegated Group**) to exercise (**Group Delegations**), subject to the following requirements:
 - a. Decisions will be made by consensus where reasonably practicable. Where a member of the Delegated Group is unable to act or, in respect of an urgent decision, is otherwise unavailable, then decisions must be made by a minimum of two members of the Delegated Group. Where, in the reasonable opinion of the Chief Executive, the minimum of two members cannot be achieved, then the Chief Executive (or any acting Chief Executive) shall be empowered to make the decision alone.
 - b. The Group Delegations will have effect only for the period from the date of this meeting until Council next meets at which time the Group Delegations will automatically be revoked unless Council resolves otherwise at that meeting.
 - c. The Group Delegations do not include a delegation of any Council powers, duties and

functions which are prohibited by law from delegation - including, without limitation, those set out in clause 32(1) of the Seventh Schedule to the Local Government Act 2002.

10. That the Council approves, for the avoidance of doubt, that the Group Delegations include the power to cancel Council and committee meetings currently scheduled which, in the reasonable opinion of the Delegated Group, should be cancelled to comply with the current central government Covid-19 alert level.
11. That the Council notes that the Group Delegations will be exercised in accordance with the following guideline process:
 - a. Prior to the Delegated Group exercising any one or all of the Group Delegations from time to time, they will take all reasonable steps to consult with other elected members, Maangai Maaori and any external appointees to the relevant committee (if any) on the proposed decision where reasonably practicable and subject to their availability.
 - b. Whether the step described at paragraph 11(a) above is reasonably practicable is at the sole discretion of each member of the Delegated Group, depending on the urgency and significance of the decision at hand.
 - c. Where, in the reasonable opinion of the Delegated Group, a decision requiring the exercise of the Group Delegations could be deferred without any material consequences, the Delegated Group may elect to not exercise the Group Delegations, and instead defer the decision until the next full Council meeting.
 - d. The Delegated Group will advise Elected Members, Maangai Maaori and any external appointees to the relevant committee of each decision to exercise of the Group Delegations as soon as reasonably possible once it has been made.
 - e. The Delegated Group shall keep a running record of all occasions where the Group Delegations have been exercised and shall remain accountable to elected members for the proper and prudent exercise of the Group Delegations.
 - f. The Delegated Group shall provide an overall report of the exercise of the Group Delegations at the next full meeting of Council as described in paragraph 9(a) above.
12. That the Council approves the suspension until further notice of Standing Order 14.2 (providing attendance by audiovisual link does not count for quorum purposes), in order to allow remote Council meetings to take place in the event the legislative requirement for physical attendance is also suspended.

Discussion

Background

13. The Local Government Act 2002 (**LGA**) sets out the obligations and functions of local authorities such as Hamilton City Council. Of relevance are the following provisions:
 - Quorum of Council is the majority of members (that is, 7 members) (see cl 23 of Sched 7 to the LGA). Quorum must be maintained while business is conducted.
 - To be counted as present for quorum purposes, an elected member must be physically present at the meeting (see cl 25A of Sched 7 to the LGA).
 - If quorum requirements are satisfied, then remaining elected members may attend and vote remotely (see cl 25A of Sched 7 to the LGA).
14. These are legislative provisions. This means Council cannot amend these requirements by Council resolution.
15. Under current legislation, Council will not be able to meet and make decisions once the country moves to alert level 4 at 11:59pm on Wednesday 25 March. Thereafter, even once the

alert level is downgraded, it will also be unable to make decisions if it is still unable to meet quorum requirements.

16. Staff therefore recommend Council resolves to delegate its functions until it is next able to meet as a full Council. Staff's recommended option is that Council grants to the Chief Executive the Extended CE Delegations. The other option is to grant the Delegated Group the Group Delegations, however this option carries more risk, which is discussed below.

Option 1: Extended CE Delegations

17. The Council's current delegations to the Chief Executive are set out in the [Delegations to Positions Policy](#).
18. Staff recommend that the Council extends the Chief Executive's current delegations to undertake all of the Council's responsibilities, duties, and powers (except as prohibited by clause [32\(1\)\(a\) to \(h\) of Schedule 7 to the LGA](#) and any other Act), by authorising the Extended CE Delegations.
19. This proposed extension to the CE's delegations is similar to the process that operates during the interregnum period i.e. between the election and the inaugural meeting of a new council.
20. Staff recommend that the Extended CE Delegations are unrestricted so as not to limit the Chief Executive's ability to respond to any novel circumstances that may arise. If restrictions are embedded as part of the resolution to delegate, the Chief Executive may be in a position where the restrictions function to limit the actions that can be taken by the Chief Executive. Because Council cannot amend the delegations until it next meets, which may not be for some time, essential actions may not be taken, or if they are taken, would be outside delegated authority and therefore unlawful.
21. Understandably, creating such a broad delegation is a concern for elected members. Three important checks and balances are recommended;
 - First, the Extended CE Delegations will immediately expire upon the convening of the next full Council meeting. This way, the default position is expiry, and will require positive resolution of Council to be extended;
 - Secondly, the Chief Executive's acknowledgment that he will, where reasonably practicable, follow the guidelines set out in paragraph 6 above in the exercise of the Extended CE Delegations.
 - Thirdly, that where reasonably practicable in the circumstances, the Mayor (or Deputy Mayor) and Chair (or Deputy Chair) of the relevant committee (if any) will canvas the views of elected members, Maangai Maaori and external appointees to the relevant committee (if any) and provide feedback to the Chief Executive before any decision is made under the Extended CE Delegations.

Option 2: Group Delegations

22. Council's other option is to grant the Group Delegations to the Delegate Group, made up of Mayor (or Deputy Mayor), Chair (or Deputy Chair) of the relevant committee (if any), and the Chief Executive.
23. The Group Delegations would be able to be exercised through remote meetings between the members of the Delegated Group. As staff do not recommend establishing the Delegated Group as a committee of Council, physical quorum issues would not apply.
24. Decisions would be made by consensus between the members of the Delegated Group. If a member of the Delegated Group was unable to act or (in respect of an urgent decision)

unavailable, then two members of the Delegated Group would be able to exercise the Group Delegations. If the two-member minimum could not be achieved, then staff recommend the Chief Executive (or any acting Chief Executive) is empowered to make the decision alone

25. If Council chooses this option, four important checks and balances are recommended:
 - First, the Group Delegations will immediately expire upon the convening of the next full Council meeting. This way, the default position is expiry, and will require positive resolution of Council to be extended;
 - Secondly, the Delegated Group will, where reasonably practicable, follow the guidelines set out in paragraph 11 above in the exercise of the Group Delegations.
 - Thirdly, that where reasonably practicable in the circumstances, the Delegated Group will canvas the views of elected members, Maangai Maaori and external appointees to the relevant committee (if any) to consider before any decision is made under the Extended CE Delegations.
 - Fourthly, the ability for the Chief Executive (or any acting Chief Executive) to make the decision at hand should the two-member minimum be unachievable.
26. Staff note that this option is more complex than the Extended CE Delegations option and risks causing confusion and delay in what has already proven to be a fast-paced and changing environment.
27. Accordingly, staff do not recommend this option. Instead, staff recommend the Extended CE Delegations option as this allows for a clean line of decision-making, but still builds in opportunity for elected members, Maangai Maaori and external appointees to provide feedback before decisions are made.

Further matters for consideration

28. At this stage, it appears that Council will not be able to meet until Alert Level 4 is lifted in at least four weeks' time (or later, depending on the public health situation at that time), unless central government specifies that Council meetings are an essential service. Currently, Council meetings are **not** an essential service and accordingly cannot continue due to the physical quorum requirements.
29. There is however a possibility that central government will make use of emergency legislative mechanisms to resolve these issues. For example, the provisions of the Epidemic Preparedness Act 2006 would allow the Governor-General to issue an Order in Council modifying restrictions and requirements of legislation (such as the Local Government Act).
30. Under the Epidemic Preparedness Act, it is therefore possible that central government will use this mechanism to modify the quorum requirements in the Local Government Act, which may in turn allow Council to count remote participation for quorum purposes and make decisions through remote Council meetings.
31. Should this happen, Standing Order 14.2 will need to be suspended to allow for audiovisual attendance to count for quorum purposes under Council's Standing Orders. Standing Order 14.2 reflects the Local Government Act by providing that remote participation in meetings does not count as attendance for quorum purposes.
32. Accordingly, staff recommend Standing Order 14.2 is suspended until further notice, to allow Council to promptly adapt to any change in legislative requirements.
33. Unless and until there is a change to legislative requirements, however, the Extended CE Delegations (or Group Delegations, if preferred) will be required. Staff understand that these restrictions are on central government's radar, however there has been no indication that steps will be taken.

34. If the recommendation is not approved then the matters covered by the Extended CE Delegations or Group Delegations will not be able to be decided on or carried out until Council next meets, which may not be for at least four weeks, and in all likelihood, longer.
35. As noted above, staff's recommended option is that the Extended CE Delegations are granted. Accordingly, staff recommend Council approves the staff recommendation to pass the following resolution:

Council resolves to;

*Extend the Chief Executive's current delegations (detailed in the Council's Delegations to Positions Policy) to include all of Council's responsibilities, duties, and powers currently retained by Council or delegated to Council's standing committees (except the District Licensing Committee) (**Extended CE Delegations**), subject to the following requirements:*

The Extended CE Delegations will have effect only for the period from the date of this meeting until Council next meets at which time the Extended CE Delegations will automatically be revoked unless Council resolves otherwise at that meeting.

The Extended CE Delegations do not include a delegation of any Council powers, duties and functions which are prohibited by law from delegation - including, without limitation, those set out in clause 32(1) of the Seventh Schedule to the Local Government Act 2002.

That the Council approves, for the avoidance of doubt, that the Extended CE Delegations may and will be exercised by an acting Chief Executive, appointed from time to time by the Chief Executive, in the event the Chief Executive is unable to act.

Legal and Policy Considerations

36. Staff have taken advice from Lachlan Muldowney, Barrister in preparing this report. Staff confirm that the matters in this report comply with the Council's legal and policy requirements.

Wellbeing Considerations

37. The purpose of Local Government changed on the 14 May 2019 to include promotion of the social, economic, environmental and cultural wellbeing of communities in the present and for the future ('the 4 wellbeings').
38. The subject matter of this report has been evaluated in terms of the 4 wellbeings during the process of developing this report.
39. The recommendations set out in this report are consistent with that purpose.

Risks

40. The staff recommendation addresses the risk arising from Council's inability to satisfy quorum requirements in light of New Zealand's response to Covid-19.
41. The proposed guideline process for the Chief Executive to follow when exercising the Extended CE Delegations addresses any risk of Council delegating its functions to the executive level.

Significance & Engagement Policy

Significance

42. Staff have considered the key considerations under the Significance and Engagement Policy and have assessed that the recommendation(s) in this report has/have a medium level of significance.

Engagement

43. Given the medium level of significance determined, the engagement level is medium. No engagement is required.

Attachments

There are no attachments for this report.