



# **SOUTH WAIRARAPA DISTRICT COUNCIL**

*Kia Reretahi Tātau*

## **Agenda**

**ORDER PAPER FOR AN EMERGENCY COUNCIL MEETING  
TO BE HELD IN**

**Martinborough Town Hall, Texas Street  
Martinborough**

**ON**

**25 March 2020**

### **MEMBERSHIP OF COUNCIL**

**HIS WORSHIP THE MAYOR**

**Mr Alex Beijen**

Deputy Mayor Garrick Emms

Cr P Colenso  
Cr R Fox  
Cr L Hay  
Cr B Jephson

Cr P Maynard  
Cr A Plimmer  
Cr R Vickery  
Cr B West

**RECOMMENDATIONS IN REPORTS ARE NOT TO BE CONSTRUED AS  
COUNCIL POLICY UNTIL ADOPTED BY COUNCIL**





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**SOUTH WAIRARAPA DISTRICT COUNCIL MEETING**  
**Emergency Meeting**  
**Agenda 25 March 2020**

**NOTICE OF MEETING**

An emergency meeting will be held in the Martinborough Town Hall, Texas Street, Martinborough on Wednesday 25 March 2020 at 10:00am. The venue will be closed to the public in accordance with Level 3 COVID 19 requirements.

**SWDC Affirmation**

**We pledge that we will faithfully and impartially use our skill, wisdom and judgement throughout discussions and deliberations ahead of us today in order to make responsible and appropriate decisions for the benefit of the South Wairarapa district at large.**

**We commit individually and as a Council to the principles of integrity and respect, and to upholding the vision and values we have adopted in our Long Term Plan strategic document in order to energise, unify and enrich our district.**

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**Open Section**

- A1.** Apologies
- A2.** Conflicts of interest

**B. Decision Reports from Chief Executive and Staff**

- B1.** Emergency Provisions for Lawful Decision Making during the COVID-19 Pandemic

AGENDA ITEM B1

**EMERGENCY PROVISIONS FOR LAWFUL DECISION-MAKING  
DURING THE COVID-19 PANDEMIC**

**Purpose of Report**

The Coronavirus (COVID-19) pandemic in New Zealand continues to evolve and the Council is asked to consider special delegations for emergency decision-making and governance processes to ensure there is a mechanism for lawful decision-making where the Council and its committees are unable or unavailable to hold meetings.

**Recommendations**

Officers recommend that the Council:

1. *Receive the Emergency Provisions for Lawful Decision-Making During the COVID-19 Report.*
2. *Appoints an Emergency Committee, with a membership of the Mayor and all Councillors.*
3. *Adopts the Emergency Committee's Terms of Reference.*
4. *Activates the Emergency Committee from 25 March 2020 to operate during Alert Levels 3 and 4 of the COVID-19 emergency and suspends all other Committees.*
5. *Agrees that the emergency delegations for decision-making due to COVID-19 will be reviewed when the alert status reverts back to level 2.*
6. *For the purposes of the COVID-19 emergency, delegates to the Chief Executive all the Council's powers, duties, and responsibilities that the Council can lawfully delegate to officers, including the ability to enter into any contract and/or to authorise any level of expenditure ("Emergency Delegation"). This Emergency Delegation does not include (or limit) the powers, duties, and responsibilities that the Council has already delegated to the 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 Emergency Delegation is subject to the following conditions.*
  - a. *It may be exercised only in circumstances where the Council or Emergency Committee 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;*

*b. The Chief Executive may only exercise the Emergency Delegation 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).*

*c. Any decisions made and documents executed in exercising the Emergency Delegation must be reported to the next ordinary meeting of the Council.*

*d. This Emergency Delegation may be revoked at any time by the Council.*

*e. In the event there is any inconsistency between this Emergency Delegation and any other delegation made by the Council, this Emergency Delegation takes precedence. For the avoidance of doubt, this means that the contract value and other limits specified in the Chief Executive's delegations will not apply while this Emergency Delegation is in effect, thus enabling the Chief Executive to approve these no matter the contract value or contract variation parameters during the effective period of this Emergency Delegation.*

7. *Delegates the authority and powers of the Chief Executive to:*

*a. Russell O'Leary, Group Manager Planning and Environment: as Acting Chief Executive, in the event that the Chief Executive is unable to fulfil his duties due to COVID-19; and*

*b. Agrees where the delegated Acting Chief Executive is unable to fulfil such duties due to COVID-19, the Chief Executive's delegated authority and powers will deescalate to the next designated manager in the following order:*

*c. Euan Stitt, Group Manager Partnerships and Operations.*

*d. Kim Rudman, HR/Corporate Service Manager (response team).*

*e. Karen Yates, Acting Policy and Governance Manager.*

*f. Katrina Neems, Chief Financial Officer.*

8. *Note that any legislative change to remove the requirement that councillors meet "in person" in order to satisfy a quorum may take some weeks.*

9. *Note that the Epidemic Preparedness Act 2006 process to modify legislation has not yet been commenced.*

## **1. Executive Summary**

The situation with COVID-19 is changing rapidly, and the Council needs to consider how it will function in an escalated Level 4 alert level environment. Council is asked to consider extraordinary measures for emergency decision-making and governance processes and approve special delegations in the event of the Chief Executive being unable to perform his duties.

## **2. Background**

The Government has announced a four level COVID-19 alert system that specifies the health and social measures to be taken in response to the COVID-19 pandemic. On 23 March 2020 the Government announced that the country had moved to Level 3 and that would move to Level 4 at 11.59 pm on Wednesday 25 March. At Level 4 all people will be instructed to stay at home, educational facilities will be closed and all business except essential services and lifeline utilities will be closed. The Council has closed its community facilities and is considering the way it delivers services for the foreseeable future. Staff will be supported to work remotely.

Local Government New Zealand (LGNZ) is coordinating with the Ministry of Health (MOH), National Emergency Management Agency (NEMA), Department of Internal Affairs (DIA) and the Society of Local Government Managers (SOLGM) to ensure all councils are receiving information through the appropriate channels. A Local Government COVID-19 response team has been formed and is providing information to councils across the country about contingency measures in the event of a community wide outbreak. One of the issues they are looking at is to modify the quorum requirements in the Local Government Act 2002 (LGA 2002). Currently members have to be physically present to meet the quorum. If modified these would enable quorums to be met via electronic methods.

The recommendations in this report are designed to provide for emergency decision-making at Levels 3 and 4.

## **3. Appointing an Emergency Committee**

It is recommended that an Emergency Committee is appointed to make effective and timely decisions in an emergency environment where the Council is unable to meet collectively, either physically, or in a virtual way.

The membership is proposed to be the Mayor and all members of Council. This allows for attendance flexibility either physically or via video or tele-conference.

The Terms of Reference are modelled on other councils and are attached in Appendix 1.

### **3.1 Quorum for Committees**

There are some legislative constraints around quorums under the LGA 2002.

For Council meetings, the legislative requirement is that half of the members need to be physically present, where the number of members (including vacancies) is even; and a majority of the members need to be physically present, where the number of members (including vacancies) is odd. Once this quorum of members physically present is reached the remaining members could participate and vote through audio or visual means (Clause 23 (3)(a) and 25A(4) of Schedule 7 of the LGA 2002).

The legislative requirements for a Committee quorum enable Council to set the quorum for the Emergency Committee to two members (clause 23(3)(b) Schedule 7 LGA 2002).

The Local Government COVID-19 response team are considering how some of the rules around these legislative quorum matters can be relaxed during the pandemic period. However, this matter is not a simple one as the key legislative constraints are primarily statutory not regulatory. Changes to statutes require Parliamentary approval. However, an Order in Council could be made by the Governor-General (acting on advice from central government) under sections 12 or 15 of the Epidemic Preparedness Act 2006 to suspend or amend legislative requirements to enable compliance for the duration of the emergency.

Until the quorum requirements are relaxed, this report proposes an interim solution that meets legislative requirements.

#### **4. Delegations to the Chief Executive**

Delegations to the Chief Executive are recommended to be increased to enable the Chief Executive to undertake 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 and/or to authorise any level of expenditure.

Like the delegations to the Chief Executive during the interregnum period, these emergency delegations are subject to a number of conditions and do not include (or limit) the powers, duties, and responsibilities that the Council has already delegated to the 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).

There are recommendations to provide for succession planning in the event that the Chief Executive is unable to carry out his duties due to COVID-19.

#### **5. Options Analysis**

##### **5.1 Option 1 – Establish Emergency Provisions – preferred option**

The Council has the option of establishing emergency provisions. This option sets out a contingency plan in the event that the Council and committees are unable to meet and make decisions during the COVID-19 pandemic. This option also provides for additional emergency delegations to the Chief Executive and for succession planning in the event that the Chief Executive is not able to carry out his duties.

This option is considered good practice and provides for continuity of decision-making and governance processes in an emergency. It is consistent with actions from other councils.



## **5.2 Option 2 – Do nothing option**

The Council has the option of not implementing emergency provisions. The Council could wait until central government issues an Order in Council changing quorum provisions.

This option is not recommended. It is unclear if or when an Order would be made and until then, there would be no effective decision-making for matters outside of existing officer delegations. In addition, a higher number of those physically present would need to be met for Council meeting quorums.

## **5.3 Option 3 – Mix and Match**

The Council has the option of choosing some of the emergency provisions. However, these are a total package and are considered to be a “belts and braces” approach to the current situation that provides for continuation of business as usual and democratic accountability for as long as possible while keeping members, staff and the public as safe as possible.

## **6. Financial Implications**

### **6.1 Current Year Budget and Future Budget Implications**

There will be a budgetary impact as a result of the COVID-19 pandemic, however officers do not believe there are specific financial implications in relation to changes to emergency governance requirements or the Chief Executive delegation arrangements as recommended.

## **7. Legislative Requirements**

Clause 23 of Schedule 7 of the LGA 2002 sets out the requirements for quorums of council and committee meetings. These quorum requirements require all business to be transacted with at least a quorum of members present during the whole of the meeting.

## **8. Conclusions**

New meeting arrangements and information will be published on our website.

Once advice has been received on the modification of LGA 2002 quorum requirements, this will be put into effect immediately.

## **9. Appendices**

Appendix 1 – TOR Emergency Committee

Contact Officer: Karen Yates, Acting Policy and Governance Manager

Reviewed By: Harry Wilson, Chief Executive

# **Appendix 1 – TOR Emergency Committee**



## **EMERGENCY COMMITTEE**

### **TERMS OF REFERENCE**

<b>Reports to:</b>	Council
<b>Chairperson:</b>	Mayor Alex Beijen
<b>Deputy Chairperson:</b>	Deputy Mayor Garrick Emms
<b>Membership:</b>	Mayor and all councillors
<b>Meeting Frequency:</b>	As required
<b>Quorum:</b>	Any two members
<b>Activated By:</b>	Resolution of Council for specific emergency events, or where resolution by Council is not possible, on the joint authority of the Mayor, Deputy Mayor and Chief Executive

#### **1. Purpose**

To determine matters within the authority of Council where the urgency of those matters precludes a full meeting of the Council, or emergency legislation is enacted and the Council is unable to meet.

#### **2. Role, responsibility and delegations**

To exercise all Council functions that cannot be exercised by the Council using its standard processes and procedures due to a pandemic, other natural disaster or state of emergency, except for those that:

- Have been delegated to staff.
- Cannot be delegated, pursuant to clause 32 of Schedule 7 of the Local Government Act 2002, or pursuant to any other legislation.
- Cannot be delegated by the Council as set out in any other legislation.

The Committee is delegated the power to recommend to Council matters as it considers appropriate.

**Meeting and reporting requirements**

When an Emergency Committee meeting has been called Councillors will be notified details by email and agendas and minutes will be circulated electronically.

The provisions for calling meetings and public notice requirements as set out in the Local Government Official Information and Meetings Act 1987 will apply.

The Emergency Committee will report to the Council (at the next available full meeting of Council) summarising the Committee's activities and any decisions made over the period.