

DELEGATIONS FOR DECISION-MAKING DUE TO COVID-19

Purpose

1. This report proposes changes to Council decision-making processes to ensure that the Council can continue to make decisions and function appropriately throughout the COVID-19 pandemic.

Summary

2. By law, 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.
3. This presents challenges for Council decision-making in light of COVID-19 and the risks associated with gatherings of certain numbers.
4. This report recommends that committee quorums are reduced in order to allow decisions to continue to be made by committee notwithstanding that some members may attend and vote via audio or audiovisual link.
5. The report also recommends that a "contingency" delegation be made to four elected members in order to ensure that urgent decisions can be made even if it is impractical for the reduced Committee quorum to be physically present at the time of a decision.

Recommendation/s

That the Council:

1. Receive the information.
2. Note that any legislative change to remove the requirement that councillors meet "in person" in order to satisfy a quorum is likely to take some weeks.
3. Note that the Epidemic Preparedness Act 2006 process to modify legislation has not yet been commenced.
4. Delegate to the Strategy and Policy Committee the following Council delegations (as contained in clause 2 of the terms of reference):
 - a. To approve Council strategy, policy and reserve management plans (clause 2(b))
 - b. To remove chairpersons of committees and subcommittees and to remove Portfolio Leaders (clause 2(c))
 - c. To approve the Local Governance Statement (clause 2(f))
 - d. To determine whether or how to fill any extraordinary Council vacancies (Clause 2(g))
 - e. To appoint or remove trustees, directors or office holders to Council's Council-Controlled Organisations (CCOs) and Council Organisations (COs), external members to Committees and to other external bodies (clause 2(i))
 - f. In respect of the Wellington District Plan: (i) to approve the recommendation of hearings commissioners on a proposed plan, plan change or variation (including

- private plan change) and (ii) to approve a proposed plan or a change to a district plan under clause 17 of the First Schedule of the Resource Management Act 1991 (clause 2(j))
- g. To promote any legislation or significant amendments to legislation relating to Wellington (e.g. a Local Bill) (clause 2(l))
 - h. To exercise any authority which it has delegated to a committee, subcommittee or officer, which is referred to it for decision (clause 2(m))
5. Note that under standing order 2.5.4 and the terms of reference for the Strategy and Policy Committee, the quorum for the committee is 8 members and that a majority of 75% of members present and voting is required to suspend this.
 6. Agree to suspend standing order 2.5.4 and 3.6.4 of the Wellington City Council Standing Orders for Meetings of Council, Committees and Subcommittees, Updated April 2015 (2015 Standing Orders) in accordance with standing order 2.1.3.
 7. Agree that, and upon its commencement on 1 April 2020, standing order 6.4 of the Wellington City Council Standing Orders For Meetings of Council, Committees and Subcommittees Updated March 2020 (2020 Standing Orders (if adopted)) will be suspended until such time as the Council resolves to revoke the suspension (when the COVID-19 crisis has passed).
 8. Agree to amend the quorum of the following Council committees and subcommittees to 2 members:
 - a. Strategy and Policy Committee
 - b. Annual Plan / LTP Committee
 - c. Regulatory Processes Committee
 - d. Finance, Audit and Risk Subcommittee
 - e. Grants Subcommittee
 - f. Council-Controlled Organisation Subcommittee
 9. Note that pursuant to standing order 15.1 and 15.5 of the 2020 Standing Orders all councillors who are members of the relevant committee or subcommittee will be able to attend and vote at any meeting via audio link or audiovisual link provided certain conditions are met.
 10. Delegate to the Mayor, Deputy Mayor, Chairperson of the Strategy and Policy Committee, and Chairperson of the Regulatory Processes Committee all responsibilities, duties and powers of all Council committees, or subcommittees (except any decisions that cannot be delegated by law), provided that such delegation will only take effect if:
 - a) the Chief Executive determines:
 - i. that an urgent decision to enable the proper performance of Council functions is required by a Council committee or subcommittee; and
 - ii. that in the circumstances it is not possible or is impractical to convene a meeting or obtain a quorum for the committee, or subcommittee (as relevant), due to the COVID-19 pandemic.
 - b) any two out of the four delegates listed in clause 10 are requested by the Chief Executive to make a decision that would otherwise be the responsibility of a committee or subcommittee, and both delegates agree that clauses i and ii of

- clause 10 (a) are satisfied; and
- c) any agreement on the decision must be made by two out of the four delegates and must be unanimous.
11. Note that the delegation in clause 10 may be exercised at any one time by any two of the Mayor, Deputy Mayor, Chairperson of the Strategy and Policy Committee, and Chairperson of the Regulatory Processes Committee.
 12. Agree that any decision made pursuant to the delegation set out in clause 10 will be binding on Council.
 13. Agree that decisions made pursuant to the delegation set out in clause 10 under these delegations will be circulated to all councillors and the public as soon as possible and be reported at the earliest possible full Council meeting.
 14. Note that the delegation set out in clause 10 is intended to be used as a contingency and is made in order to ensure that Council can continue to undertake its proper functions throughout the pandemic.
 15. Note that 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.
 16. Note that a memo has been prepared so that the Mayor may designate Deputy Mayor Sarah Free and, in her absence, Councillor Malcolm Sparrow with the ability to declare a local emergency for Wellington City (in the event that the Mayor is absent) in accordance with the Civil Defence Emergency Management Act 2002.

Background

6. In January 2020 the Coronavirus (COVID-19) outbreak in the Wuhan Province of China was reported in the media. This flu like illness is highly contagious and can be transmitted from person to person. The virus has spread throughout China, Hong Kong, Iran, Italy, United Kingdom, United States, Singapore and Thailand. New Zealand, at the time of writing, has over 20 confirmed cases.
7. On 14 March 2020, Prime Minister Jacinda Ardern announced new border measures and a ban on cruise ships entering New Zealand waters. A subsequent Government announcement restricts public gatherings of more than 500 people.
8. 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.
9. 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 Wellington.
10. Further advice from the Government on restricting smaller public gatherings, including Council and Council committee meetings is likely.

Legislative constraints

11. 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:
12. 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.
13. 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).
14. 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.
15. This situation is not unique to Wellington City 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).
16. 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 audiovisual link. If this law change occurred then it would be possible for Council's regular decision-making processes to be implemented remotely.
17. However, the Chief Advisor of SOLGM has advised that any such law change is likely to take weeks to progress. It is unclear what other legislative changes would be proposed.
18. Under the Epidemic Preparedness Act 2006, Orders in Council could be obtained which would modify a restriction or requirement in the LGA. However, this process involves several steps including the issuing of an epidemic notice by the Prime Minister, the presentation of that notice to Parliament, and while the notice is in force, the Minister of Local Government (on the advice of the Secretary for Local Government) recommending to the Governor General that the particular Order in Council be made. Officers understand that this process has not yet commenced.
19. 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.

Proposal

20. There are two options that can be implemented to ensure the Council has the ability to make urgent decisions during the pandemic:

- Option 1: Agree to reduce the quorum for each Council committee to a minimum of two elected members (who would be required to be physically present for all meetings). This would still allow other members to attend and vote via audio or audiovisual link.
- Option 2: Agree that a delegation be given to four elected members so that in the event that an urgent decision is required to enable Council to perform its proper functions, and it is impractical to obtain a committee quorum of two physically present elected members, such a decision can be made by the two delegates. Any such decision made by the two delegates should be unanimous.

21. Officers recommend that Council implement both of these options.

Discussion

Reduction in quorum

22. Reducing the quorum of each Committee to two would allow decisions to continue to be made by that Committee, notwithstanding that a majority of members may not be physically present. Any elected member who is a member of the committee would be entitled to attend and vote via audio or audiovisual link.
23. By law, Council's quorum cannot be reduced. Therefore it is recommended that all powers currently retained by Council be delegated (to the extent permitted by law) to the Strategy and Policy Committee, which would enable these decisions to be made by this committee with a quorum of two members. Those decisions (set out in clause 2 of the Terms of Reference) are:
- a) To approve a proposed policy statement or plan under the Resource Management Act 1991
 - b) To approve Council strategy, policy and reserve management plans
 - c) To remove chairpersons of committees and subcommittees and to remove Portfolio Leaders
 - d) To approve Council's recommendation to the Remuneration Authority for the remuneration of elected members
 - e) To approve the Triennial Agreement under the Local Government Act 2002
 - f) To approve the Local Governance Statement
 - g) To determine whether or how to fill any extraordinary Council vacancies
 - h) To make decisions on representation reviews
 - i) To appoint or remove trustees, directors or office holders to Council's Council Controlled Organisations (CCOs) and Council Organisations (COs), external members to Committees and to other external bodies
 - j) In respect of the Wellington District Plan: (i) to approve the recommendation of hearings commissioners on a proposed plan, plan change or variation (including

- private plan change) and (ii) to approve a proposed plan or a change to a district plan under clause 17 of the First Schedule of the Resource Management Act 1991
- k) To approve the final design and commercial terms for development proposals under the Waterfront Project as required by the Waterfront Framework
 - l) To promote any legislation or significant amendments to legislation relating to Wellington (e.g. a Local Bill)
 - m) To exercise any authority which it has delegated to a committee, subcommittee or officer, which is referred to it for decision
24. By law, some decisions cannot be delegated and must remain with Council. These include:
- a) The power to make a rate
 - b) The power to make a bylaw
 - c) The power to adopt a Long-term Plan, Annual Plan, or Annual Report, including adopting changes to fees and charges
 - d) The power to borrow money, or purchase or dispose of assets, other than in accordance with the long term plan.
25. It is not anticipated that there will be any change to the delegations currently granted to the Chief Executive or officers.
26. Officers propose that the reduction in quorum take effect immediately. This reflects the rapid nature of COVID-19 and will ensure that decisions can continue to be made irrespective of when any formal restrictions may be implemented. In the interim, it is anticipated that elected members will continue to attend meetings in person as they feel appropriate.
27. Council's standing orders (both current and proposed) require that the Annual /LTP Committee and Strategy and Policy committees have the same quorum as that of Council. Therefore, certain standing orders must be temporarily suspended to give effect to the reduced quorum.
28. New standing orders are proposed to be implemented as of 1 April 2020. Assuming that this proceeds, the suspension will also need to apply to the new standing orders.
29. When the emergency situation has clearly passed, the Council would by Council resolution:
- a) Revoke the suspension of the standing orders (this will require 75% agreement); and
 - b) Revert the quorum numbers to that included in the original terms of reference for the committees.
30. Legislative change may also allow Council to take the above actions. However, at this stage we do not know what such amendments may look like (meaning that officers cannot be certain that any such amendment would permit the actions identified above); nor do we know how quickly they could be implemented.

Delegation – contingency

31. Given the nature of COVID-19, there is a possibility that it may become impossible or impracticable for a quorum of 2 to be physically present during a decision. This would mean that decisions required urgently could not be progressed. While officers consider this a low probability, it is recommended that a delegation be granted to certain elected members to ensure that Council or committee decisions can continue in all circumstances.
32. 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 Council or the committee or subcommittee (as relevant).
33. 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.
34. 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.
35. Council can by resolution, revoke the delegation:
 - i. when the emergency situation relating to COVID-19 has clearly passed; or
 - ii. 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 audiovisual link.

Local Emergency

36. Clause 25 of the Civil Defence Emergency Management Act 2002 permits the Mayor to declare a state of local emergency or give notice of a local transition period. Currently the Deputy Mayor is delegated in the absence of the Mayor. Given the current situation, a memo will be prepared for the Mayor to also designate this function to Councillor Malcolm Sparrow in the event that both the Mayor and Deputy Mayor are absent.

Options

37. Council can agree to either, both or none of the recommended options.

38. If Council agrees only to implement a reduced quorum, decision-making by Committee can continue with a reduced quorum. Elected members can attend and vote by audio or audiovisual link.
39. If Council agrees only to the delegation of its powers to certain members, all decisions deemed urgent would be made by the delegates in the event that the CE believed that it was impracticable to obtain a quorum.
40. If Council agrees to both recommendations, then urgent Council decision-making will be able to continue, even in the case that two elected members of a committee cannot meet. Decision-making power in specific circumstances would be vested with a smaller group of elected members.
41. 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 or if the health of members prevented them from attending in person. If there were no official restrictions, but it was still advisable to avoid larger groups of people, then urgent decision-making could occur, but with an increased risk to those involved.

Attachments

Nil

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SUPPORTING INFORMATION

Engagement and Consultation

Not applicable

Treaty of Waitangi considerations

Not applicable

Financial implications

Not applicable

Policy and legislative implications

If adopted, these recommendations will ensure that Council can make decisions during the pandemic, despite legislative constraints.

Risks / legal

If the recommendations are not adopted, Council may not be able to make decisions that are required for the effective operation of Council during the pandemic.

Climate Change impact and considerations

Not applicable

Communications Plan

Not applicable

Health and Safety Impact considered

In approving these recommendations the health and safety of all officers and Elected Members will be promoted as Council will be able to make effective decisions without potentially putting themselves at risk by gathering in large numbers.