

## **Special Meeting - 18 March 2020**

### **6.1 FORMATION OF PANDEMIC RESPONSE TEAM**

Attachment 1 – Memorandum of advice which provides detail on the points above

Attachment 2 - List of powers that can only be exercised by an absolute majority of Council

# Memorandum



## DELEGATIONS, MEETINGS AND COMMITTEES IN EMERGENCIES

To: CEO
From: Ian McLeod
Date: 16 March 2020
Subject: <b>Delegations, committees and meetings in Emergencies</b>
File Number: VTL/298

### SUMMARY OF RELEVANT POINTS

1. There are no emergency powers in the Local Government Act other than:
  - a. the power to enter private land without the owner's consent (s3.34); or
  - b. the power to incur expenditure from the municipal budget authorised in advance by the President (s6.8);
  - c. power to impose a supplementary general rate or specified area rate for the unexpired portion of a year (6.32(3));
2. There will always be some limitations on the powers that can be delegated to CEO or committees, most specifically any power that requires an absolute or 75% majority;
3. President can call special meeting with no set period of notice – this can be used to exercise any power that needs an absolute majority;
4. There is nothing to stop council from forming an informal emergency group that provides direct advice to CEO or Council, but without any direct powers of their own.
5. There may be emergency powers in other legislation such as the Public Health Act and I can review these on request.

### A. POWERS THAT CAN AND CAN'T BE DELEGATED TO CEO

Council can delegate any of its powers to the CEO by way of an absolute majority resolution, except for the following:

#### 5.43. [Limits on delegations to CEO](#)<sup>28</sup>

A local government cannot delegate to a CEO any of the following powers or duties —

- (a) any power or duty that requires a decision of an absolute majority of the council;
- (b) accepting a tender which exceeds an amount determined by the local government for the purpose of this paragraph;
- (c) appointing an auditor;
- (d) acquiring or disposing of any property valued at an amount exceeding an amount determined by the local government for the purpose of this paragraph;
- (e) any of the local government's powers under section 5.98, 5.98A, 5.99, 5.99A or 5.100;
- (f) borrowing money on behalf of the local government;

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- (g) hearing or determining an objection of a kind referred to in section 9.5;
- (ha) the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government;
- (h) any power or duty that requires the approval of the Minister or the Governor;
- (i) such other powers or duties as may be prescribed.

**B. POWERS THAT CAN AND CAN'T BE DELEGATED TO COMMITTEES**

The powers that Council can delegate to groups or committees differs depending upon the composition of the committee. Sections 5.5.16, 5.17 and 5.9 can be summarised as follows:

<b>Composition of committee</b>	<b>Powers that can be delegated</b>
Councillors only	Any power except one that requires an absolute or 75% majority
Councillors and staff	Any power that can be delegated to CEO (see s5.43 above)
Others <u>and</u> (staff and/or councillors)	Only powers necessary for the management of LG property or an LG event
Others only	None

**C. DELEGATING TO OTHER EMPLOYEES**

The CEO can delegate any of her powers to another employee other than the power to delegate. A person who is acting in the CEO's position will have all the CEO's powers.

The CEO cannot delegate any of her functions or duties or sub-delegate any power delegated by Council to a committee or a person who is not an employee.

**D. COUNCIL MEETING, SPECIAL COUNCIL MEETINGS AND COMMITTEE MEETINGS.**

- **Special Council meetings** - A special Council meeting can be called to discuss any business that is urgent, complex or confidential (standing orders s2.1(3)).
- **How meetings called** - Ordinary or special meeting must be called by President or at least 1/3 councillors by way of a notice to the CEO setting out date and purpose (LG Act s5.4);
- **Convening meetings:** Ordinary meetings require notice of time date and place and agenda 72 hours before meeting. Special Meetings have not set time for notice or agenda, just needs to be given before hand. (LG Act s.5.5)
- **Committee meetings:** the rule that apply in relation to special and ordinary council meetings also apply to committee meetings except presiding member can be exchanged for president and can be called by 2 members instead of 1/3.

**E. REMOTE ATTENDANCE AT COUNCIL MEETINGS**

Regulation 14A and 14B of the *Local Government (administration) Regulations 1996* provide:

**14A. Attendance at meetings by means of instantaneous communication — s. 5.25(1)(ba)**

- (1) A person who is not physically present at a meeting of a council or committee is to be taken to be present at the meeting if —

- (a) the person is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting;
  - (b) the person is in a suitable place; and
  - (c) the council has approved\* of the arrangement.
- (2) A council cannot give approval under subregulation (1)(c) if to do so would mean that at more than half of the meetings of the council, or committee, as the case may be, in that financial year, a person who was not physically present was taken to be present in accordance with this regulation.
- (3) A person referred to in this regulation is no longer to be taken to be present at a meeting if the person ceases to be in instantaneous communication with each other person present at the meeting.
- (4) In this regulation —
- “suitable place”** means a place that the council has approved\* as a suitable place for the purpose of this regulation and that is located —
- (a) in a townsite or other residential area; and
  - (b) 150 km or further from the place at which the meeting is to be held under regulation 12, measured along the shortest road route ordinarily used for travelling;

**“townsite”** has the same meaning given to that term in the *Land Administration Act 1997* section 3(1).

\* Absolute majority required.

*[Regulation 14A inserted in Gazette 31 Mar 2005 p. 1031.]*

14B. Attendance at meetings by means of instantaneous communication after natural emergency — s. 5.25(1)(ba)

- (1) If a council member is prevented from being physically present at a meeting of the council because of fire, flood, lightning, movement of land, storm, or any other natural disaster the member is to be taken to be present at the meeting if —
- (a) the member is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting; and
  - (b) the member is authorised to be present by —
    - (i) the Mayor;
    - (ii) the President; or
    - (iii) the council.
- (2) A person referred to in this regulation is no longer to be taken to be present at a meeting if the person ceases to be in instantaneous communication with each other person present at the meeting.
- (3) A place where a person referred to in this regulation is physically present during a meeting is not a place that is open to members of the public under section 5.23(1).
- (4) In this regulation —
- “person referred to in this regulation”**, in respect of a meeting, means a council member who is prevented from being physically present at that meeting.

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*[Regulation 14B inserted in Gazette 31 Mar 2005 p. 1031-2; amended in Gazette 19 Aug 2005 p. 3872.]*

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## List of Absolute Majority Decisions

Updated January 2013

This document is designed to assist local governments in complying with provisions of the *Local Government Act 1995* referring to voting requirements of decision making processes. In the Act, absolute majority means:

- When in relation to a council, a majority comprising enough of the members for the time being of the council for their number to be more than 50% of the number of offices (whether vacant or not) of member of the council;
- When in relation to any other body, a majority comprising enough of the persons for the time being constituting the body for their number to be more than 50% of the number of offices (whether vacant or not) on the body;

Under the Act an absolute majority is required for the following decisions:

### Local Laws

Legislative Reference	Description of Legislative Provision
s3.12(4)	After the last day for submissions, the local government is to consider any submissions made and may make the local law as proposed or make a local law that is not significantly different from what was proposed.
s3.16(4)	When its council has considered the report, the local government may determine whether or not it considers that the local law should be repealed or amended.

### Commercial Enterprises

Legislative Reference	Description of Legislative Provision
s3.59(5)	After the last day for submissions, the local government is to consider any submissions made and may decide to proceed with the undertaking or transaction as proposed or so that it is not significantly different from what was proposed.

## Elections

Legislative Reference	Description of Legislative Provision
s4.17(3)	<p>If a councillor's office becomes vacant under section 2.32 –</p> <p>(a) in a district that has no wards; and            at least 80% of the number of offices of member of the council in the district are still filled, the council may, with the approval of the Electoral Commissioner, allow the vacancy to remain unfilled and, subject to subsection (4), in that case, the term of the member who held the office is to be regarded in section 4.6 as ending on the day on which it would have ended if the vacancy had not occurred.</p>
s4.20(2) CEO	<p>A local government may, having first obtained the written agreement of the person concerned and the written approval of the Electoral Commissioner, appoint a person other than the CEO to be the returning officer of the local government for –</p> <p>(a) an election; or</p> <p>(b) all elections held while the appointment of the person subsists.</p>
s4.20(4)	<p>The local government may decide to conduct the election as a postal election.</p>
s4.61(2)	<p>The local government may decide to conduct the election as a postal election.</p>

## Committees

Legislative Reference	Description of Legislative Provision
s5.8	<p>A local government may establish committees of 3 or more persons to assist the council and to exercise the powers and discharge the duties of the local government that can be delegated to committees.</p>
s5.10(1)	<p>A committee is to have its members –</p> <p>(a) person's appointed by the local government to be members of the committee (other than those referred to in paragraph (b)); and</p> <p>(b) persons who are appointed to be members of the committee under subsection (4) or (5).</p>

## Committees continued.

Legislative Reference	Description of Legislative Provision
s5.11A (1)	The local government may appoint a person to be a deputy of a member of a committee and may terminate such an appointment at any time.
s5.15	The local government may reduce the number of offices of committee member required for a quorum at a committee meeting specified by the local government if there would not otherwise be a quorum for the meeting.
s5.16(3)	Any decision to amend or revoke a delegation under this section is to be by an absolute majority.

## Employees

Legislative Reference	Description of Legislative Provision
s5.36(2)	A person is not to be employed in the position of CEO unless the council –  (a) believes that the person is suitably qualified for the position; and  (b) is satisfied with the provisions of the proposed employment contract.
s5.42(1)	A local government may delegate to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43.

## Annual Report

Legislative Reference	Description of Legislative Provision
s5.54(1)	Subject to subsection (2), the annual report for a financial year is to be accepted by the local government no later than 31 December after that financial year.



## Fees, Expenses

Legislative Reference	Description of Legislative Provision
s5.98(A)	A local government may decide to pay the deputy mayor or deputy president of the local government an allowance of up to the prescribed percentage of the annual local government allowance to which the mayor or president is entitled under section 5.98(5).
s5.99	A local government may decide that instead of paying council members a fee referred to in section 5.98(1), it will instead pay all council members who attend council or committee meetings – (a) the prescribed minimum annual fee; or (b) where the local government has set a fee within the prescribed range for annual fees, that fee.
s5.99A	A local government may decide that instead of reimbursing council members under section 5.98(2) for all of a particular type of expense it will instead pay all council members – (a) the prescribed minimum annual allowance for that type of expense; or (b) where the local government has set an allowance within the prescribed range for annual allowances for that type of expense, an allowance of that amount, and only reimburse the member for expenses of that type in excess of the amount of the allowance.

## Finance

Legislative Reference	Description of Legislative Provision
s6.2(1)	During the period from 1 June in a financial year to 31 August in the next financial year, or such extended time as the Minister allows, each local government is to prepare and adopt, in the form and manner prescribed, a budget for its municipal fund for the financial year ending on the 30 June next following that 31 August.
s6.3(b)	If, at any time after the imposition of rates in a financial year it intends to impose a supplementary general rate or specified area rate for the unexpired portion of the financial year.

## Finance continued.

Legislative Reference	Description of Legislative Provision
s6.8(1)	<p>A local government is not to incur expenditure from its municipal fund for an additional purpose except where the expenditure –</p> <ul style="list-style-type: none"> <li>(a) is incurred in a financial year before the adoption of the annual budget by the local government;</li> <li>(b) is authorised in advance by resolution; or</li> <li>(c) is authorised in advance by the mayor or president in an emergency.</li> </ul>
s6.11(2)	<p>Subject to subsection (3), before a local government –</p> <ul style="list-style-type: none"> <li>(a) changes the purpose of a reserve account; or</li> <li>(b) uses the money in a reserve account for another purpose, it must give one month's local public notice of the proposed change of purpose or proposed use.</li> </ul>
s6.12(1)	<p>Subject to subsection (2) and any other written law, a local government may –</p> <ul style="list-style-type: none"> <li>(a) when adopting the annual budget, grant a discount or other incentive for the early payment of any amount of money;</li> <li>(b) waive or grant concessions in relation to any amount of money; or</li> <li>(c) write off any amount of money, which is owed to the local government.</li> </ul>
s6.13(1)	<p>Subject to any other written law, a local government may resolve to require a person to pay interest at the rate set in its annual budget on any amount of money (other than rates and service charges) which –</p> <ul style="list-style-type: none"> <li>(a) that person owes to the local government; and</li> <li>(b) has been owed for the period of time referred to in subsection (6).</li> </ul>
s6.16(1)	<p>A local government may impose and recover a fee or charge for any goods or service it provides or proposes to provide, other than a service for which a service charge is imposed.</p>

## Finance continued.

Legislative Reference	Description of Legislative Provision
s6.16(3)	<p>Fees and charges are to be imposed when adopting the annual budget but may be –</p> <ul style="list-style-type: none"> <li>(a) imposed during a financial year; and</li> <li>(b) amended from time to time during a financial year.</li> </ul>
s6.20(2)	<p>Where, in any financial year, a local government proposes to exercise a power under subsection (1) (<b>power to borrow</b>) and details of that proposal have not been included in the annual budget for that financial year –</p> <ul style="list-style-type: none"> <li>(a) unless the proposal is of a prescribed kind, the local government must give one month's local public notice of the proposal; and</li> <li>(b) the resolution to exercise that power is to be by absolute majority.</li> </ul>
s6.20(3)	<p>Where a local government has exercised a power to borrow and –</p> <ul style="list-style-type: none"> <li>(a) it does not wish to proceed with the performance of the function or the exercise of the power for which the power to borrow was exercised; or</li> <li>(b) after having completed the performance of the function or the exercise of the power for which the power to borrow was exercised, any part of the money borrowed, credit obtained or financial accommodation arranged has not been expended or utilised, the local government may resolve to expend the money or utilize the credit or financial accommodation for another purpose if one month's local public notice is given of the proposed change of purpose.</li> </ul>

## Finance continued.

Legislative Reference	Description of Legislative Provision
s6.32(1)	<p>When adopting the annual budget, a local government –</p> <p>(a) in order to make up the budget deficiency, is to impose a general rate on rateable land within its district, which rate may be imposed either –</p> <ul style="list-style-type: none"> <li>(i) uniformly; or</li> <li>(ii) differentially;</li> </ul> <p>(b) may impose on rateable land within its district –</p> <ul style="list-style-type: none"> <li>(i) a specified area rate; or</li> <li>(ii) a minimum payment; and</li> </ul> <p>(c) may impose a service charge on land within its district</p>
s6.32(3)	<p>A local government –</p> <p>(a) may, at any time after the imposition of rates in a financial year, in an emergency, impose a supplementary general rate or specified area rate for the unexpired portion of the current financial year; and</p> <p>(b) is to, after a court or the State Administrative Tribunal has quashed a general valuation, rate or service charge, impose a new general rate, specified area rate or service charge.</p>
s6.46	<p>Subject to the <i>Rates and Charges (Rebates and Deferments) Act 1992</i>, a local government may, when imposing a rate or service charge, resolve to grant a discount or other incentive for the early payment of any rate or service charge.</p>
s6.47	<p>Subject to the <i>Rates and Charges (Rebates and Deferments) Act 1992</i>, a local government may at the time of imposing a rate or service charge or at a later date resolve to waive a rate or service charge or resolve to grant other concessions in relation to a rate or service charge.</p>

## Finance continued.

Legislative Reference	Description of Legislative Provision
s6.51(1)	<p>A local government may at the time of imposing a rate or service charge resolve to impose interest (at the rate set in its annual budget) on –</p> <p>(a) a rate or service charge (or any installment of a rate or service charge); and</p> <p>(b) any costs of proceedings to recover any such charge, that remains unpaid after becoming due and payable.</p>
s7.1A(2)	<p>The members of the audit committee of a local government are to be appointed by the local government and at least 3 of the members, and the majority of the members, are to be council members.</p>
s7.1B(1)	<p>Despite section 5.16, the only powers and duties that a local government may delegate to its audit committee are any of its powers and duties under this Part other than this power of delegation.</p>
s7.3(1)	<p>A local government is to, from time to time whenever such an appointment is necessary or expedient, appoint a person, on the recommendation of the audit committee, to be its auditor.</p>
s7.6(3)	<p>Where –</p> <p>(a) the registration of a local government’s auditor as a registered company auditor is suspended; or</p> <p>(b) a local government’s auditor becomes unable or unwilling to carry out all or part of his or her duties, the local government is to appoint a person to conduct the audit or to complete that part of the audit which remains to be conducted, as the case requires.</p>
Admin Reg. 10(1) s5.25(1)(e)	<p>If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported –</p> <p>(a) in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority;</p>

## Finance continued.

Legislative Reference	Description of Legislative Provision
Admin Reg. 10(2)	<p>If a decision has been made at a council or a committee meeting then any decision to revoke or change the first mentioned decision must be made –</p> <p>(a) in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or</p> <p>(b) in any other case, by an absolute majority.</p>
Admin Reg. 14A(1)(c) Attendance at meetings by means of instantaneous communication s5.25(1)(ba)	<p>A person who is not physically present at a meeting of a council or committee is to be taken to be present at the meeting if –</p> <p>(a) the person is simultaneously in audio contact, by telephone or other means of instantaneous communication, with each other person present at the meeting;</p> <p>(b) the person is in a suitable place; and</p> <p>(c) the council has approved of the arrangement.</p>
Admin Reg. 14A(4)	<p>In this regulation –</p> <p><b>suitable place</b> means a place that the council has approved as a suitable place for the purpose of this regulation and that is located –</p> <p>(a) in a townsite or other residential area; and</p> <p>(b) 150 km or further from the place at which the meeting is to be held under regulation 12, measured along the shortest road route ordinarily used for travelling;</p>
Admin Reg. 19C(7) Planning for the future s5.56	<p>A council is to consider a Strategic Community Plan, or modifications of such a plan, submitted to it.</p>
Admin Reg. 19DA(6) Planning for the future s5.56	<p>A council is to consider a Corporate Business Plan, or modifications of such a plan, submitted to it and is to determine whether or not to adopt the plan, or the modifications, as is relevant.</p>

## Finance continued.

Legislative Reference	Description of Legislative Provision
FM Reg.33A Review of budget	A council is to consider a review submitted to it and is to determine whether or not to adopt the review, any parts of the review or any recommendations made in the review.
Schedule 2.1 Cl.9(1)(b)(ii)	<p><b>Procedure for holding poll</b></p> <p>Where, under clause 7 or 8, the Minister requires that a recommendation be put to a poll –</p> <p>(a) the Advisory Board is to –</p> <ul style="list-style-type: none"> <li>(i) determine the question or questions to be answered by electors; and</li> <li>(ii) prepare a summary of the case for each way of answering the question or questions;</li> </ul> <p>and</p> <p>(b) any local government directed by the Minister to do so is to –</p> <ul style="list-style-type: none"> <li>(i) in accordance with directions by the Minister, make the summary available to the electors before the poll is conducted; and</li> <li>(ii) subject to subclause (2), declare the Electoral Commissioner, or a person approved by the Electoral Commissioner, to be responsible for the conduct of the poll under Part 4, and return the results to the Minister.</li> </ul>
Schedule 2.2 Cl.4(2)(a)&(b)	<p><b>Dealing with submissions</b></p> <p>(1) The local government is to consider any submission made under clause 3.</p> <p>(2) If, in the council's opinion, a submission is –</p> <ul style="list-style-type: none"> <li>(a) one of a minor nature; and</li> <li>(b) not one about which public submissions need be invited, the local government may either propose to the Advisory Board that the submission be rejected or deal with it under clause 5(b).</li> </ul>

## Finance continued.

Legislative Reference	Description of Legislative Provision
Schedule 2.2 Cl.5(b)&(c)	<p><b>Local government may propose ward changes or make minor proposals</b></p> <p>A local government may, whether or not it has received a</p> <p>Submission –</p> <ul style="list-style-type: none"><li>(a) carry out a review of whether or not an order under section 2.2, 2.3(3) or 2.18 should, in the council’s opinion, be made;</li><li>(b) propose to the Advisory Board the making of an order under section 2.2(1), 2.3(3) or 2.18(3) if, in the opinion of the council, the proposal is –<ul style="list-style-type: none"><li>(i) one of a minor nature; and</li><li>(ii) not one about which public submissions need to be invited; or</li></ul></li><li>(c) propose to the Minister the making of an order changing the name of the district or a ward.</li></ul>
Schedule 2.2 Cl.9	<p><b>Proposal by local government</b></p> <p>On completing a review, the local government is to make a report in writing to the Advisory Board and may propose to the Board the making of any order under section 2.2(1), 2.3(3) or 2.18(3) it thinks fit.</p>

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