

**QLDC Council
29 September 2016**

Report for Agenda Item: 12

Department: Corporate Services

Delegations to the Chief Executive during the interim election period October 2016

Purpose

The purpose of this report is to request that the Council delegate to the Chief Executive all of its responsibilities, duties and powers under all legislation without limitation, except for those set down in legislation that cannot be delegated, from election day until the inauguration of the new Council, in order for the normal business of the Council to be carried out without interruption.

Recommendation

That Council:

1. **Note** the contents of this report; and
2. **Delegate** to the Chief Executive all of the functions, duties and powers of the Council under all legislation without limitation, except for those powers set down in legislation that cannot be delegated, from 8 October 2016 until the inauguration of the new Council.

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14/09/2016

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15/09/2016

Background

- 1 There is an existing broad delegation of powers from the Council to the Chief Executive, subject to restrictions on borrowing and the level of financial transactions that can be undertaken. This is set out in the Delegations Register and is attached as Attachment A.
- 2 Section 116 of the Local Government Act 2002 provides that the sitting Council leaves office on the day after publication of the electoral result in a public newspaper. Publication is anticipated to take place on Thursday 13 October 2016. While S115 of the Act provides that the successful candidates take office from the same date, ie 13 October, Clause 14 of Schedule 6 (Declaration by Member) provides that they cannot act until they have taken the oath of office. This will occur at the inaugural meeting. (These provisions are attached as Attachment C.
- 3 The inaugural meeting of the new Council is provisionally scheduled for 2pm on Thursday 20 October. In effect, this means that from 14 – 20 October no elected members will have the power to act.

Comment

- 4 The final meeting of the outgoing Council is on 6 October 2016. Election Day is 8 October.
- 5 Officers have identified the following matters which may need to be dealt with during this period, to avoid delays and consequent inconvenience and expense for the public:
 - a. Applications normally dealt with by the Property Sub-Committee, such as licences to occupy, temporary road closures, reserves licences and affected party approvals
 - b. Appointment of Commissioners for resource consent hearings under the Resource Management Act
 - c. Appointment of Commissioners to hear resource consent applications under the Housing and Special Housing Area Act
- 6 There may be other matters, as yet unforeseen, that would also require the Chief Executive to exercise the delegated powers of the Council in order for routine business to continue without undue delay.
- 7 For that reason, it is recommended that this Council delegate to the Chief Executive all of its responsibilities, duties and powers without restriction for the period from the day of the election (8 October 2016) until the inauguration of the new Council, leaving only the limitations and exclusions set out in legislation, but with caveats suggested below.
- 8 It is recommended that the following caveats be placed on the exercise of the delegation:

- a. The chief executive may only act after consultation with the person elected to the position of Mayor.
- b. The Chief Executive may only exercise the delegation in relation to those matters that cannot reasonably wait until the first ordinary meeting of the new Council.
- c. The Chief Executive will report any decisions taken under this delegated authority to the first ordinary meeting of the new Council, as well as to the Audit and Risk Committee as provided for in the ordinary delegation referred to in Paragraph 2 above.

Options

- 9 This report identifies and assesses the following reasonably practicable options for assessing the matter as required by section 77 of the Local Government Act 2002.
- 10 Option 1 Grant an expanded delegation of authority to the Chief Executive during the Interim Election Period.
- 11 As outlined above, this would extend the existing delegation of all of the Council's responsibilities, duties and powers – except those specified in clause 32(1) of Schedule 7 of the Local Government Act 2002 and other legislation – to the Chief Executive for the period from the day of the election until the inauguration of the new Council.

Advantages:

- 12 Delegating authority to the Chief Executive will ensure that the routine and urgent business of the Council can continue uninterrupted during the period in which there are no elected representatives empowered to make decisions.
- 13 The delegation will avoid inconveniencing members of the public, businesses and other agencies and will ensure that the business of the Council continues uninterrupted.

Disadvantages:

- 14 There is a risk that the incoming Council might disagree with an action taken by the Chief Executive under the delegation and subsequently overturn a decision. This risk would be mitigated by the limited duration of the delegation and the recommended caveats on the exercise of the delegation.
- 15 Option 2 Not make a delegation of decision-making authority to the Chief Executive.

Advantages:

- 16 Avoids the risk of the Chief Executive making a decision under the expanded delegation which would subsequently be overturned by the incoming Council.

Disadvantages:

- 17 Potentially interrupts the smooth running of the Council's routine business by causing a delay in decision-making.
- 18 Potentially causes inconvenience and expense to the public, including businesses and other agencies, by causing a delay in completing a Council process or providing a decision on an application. This could be mitigated in part by advising the public in advance to make their applications for foreseeable requirements, such as licences to occupy etc, in time for them to be considered by the outgoing Council.
- 19 Option 3 There is no "status quo option" in this matter – for logistical reasons it is impossible to schedule the inauguration of the new Council on the same day as the outgoing Council leaves office.
- 20 This report recommends Option 1 for addressing the matter because the advantages of granting the delegation, together with the caveats on its exercise, outweigh the risks.

Significance and Engagement

- 21 This matter is of low significance, as determined by reference to the Council's Significance and Engagement Policy because it has no impact on the environment, culture and people of the district; the proposed recommendation mitigates the potential economic impact on an individual or business by avoiding delays in decision-making; it is consistent with the Council's pragmatic approach; and it minimises the impact on the Council's capability and capacity by ensuring business continuity during the change in its governance.

Risk

- 22 This matter does not have significant risk. The risk of delegations being inappropriately exercised is documented in the Council's risk register (OR011c). The risk is classed as moderate. This matter relates to this risk because it creates a new delegation to the Chief Executive
- 23 The recommended option considered above mitigates the risk by limiting the delegation to the Chief Executive only, for a limited time, with the following constraints:
 - a. The chief executive may only act after consultation with the person elected to the position of Mayor.
 - b. The Chief Executive may only exercise the delegation in relation to those matters that cannot reasonably wait until the first ordinary meeting of the new Council.
 - c. The Chief Executive is required to report any decisions taken under this delegated authority to the first ordinary meeting of the new Council.

Financial Implications

24 There are no operational or capital expenditure requirements or other budget or cost implications resulting from the decision.

Council Policies, Strategies and Bylaws

25 The following Council policies, strategies and bylaws were considered:

- The Significance and Engagement Policy
- The Delegations Manual

26 The recommended option is consistent with the principles set out in the named policy/policies.

27 This matter is not included in the 10-Year Plan/Annual Plan because it does not require the commitment of funds and it aims to preserve levels of service rather than alter them, by ensuring that Council business can continue as usual during the interim election period.

Local Government Act 2002 Purpose Provisions

28 The recommended option:

- Will help meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses by ensuring Council business can continue uninterrupted for the fortnight between the sitting Council leaving office and the incoming elected members becoming empowered to act.
- Can be implemented through current funding under the 10-Year Plan and Annual Plan;
- Is consistent with the Council's plans and policies; and
- Would not alter significantly the intended level of service provision for any significant activity undertaken by or on behalf of the Council, or transfer the ownership or control of a strategic asset to or from the Council.

Consultation: Community Views and Preferences

29 The persons who are affected by or interested in this matter are the residents and ratepayers of the District, and elected members.

30 The Council has not undertaken consultation on this matter, nor sought informal feedback.

Attachments

Attachment A: Existing delegation to the Chief Executive

Attachment B: Exclusions under the Local Government Act 2002

Attachment C Relevant Legislation under Local Government Act 2002 and Local Electoral Act 2001

Attachment A

DELEGATIONS FROM COUNCIL TO THE CHIEF EXECUTIVE OFFICER

The Council delegates to the Chief Executive Officer:

1. Any and all of its responsibilities, duties and powers to act on any matter, subject to the limits and conditions below and excluding those matters in respect of which delegation is prohibited by any Act or Regulation. This power includes the authority to sub- delegate such powers as the Chief Executive determines necessary.

Limits and Conditions

- a. the power of the Chief Executive Officer alone to commit the Council to borrowing which has been approved in the Ten Year Plan or Annual Plan is limited to instruments for a maximum of \$30,000,000 of principal plus the associated interest payments and where the borrowing complies with the Treasury Management Policy.
 - b. in the case of other transactions the power of the Chief Executive Officer together with the Mayor or Deputy Mayor to commit the Council to a transaction (or to terminate or vary any transaction) is limited to a maximum of \$7,500,000 for capital expenditure and a maximum of \$5,000,000 for operational expenditure.
 - c. in the case of other transactions the power of the Chief Executive Officer alone to commit the Council to a transaction (or to terminate or vary any transaction) is limited to:
 - i. a maximum of \$4,000,000 for capital expenditure; and
 - ii. a maximum of \$1,000,000 for operating expenditure; and
 - iii. a maximum of \$4,000,000 for grants to Destination Queenstown which are approved by Council in an Annual Plan or Ten Year Plan.
 - d. a transaction (including termination or variation of any transaction) must be for the efficient conduct of Council affairs, and be consistent with the Ten Year Plan and/or Annual Plan.
 - e. the rules set out in the General rules applying to all delegations – Queenstown Lakes District Council, attached as Schedule 2 must be complied with.
 - f. the value of a series of repeat, related or ancillary transactions must be aggregated for the purpose of determining if they exceed the capital expenditure or operational expenditure limit specified in this delegation.
 - g. the value of a transaction must be calculated as the total value of the transaction over the full term of the contract and shall include any rights of renewal unless such rights of renewal are at the absolute discretion of the Council.
 - h. in regard to the borrowing of money or the acquisition and disposal of assets, the transaction being in accordance with the Ten Year Plan.
2. The power to sub-delegate any of the Chief Executive’s responsibilities, duties and powers on any matter, including:
 - a. Section 43, Local Government (Official Information and Meetings) Act 1987;
 - b. Section 125, Privacy Act 1993.
 3. The Council’s power to bring or withdraw prosecution or infringement proceedings for any offence, including but not limited to:
 - a. Resource Management Act 1991;
 - b. Building Act 2004;
 - c. Local Government Act 2002;
 - d. any Queenstown Lakes District Council Bylaw.

4. The Council's power, pursuant to Part 6 of the Criminal Procedure Act 2011, to decide to appeal against any sentence passed upon the conviction of any person for proceedings by the Council. Such appeals only to be lodged on solicitor's recommendation.

Reporting

A quarterly report on the Chief Executive's exercise of delegated powers on material matters will be provided for the information of the Audit and Risk Committee.

Failure to report the exercise of powers under this delegation shall not invalidate the exercise of the delegation.

Explanatory Notes:

The specified expenditure limits do not include GST.

These delegations do not preclude the Chief Executive Officer from referring any matter to the Council or a committee (including a subcommittee) of the Council or to the Wanaka Community Board, as appropriate, for a decision for any reason

Attachment B:

31 Clause 32(1) of Schedule 7 of the Local Government Act 2002 sets out several powers of a local authority which cannot be delegated:

- (a) the power to make a rate; or
- (b) the power to make a bylaw; or
- (c) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan; or
- (d) the power to adopt a long-term plan, annual plan, or annual report; or
- (e) the power to appoint a chief executive; or
- (f) the power to adopt policies required to be adopted and consulted on under this Act in association with the long-term plan or developed for the purpose of the local governance statement.
- (g) Repealed
- (h) the power to adopt a remuneration and employment policy.

Attachment C – Relevant Legislation under Local Government Act 2002 and Local Electoral Act 2001

LOCAL GOVERNMENT ACT 2002

Clause 14 of Schedule 7 - Declaration by member

- A A person may not act as a member of a local authority until—
- (i) that person has, at a meeting of the local authority following the election of that person, made an oral declaration in the form set out in subclause (3); and
 - (j) a written version of the declaration has been attested as provided under subclause (2).
- B The written declaration must be signed by the member and witnessed by—
- (k) the chairperson; or
 - (l) the mayor; or
 - (m) a member of the local authority; or
 - (n) the chief executive of the local authority; or
 - (o) in the absence of the chief executive, some other officer appointed by the chief executive.
- C The form of the declaration must consist of the following elements:

“Declaration by mayor or chairperson or member

“I, AB, declare that I will faithfully and impartially, and according to the best of my skill and judgment, execute and perform, in the best interests of [*region or district*], the powers, authorities, and duties vested in, or imposed upon, me as [*mayor or chairperson or member*] of the [*local authority*] by virtue of the Local Government Act 2002, the Local Government Official Information and Meetings Act 1987, or any other Act

“Dated at [*place, date*]

“Signature:

“Signed in the presence of:

“CD, [*mayor or chairperson or member or chief executive of local authority*]”.

Clause 30 (7) of Schedule 7

A committee, subcommittee, or other subordinate decision-making body is, unless the local authority resolves otherwise, deemed to be discharged on the coming into office of the members of the local authority elected or appointed at, or following, the triennial general election of members next after the appointment of the committee, subcommittee, or other subordinate decision-making body.

Clauses 31 of Schedule 7

Clause 31 (4)

(4) Despite subclause (3),—

- (p) at least 1 member of a committee must be an elected member of the local authority; and
- (q) an employee of a local authority acting in the course of his or her employment may not act as a member of any committee unless that committee is a subcommittee.

Clause 31 (5)

If a local authority resolves that a committee, subcommittee, or other decision-making body is not to be discharged under clause 30 (7), the local authority may replace the members of that committee, subcommittee, or other subordinate decision-making body after the next triennial general election of members.

Clause 32(1) of Schedule 7

Unless expressly provided otherwise in this Act, or in any other Act, for the purposes of efficiency and effectiveness in the conduct of a local authority's business, a local authority may delegate to a committee or other subordinate decision-making body, community board, or member or officer of the local authority any of its responsibilities, duties, or powers except—

- (r) the power to make a rate; or
- (s) the power to make a bylaw; or
- (t) the power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan; or
- (u) the power to adopt a long-term plan, annual plan, or annual report; or
- (v) the power to appoint a chief executive; or
- (w) the power to adopt policies required to be adopted and consulted on under this Act in association with the long-term plan or developed for the purpose of the local governance statement.
- (x) Repealed
- (y) the power to adopt a remuneration and employment policy.

LOCAL ELECTORAL ACT 2001

Section 86 - Declaration of Result

The electoral officer conducting an election or poll must give public notice declaring the official result of the election or poll in the prescribed manner as soon as practicable after—

- (z) Repealed.
- (aa) the validity of all special votes has been determined; and
- (bb) all valid votes have been counted.

Section 115 - When members come into office

Candidates at a triennial general election who are declared to be elected come into office on the day after the day on which the official result of the election is declared by public notice under section 86.

Section 116 - When members leave office

- D Every member of a local authority or community board, unless vacating office sooner, vacates office,—
 - (cc) in a case where the member's office is the subject of an election, when the members elected at the next election come into office:
 - (dd) in a case where provision is made by any enactment to fill a vacancy by appointment, when the member's successor comes into office.
- E Despite subsection (1) (a), if a member's office is the subject of an election, and neither the member nor any other person is elected at the election to that office, the member vacates office at the same time as any other member of the local authority who is not re-elected at the election]