

**Notice of the Extraordinary meeting of**

**Nelson City Council**

***Te Kaunihera o Whakatū***

Date:	Tuesday 24 March 2020
Time:	1.00p.m..
Location:	Council Chamber, Civic House 110 Trafalgar Street Nelson

**Agenda**

***Rārangi take***

**Mayor** Her Worship the Mayor Rachel Reese

**Deputy Mayor** Cr Judene Edgar

**Members** Cr Yvonne Bowater

Cr Trudie Brand

Cr Mel Courtney

Cr Kate Fulton

Cr Matt Lawrey

Cr Brian McGurk

Cr Gaile Noonan

Cr Rohan O'Neill-Stevens

Cr Pete Rainey

Cr Rachel Sanson

Cr Tim Skinner

**Quorum** 7

**Pat Dougherty**  
**Chief Executive Officer**

Nelson City Council Disclaimer

Please note that the contents of these Council and Committee agendas have yet to be considered by Council and officer recommendations may be altered or changed by the Council in the process of making the formal Council decision. For enquiries call (03) 5460436.

## **Council Values**

Following are the values agreed during the 2016 – 2019 term:

- A. Whakautetanga: respect
- B. Kōrero Pono: integrity
- C. Māiatanga: courage
- D. Whakamanatanga: effectiveness
- E. Whakamōwaitanga: humility
- F. Kaitiakitanga: stewardship
- G. Manaakitanga: generosity of spirit

## **Opening Prayer**

### **1. Apologies**

Nil

### **2. Confirmation of Order of Business**

### **3. Interests**

3.1 Updates to the Interests Register

3.2 Identify any conflicts of interest in the agenda

### **4. Public Forum**

### **5. Mayor's Report**

### **6. Emergency Provisions for COVID-19**

**6 - 18**

Document number R15935

Recommendation

#### ***That the Council***

- 1. Receives the report Emergency Provisions for COVID-19 (R15935) and its attachment/s (); and its attachments Emergency Committee Terms of Reference (A2363612) and Proposed Amendments to Standing Orders (A2335387); and***
- 2. Establishes an Emergency Committee, with a membership of three being, in the first instance, the Mayor, Deputy Mayor and the relevant Committee Chair whose area of responsibility the matter of urgency falls under; and***
- 3. Provides that where a member of the Emergency Committee is unable to fulfil their***

*duties for whatever reason, another Standing Committee Chair will be appointed by the Chief Executive to undertake the role of Emergency Committee member; and*

4. ***Adopts the Emergency Committee's Terms of Reference (A2363612) and***
5. ***Delegates to the Emergency Committee all Council's powers, duties, and responsibilities, except for those that cannot legally be delegated; and***
6. ***Agrees that such delegation shall take effect if the Chief Executive determines that:***
  - a. ***An urgent decision to enable the proper performance of Council functions is required by Council or a Committee or a Subcommittee; and***
  - b. ***In the circumstances it is not possible or it is impracticable to convene a meeting or obtain a quorum for the Council, Committee or Subcommittee due to the COVID-19 pandemic, and***
7. ***Agrees that any decision made pursuant to this delegation will be binding on Council;***
8. ***Agrees that decisions made pursuant to this delegation will be circulated to all Councillors and the public as soon as possible and be reported at the earliest possible Council meeting; and***
9. ***Approves the proposed amendments to Standing Orders as set out in Attachment 2 (A2335387).***

## **CONFIDENTIAL BUSINESS**

### **7. Exclusion of the Public**

Recommendation

***That the Council***

1. ***Excludes the public from the following parts of the proceedings of this meeting.***

**2. The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:**

<b>Item</b>	<b>General subject of each matter to be considered</b>	<b>Reason for passing this resolution in relation to each matter</b>	<b>Particular interests protected (where applicable)</b>
<b>1</b>	<b>Community Housing: Revised Negotiating Brief</b>	<p>Section 48(1)(a)</p> <p>The public conduct of this matter would be likely to result in disclosure of information for which good reason exists under section 7</p>	<p>The withholding of the information is necessary:</p> <ul style="list-style-type: none"> <li>• Section 7(2)(c)(i) To protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information or information from the same source and it is in the public interest that such information should continue to be supplied</li> <li>• Section 7(2)(g) To maintain legal professional privilege</li> <li>• Section 7(2)(i) To enable the local authority to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)</li> </ul>

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## **Emergency Provisions for COVID-19**

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### **1. Purpose of Report**

- 1.1 To consider extraordinary measures for emergency decision making and governance processes to ensure that Council can continue to make decisions and function appropriately throughout the COVID-19 pandemic.

### **2. Summary**

- 2.1 The Local Government Act 2002 (the Act) requires Council to have a quorum for all meetings of Council and Committees where decisions are made. The Act requires meeting attendees to be physically present in the room in order to achieve a quorum. Clause 23 (2) of Schedule 7 of the LGA states:

*"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."*

- 2.2 Although the Act allows for attendance by members at meetings by audio or audio visual 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).
- 2.3 This presents challenges for Council decision-making in light of COVID-19 and the risks associated with the requirement for urgent decisions whilst meeting in person.
- 2.4 While at Alert Level 4 urgent Council decision making is likely to remain an essential service, there may be restrictions on smaller gatherings (which may include Council or Committee meetings) and elected members may be affected by the outbreak and unable to attend meetings.
- 2.5 The Epidemic Preparedness Act 2006 provides for Orders in Council to be made which modify a restriction or requirement in the LGA. However, that requires several steps and it is not clear when this process would commence or how it would address this issue. Accordingly, to ensure Council can take swift action as necessary throughout this pandemic, some changes to the decision making processes are required.

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- 2.6 This report recommends delegating all decision making powers, except those that cannot be delegated by law, to an Emergency Committee to ensure that urgent decisions can be made during the COVID-19 pandemic.
- 2.7 This report also recommends a reduction to the Committee quorum, to mirror the Act, in order that as the recovery process begins, decisions can be made by two Committee members, notwithstanding that some members may attend and vote via audio or audio visual link.

### 3. Recommendation

#### ***That the Council***

1. ***Receives the report Emergency Provisions for COVID-19 (R15935) and its attachment/s (); and its attachments Emergency Committee Terms of Reference (A2363612) and Proposed Amendments to Standing Orders (A2335387); and***
2. ***Establishes an Emergency Committee, with a membership of three being, in the first instance, the Mayor, Deputy Mayor and the relevant Committee Chair whose area of responsibility the matter of urgency falls under; and***
3. ***Provides that where a member of the Emergency Committee is unable to fulfil their duties for whatever reason, another Standing Committee Chair will be appointed by the Chief Executive to undertake the role of Emergency Committee member; and***
4. ***Adopts the Emergency Committee's Terms of Reference (A2363612) and***
5. ***Delegates to the Emergency Committee all Council's powers, duties, and responsibilities, except for those that cannot legally be delegated; and***
6. ***Agrees that such delegation shall take effect if the Chief Executive determines that:***
  - a. ***An urgent decision to enable the proper performance of Council functions is required by Council or a Committee or a Subcommittee; and***

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***b. In the circumstances it is not possible or it is impracticable to convene a meeting or obtain a quorum for the Council, Committee or Subcommittee due to the COVID-19 pandemic, and***

***7. Agrees that any decision made pursuant to this delegation will be binding on Council;***

***8. Agrees that decisions made pursuant to this delegation will be circulated to all Councillors and the public as soon as possible and be reported at the earliest possible Council meeting; and***

***9. Approves the proposed amendments to Standing Orders as set out in Attachment 2 (A2335387).***

#### **4. Background**

4.1 On 23 March 2020, the Government announced an immediate lift in the COVID-19 alert status from level two to level three, with a further increase to level four to be introduced on 25 March 2020. As a result, the majority of Council and Committee meetings have been suspended.

4.2 This current and fast-changing situation regarding the COVID-19 virus has prompted consideration of how to alter Council practices to enable urgent decisions relating (for example) to the response to COVID-19 and decisions necessary for the continued operation of Council services.

4.3 Officers understand that Local Government New Zealand is working closely with the Department of Internal Affairs to consider the quorum requirements for Council and Committee meetings in light of the COVID-19 virus.

4.4 The Epidemic Preparedness Act 2006 provides that an Order in Council can be made (called a modification order) to change, suspend, or waive any statutory requirements where COVID-19 makes it impossible or impracticable to comply with them. For instance, presuming quorum requirements become impracticable to comply with as a result of COVID-19, a modification order could provide that a quorum can be constituted from members attending a meeting by an audio or audio visual link. However, such modifications to statutory requirements would come into force only once the Prime Minister issues a notice declaring COVID-19 to be an epidemic, and issues a further notice activating a modification order. These steps have not occurred as yet.

4.5 Currently, for all meetings, Council's Standing Orders require a quorum of half of all members to be physically present where the number of



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members is even, and a majority of members to be physically present, where the number of members is odd.

- 4.6 Council can amend Standing Orders, with a 75% majority vote of members present at the meeting (Standing Order 3.2 and clause 27 of Schedule 7 of the LGA), as long as any amendments are consistent with legislation.

### **5. Discussion**

- 5.1 The ability to continue to make council decisions in a timely manner during the COVID-19 pandemic, when currently constrained by the legislative quorum requirements, is an issue that Councils across the country are grappling with and a range of solutions are being worked on.
- 5.2 The challenge for Council is that swift action is required to put plans in place in order to ensure that Council can make decisions as necessary, including decisions relating directly to the response to COVID-19, whilst others may be necessary for the continued operation of essential Council services
- 5.3 Furthermore, international experience indicates that measures are required to be put in place should the Council be unable to meet collectively, either physically or in a virtual meeting room environment, to consider and make decisions on urgent matters.
- 5.4 Clause 32 of Schedule 7 of the Act permits Council to delegate its responsibilities, duties or powers to Committees, other subordinate decision making bodies, community boards, members or officers, except those that by law, cannot be delegated and must remain with Council. These include:
- The power to make a rate
  - The power to make a bylaw
  - The power to adopt a Long-term Plan, Annual Plan, or Annual Report, including adopting changes to fees and charges
  - The power to borrow money, or purchase or dispose of assets, other than in accordance with the long term plan.
- 5.5 Consequently, whatever option is chosen, these decisions remain that of Council and cannot be made under delegated authority.

### **Proposal**

- 5.6 At its meeting on 14 November 2019, Council adopted a revised Delegations Register which introduced a new approach to delegations, delegating broader powers to both the Chief Executive and committees than in previous trienniums.

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- 5.7 Officers have identified an option to enable urgent decision making during the pandemic which aligns with this new approach. This option recommends the delegation of all of Council's powers, duties and responsibilities, except for those that Council cannot legally delegate, to an Emergency Committee established for the specific purpose to consider and make decisions on urgent matters during the COVID-19 pandemic
- 5.8 This option is considered in greater detail below. Any decision made pursuant to the delegation would be binding on Council.

### **6. Establishment of an Emergency Committee**

- 6.1 Officers recommend that Council delegate all responsibilities, duties and powers of Council and all Committees and Subcommittees to an Emergency Committee, except for any decisions that cannot be delegated by law.
- 6.2 Officers recommend that this delegation only take effect if the Chief executive determines:
- 6.2.1 That an urgent decision to enable the proper performance of Council functions is required by Council, or a Committee or Subcommittee; and
- 6.2.2 That in the circumstances it is not possible or is impracticable to convene a meeting or obtain a quorum of the Council, Committee or Subcommittee due to the COVID-19 pandemic.
- 6.3 In the interest of effective and timely decision making in an emergency environment, it is proposed the membership consist of three: the Mayor, Deputy Mayor and the Chair whose area of responsibility the matter of urgency falls under.
- 6.4 Where one of the members is unable to fulfil their duties for whatever reason, an alternate Committee Chair will be appointed by the Chief Executive to undertake the role of member.
- 6.5 The Chief Executive and officer delegations that are currently in place, and delegations that cannot be delegated by law, would be unaffected by this delegation to the Emergency Committee.

### **Transparency**

- 6.6 It is important and appropriate that Council decision-making remains transparent. Given the significant scope of the matters covered by the proposed delegation, and that not all Councillors are involved in related decision-making, continued transparency is important.
- 6.7 Where an Emergency Committee Meeting has been called, the meeting will be publicly notified, Councillors will be notified of the details by email and information will be made available on the Council website.

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- 6.8 Agendas and Minutes of the Emergency Committee Meeting will also be circulated to Councillors and made publicly available on the Council website in accordance with the provisions of the Local Government Official Information and Meetings Act 1987.
- 6.9 After the event for which the Emergency Committee Meeting has been called, Council will receive a report summarising the Committee's activity at the earliest possible Council meeting.

### **Revocation**

- 6.10 Whilst Council can, by resolution, revoke the delegation at any time, it is anticipated that this delegation would remain in force until the emergency situation relating to COVID-19 has clearly passed.

## **7. Changes to Standing Orders**

- 7.1 In addition to the increased delegations, officers also recommend that changes are made to Standing Orders to increase the flexibility of elected members' attendance as the country starts to move out of Alert Level 4.

### **Reduction to quorum for committee and subcommittee meetings**

- 7.2 The options of delegating authority to an Emergency Committee would enable Council to continue to make decisions and function appropriately throughout the COVID-19 pandemic.
- 7.3 Officers also recommend that Council amends Standing Orders relating to the quorum requirements for committees and subcommittees to mirror the requirements of the Act. Doing so will allow greater flexibility for committee meetings to take place with as few people physically together in one room as possible.
- 7.4 The expectation would be that a majority of committee members would participate in committee meetings, with decisions made by a majority of members (albeit not necessarily physically present in the room). The reduction in the quorum would support committee decision making, particularly as Council transitions from the emergency provisions back to business as usual.
- 7.5 Clause 23(b) of Schedule 7 to the Act states that:

(3) *The quorum at a meeting of-*

(b) *a committee-*

(i) *is not fewer than 2 members of the committee (as determined by the local authority or committee that appoints the committee); and*

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*(ii) in the case of a committee other than a subcommittee, must include at least one local member of the local authority.*

- 7.6 Under Standing Order 12.7, any members of committees not physically required for quorum purposes will be able to join the committee meeting via audio or audio visual link, and be able to vote on any matter raised at the meeting (Standing Order 12.9).
- 7.7 Standing Order 12.11 outlines the conditions for attending meetings by audio or audio-visual link. It states that the Chairperson may give approval for attendance by electronic link, and provides examples of situations where approval can be given. It is suggested that example (c), "*where a member is unable to attend due to an emergency*" would be appropriate to cover situations where committee or subcommittee meetings were held with only two members physically present (for quorum purposes), and the remaining members attending via audio and or audio visual link.
- 7.8 Council has appropriate technology resources to support multiple committee members to attend committee members via audio or audio-visual means. Members of the public attending public forum, or upcoming hearings of submissions will also be offered the option of providing input via an audio or audio-visual link.
- 7.9 A copy of the relevant section of Standing Orders showing the proposed amendment is included as attachment one (A2335387).

### **Allowing the Chairperson to attend via audio or audio visual link**

- 7.10 Section 12.10 of Standing Orders outlines the Chairperson's responsibilities in respect of facilitating attendance for members by audio or audio visual link.
- 7.11 However, this section includes the requirement that where the Chairperson attends via audio or audio visual link, the chairing duties are to be undertaken by the deputy chair or a member that is physically present. This requirement is not included in the Local Government Act 2002.
- 7.12 Officers recommend that this section is amended to remove the requirement for the chairing duties to be undertaken by a member that is physically present. This will allow a Chairperson the flexibility to attend via audio or audio visual link should the need arise.
- 7.13 Officers propose that the preferred delegation and proposed changes to Standing Orders take effect immediately. This reflects the rapid nature of COVID-19 and will ensure that decisions can continue to be made, irrespective of any additional formal restrictions that may be implemented.

## 8. Options

- 8.1 Elected Members have two options – Option 1 – the delegation to the Emergency Committee and change to the standing orders or Option 2 – the status quo. Officers recommend option 1.

<p><b>a) Option 1: Establish an Emergency Committee to undertake all decision making, other than those decisions which are not permitted by law to be delegated, during the COVID-19 pandemic and</b></p> <p><b>b) Change Standing Orders to reduce the quorum for committees and subcommittees and permit the Chairperson to attend via audio or audio visual link</b></p>	
Advantages	<ul style="list-style-type: none"> <li>• Decisions would be made under urgency, as required</li> <li>• Only limited members need to be physically present</li> <li>• Council decision making would be able to continue</li> <li>• All decisions would continue to be made by Elected Members</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>• There is a risk that it may become impossible or impractical for a quorum of two to be physically present during an Emergency Committee Meeting</li> </ul>
<p><b>Option 2:</b></p> <p><b>Status quo</b></p>	
Advantages	<ul style="list-style-type: none"> <li>• None</li> </ul>
Risks and Disadvantages	<ul style="list-style-type: none"> <li>• Decision-making may become impossible or impracticable</li> </ul>

## 9. Next Steps

- 9.1 The majority of Council and committee meetings have already been cancelled. New meeting arrangements and information will be published on the Council website.

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- 9.2 YouTube recordings will continue to be made available on Council's website, with key messaging advising members of the public, in the interest of public health to access these recordings rather than physically attend meetings.
- 9.3 Members of the public that wish to speak at a Council or Committee Meeting or hearing will be only be able to do so through a virtual meeting platform.

**Author: Mary Birch, Manager Governance and Support Services**

### **Attachments**

Attachment 1: A2363612 - Emergency Committee Terms of Reference [↓](#)

Attachment 2: A2335387 - Proposed Amendments to Standing Orders [↓](#)

<b>Important considerations for decision making</b>
<b>1. Fit with Purpose of Local Government</b> Adoption of the increased delegations and proposed changes to Standing Orders assists Council in enabling democratic decision-making as efficiently and effectively as possible.
<b>2. Consistency with Community Outcomes and Council Policy</b> The proposed delegations and amendments to Standing Orders are consistent with Council's community outcome of <i>"Our Council provides leadership and fosters partnerships, a regional perspective, and community engagement"</i> as they aim to clarify how the decisions and activities of Council will be managed during the COVID-19 pandemic.
<b>3. Risk</b> The proposed delegations and changes to Standing Orders aim to improve clarity regarding procedures and decision-making during the COVID-19 pandemic, thereby reducing the risk of ambiguity or uncertainty.
<b>4. Financial impact</b> There are no obvious financial implications as a result of the proposed delegation or changes to Standing Orders.
<b>5. Degree of significance and level of engagement</b> The matters considered in this report are of low significance because they are largely administrative in nature, aimed at ensuring core Council business can continue during the COVID-19 pandemic. Therefore no public engagement has taken place regarding these matters.
<b>6. Climate Impact</b> The matters considered in this report do not have any impact on climate change.
<b>7. Inclusion of Māori in the decision making process</b> No engagement with Māori has been undertaken in preparing this report.
<b>8. Delegations</b> Council retains responsibility for Standing Orders and the Delegations Register.

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## Nelson City Council Emergency Committee

### Membership

<b>Chairperson</b>	Mayor Reese
<b>Deputy Chairperson</b>	Deputy Mayor Edgar
<b>Members</b>	The Committee Chair whose area of responsibility the matter of urgency falls under  In the event that one of the Members is unable to fulfil their duties for whatever reason, an alternate Committee Chair will be appointed by the Chief Executive to undertake the role of Emergency Committee Member
<b>Quorum</b>	Two members
<b>Meeting frequency</b>	As required

### Purpose

To enable urgent and essential decision making and governance processes to continue during the COVID-19 pandemic.

### Role

To exercise all Council's powers, duties and responsibilities, except for those that:

- Have been delegated to the Chief Executive or officers; or
- Cannot be delegated pursuant to clause 32 of Schedule 7 of the Local Government Act 2002, or pursuant to any other legislation

### Power to Act

Council delegates to the Emergency Committee all its powers, duties and responsibilities, except those that cannot be legally delegated.

The delegation will only take effect if the Chief Executive determines:

- a) That an urgent decision to enable the proper performance of Council functions is required by Council, a committee or subcommittee; and
- b) That in the circumstances it is not possible or it is impractical to convene a meeting or obtain quorum for Council, committee or subcommittee, due to the COVID-19 pandemic.

### Power to Recommend

The Emergency Committee reports to Council.

## Proposed Changes to Standing Orders

### 10.2 Committees and subcommittees

The quorum for a meeting of a committee or a subcommittee is not less than two **elected** members, and: **in the case of a committee other than a subcommittee, must include at least one elected member.**

- ~~(a) half of the members physically present, where the number of members (including vacancies) is even; and~~
- ~~(b) a majority of the members physically present, where the number of members (including vacancies) is odd.~~

### 12.1 Chairperson's duties

Where the technology is available and a member is attending a meeting by audio or audio visual link, the Chairperson must ensure that:

- (a) the technology for the link is available and of suitable quality;
- (b) procedures for using the technology in the meeting will ensure that:
  - i. everyone participating in the meeting can hear each other;
  - ii. the member's attendance by audio or audio visual link does not reduce their accountability or accessibility of that person in relation to the meeting;
  - iii. the requirements of Part 7 of LGOIMA are met; and
  - iv. the requirements in these standing orders are met.

~~If the Chairperson is attending by audio or audio visual link then chairing duties will be undertaken by the deputy chair or a member who is physically present.~~

*d. 25A (3) schedule 7, LGA 2002.*