

5. DELEGATION: PROSECUTIONS - APPEALS AGAINST SENTENCE

Officer responsible Environmental Services Manager	Author David Rolls, Solicitor, DDI 941-8892
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The purpose of this report is to recommend that the Council delegate to the General Manager Regulation and Democracy Services the power to appeal to the High Court against any sentence passed by the District Court on the conviction of any person for an offence prosecuted by the Council.

STATUTORY POWER TO APPEAL SENTENCE

Section 115A of the Summary Proceedings Act 1957 gives a prosecuting authority a right of appeal to the High Court against the sentence passed in the District Court on the conviction of any person for an offence by that Court. Section 116 provides that such appeals must be filed in the High Court within 28 days after the person has been sentenced. Failing that, special leave to appeal out of time must be obtained from the High Court.

Prior to 1 July 2003, Section 114Q(1)(c) of the Local Government Act 1974 prohibited a territorial authority from delegating its powers to institute any proceedings in the High Court other than injunctive proceedings. Consequently, any decision whether or not to appeal such a sentence to the High Court had to be made by the territorial authority itself. Now that the Local Government Act 2002 is in force a territorial authority is no longer prohibited from delegating such powers.

JUSTIFICATION FOR DELEGATION

On Wednesday 21 May 2003, the District Court convicted and sentenced Mr Murray John Knowles for two offences under the Building Act 1991. It also convicted and sentenced Murray's Furniture Limited for one offence under that Act. Unfortunately, it was not possible to consider whether the sentences merited an appeal and then obtain a decision of the Council within the 28 day statutory time limit without calling a special meeting of the Council. In order to avoid the inconvenience and expense of calling a special meeting it was decided to have the matter determined at the ordinary meeting of the Council on Thursday 24 July 2003 and, if the Council agreed to the appeal, to apply to the High Court for leave to appeal out of time. In this case it was considered that there would be a good chance that the High Court would grant such leave bearing in mind the reason for the delay and the fact that the application would only have been made several days after the expiry of the statutory time limit.

Unfortunately, in subsequently declining his consent to the appeal, the Solicitor-General gave as a reason for declining that consent the fact that the Solicitor-General rarely consents to appeals against sentence out of time. This reason was relied on notwithstanding that it had been brought to the Solicitor-General's attention that the cause for the delay was to avoid the inconvenience and cost of calling a special meeting of the Council.

To avoid the Solicitor-General declining his consent on this ground in the future, and to avoid the necessity of obtaining the leave of the High Court to appeal out of time, it is recommended that the Council delegate, to the General Manager Regulation and Democracy Services, its power to appeal sentences. The fact that no such appeal may be lodged in the High Court without the consent of the Solicitor-General will ensure that the General Manager's decision will be reviewed before that appeal may proceed.

COMPLIANCE WITH THE DECISION-MAKING REQUIREMENTS OF THE LOCAL GOVERNMENT ACT 2002

It is considered that the decision now sought from the Council concerns a matter of a minor administrative nature only. Consequently, it is suggested that no further action need be taken in respect of the requirements of sections 77 and 78 of the Local Government Act 2002.

Staff

Recommendation: That the Committee recommend that the Council delegate to the General Manager Regulation and Democracy Services the Council's power, pursuant to section 115A of the Summary Proceedings Act 1957, to appeal to the High Court against any sentence passed in the District Court upon the conviction of any person for an offence prosecuted by the Council.

Chairman's

Recommendation: That the above recommendation be adopted.