

11. **DELEGATIONS: SECTIONS 693, 694 AND 698 LOCAL GOVERNMENT ACT 1974
OBSTRUCTION OF COUNCIL STAFF CARRYING OUT LAWFUL DUTIES UNDER LOCAL
GOVERNMENT ACT**

Officer responsible
Director of Operations

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The purpose of this report is to recommend that the Council delegate to the Director of Operations the power to institute prosecutions for offences under section 693 and section 694 of the Local Government Act 1974 and the power to seek injunctions from the District Court under section 698 of that Act to prevent the continuance of such offences.

BACKGROUND

The Local Government Act 1974 authorises the Council to construct (subject to the provision of compensation) and maintain public works on private land for a number of specific purposes. Those purposes include water supply, sewerage and stormwater drainage, trade wastes disposal and land drainage. Section 708A of the Act empowers the Council, through its employees and contractors, to enter upon private land for the purpose of maintaining those public works. Those powers of entry are subject to certain conditions, such as the giving of prior notice to the occupier where the private land is occupied.

For a number of years now Council staff and contractors employed by the Council have experienced considerable difficulty in entering a particular farm property in the Council's district for the purpose of maintaining a public drain which passes through that property. There is also a weir situated on the drain on the property. It is essential that the drain and weir be regularly maintained by removing accumulations of silt and vegetation in order to avoid flooding to other properties further downstream.

Notwithstanding the Council's lawful powers of entry the owner of the property has regularly refused Council staff and Council contractors entry, has threatened Council staff on site, and more recently has obstructed their entry by placing heavy machinery across an access point on to the property. Numerous attempts to resolve this issue on an amicable basis have been made. The land owner has been advised of the reasons for the necessary maintenance, the Council's powers of entry and the Council's willingness to co-operate with him in every reasonable way in carrying out that work. Unfortunately these attempts have met with failure.

The Council now has little option other than to resort to its remedies under sections 693 and 698 of the Local Government Act. Section 693 provides that every person commits an offence who wilfully prevents or obstructs any person authorised under the Act from carrying out anything that person is authorised to do under the Act or who refuses admittance to any person exercising a power of entry under that Act. Section 698 of the Act authorises the Council to apply to the District Court for an injunction restraining any person from committing a continuing breach of offences under that Act.

Although not of relevance to the case in hand, Section 694 of the Act is also of particular relevance to the protection of Council works generally. That section creates offences relating to the wilful or negligent destruction of works or property owned or under the control of the Council. These include works and property situated on private land.

In the interests of administrative efficiency it is considered desirable that the Council delegate generally to the Director of Operations the power to prosecute offences under section 693 and 694 and also the power under section 698 to apply to the District Court for an injunction restraining any person from committing a continuing breach of either section 693 or 694. Such delegations will enable the Council to deal specifically with the problem in hand and also any similar problems which may arise in future.

Recommendation: That the Council delegate to the Director of Operations:

- (a) The power to institute prosecutions for any offence set out in sections 693 or 694 of the Local Government Act 1974 and to make any decision in regard to any such prosecution; and
- (b) The power to apply to the District Court for any injunction under section 698 of that Act in respect of any offence under sections 693 or 694, together with the power to make any decision concerning any such application.