

2. PROSECUTIONS UNDER THE BUILDING ACT - M J KNOWLES BUILDING

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The purpose of this report is to inform the Council of the outcome of the proposed appeals to the High Court regarding the fines imposed by the District Court in prosecutions taken by the Council earlier this year in respect of the M J Knowles Building.

On Thursday 26 June 2003, the Council resolved that it lodge appeals in the High Court against the fines imposed by the District Court upon Murray John Knowles and Murray's Furniture Limited upon their convictions for certain offences under the Building Act 1991 in relation to the M J Knowles Building. That building is situated at 227-231 Tuam Street.

The offences and penalties imposed in the District Court were:

1. Murray John Knowles:
 - (a) Permitting the building to be used for a use for which it was not safe contrary to Section 80(1)(b): convicted and fined \$7,500; and
 - (b) Carrying out building work without a building consent contrary to Section 80(1)(a): convicted and fined \$1,000.
2. Murray's Furniture Limited:

Permitting the building to be used for a use for which the building was not safe contrary to Section 80(1)(b): convicted and fined \$7,500.

These fines were considered by both the Council's external and internal legal advisers to be quite inadequate having regard to the maximum fines for those offences prescribed by the Act and the seriousness of the offences. The circumstances of the offences involved serious issues of public safety.

Before lodging the appeal the Council was required by Section 115A of the Summary Proceedings Act 1957 to obtain the consent of the Solicitor-General. Unfortunately, the Solicitor-General subsequently declined to consent to the lodging of the appeals. The Solicitor-General did agree that the fines were low in view of the aggravating features of the offending and the recognised need for deterrent penalties in this area. However, despite this, the Solicitor-General gave the following reasons for declining consent:

1. While lenient, the fines were not manifestly inadequate.
2. The Sentencing Judge had appeared to accept a submission that the defendants were not in a strong financial position, although it was noted that it was difficult to ascertain what weight the Judge had placed on this factor and upon what evidence his assessment was based as there were no sentencing notes.
3. The Solicitor-General rarely consents to appeals against sentence out of time. In this regard it would require a more obvious and compelling case for an appeal out of time to be justified.

The issue of the timing of the lodging of the appeal is dealt with in further in clause 5 of this agenda headed "Delegations: Prosecutions - Appeals against Sentence".

As the Solicitor-General's consent was declined the appeals contemplated were unable to be lodged in the High Court.

- Recommendation:**
1. That the information be received.
 2. That this report be considered along with clause 3 of this report.