


5. MISCELLANEOUS DELEGATIONS



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PURPOSE OF REPORT

1. To recommend that the Council delegate a number of new routine administrative powers to the Chief Executive.

EXECUTIVE SUMMARY

2. In recent times the Council has been conferred with a number of new routine administrative powers. These powers have arisen as a result of recent amendments to the Dog Control Act 1996, and the passing of the new Christchurch City Council Trade Waste Bylaw 2006, the Christchurch City Licensed Waste Handling Facilities Bylaw 2007, and the Christchurch City Urban Fire Safety Bylaw 2007.
3. There are also three statutory powers which have not been delegated to staff in the past either at all or fully, and which, in the interests of administrative efficiency, should be. These are contained in section 139 of the Animal Welfare Act 1999 and section 171 and 173 of the Local Government Act 2002. The powers in question are detailed in the sections of this report headed "Background" and "Staff Recommendations".
4. To enable the Council to exercise these powers in an efficient manner it is desirable that the Council delegate them to its staff.
5. The most effective way of ensuring that these powers are able to be exercised at all times by the appropriate officers is for the Council to delegate those powers to the Chief Executive. The Chief Executive may then, in turn, sub-delegate those powers from time to time as he sees fit to the appropriate officers of the Council.
6. If the Council was to delegate directly to the specific officer who will be charged with exercising that power, as it has done in the past, then every time it becomes necessary to have that power exercised by a different officer it is necessary to go back to Council to have a new delegation made. This is wasteful of the Council's time and can often result in considerable delays in the exercise of the administrative functions of the Council.
7. In the past the Council has individually delegated each of its routine administrative powers under the Dog Control Act 1996 directly to various officers of the Animal Control Unit. This has resulted in reports being presented to Council which contain lengthy lists of delegations. The danger with this approach is that on occasion a routine administrative power may be overlooked.
8. It is the authors' view that in the case of the Dog Control Act 1996, and the Bylaws the better approach is for the Council simply to delegate all its powers under each instrument by way of exception. In other words, the Council delegates to its staff all of its powers under those instruments except those that it wishes to reserve for itself.
9. In delegating by exception the Council will generally reserve for itself powers to determine policy, to set fees, and to hear and determine objections. In other words the Council will retain for itself powers which properly fall within the realm of governance. This approach has already been adopted by the Council in respect of its numerous powers under the Building Act 2004. It appears to work very well.
10. The delegation of routine administrative powers by way of exception and directly to the Chief Executive has, in the authors' view, two very important advantages.

11. Firstly it will help to define the boundary between matters of governance and matters of management. The Council will retain those powers which it considers properly fall within the ambit of governance. It will not delegate them. Conversely it will delegate all routine administrative powers, the exercise of which are properly a function of management, to the Chief Executive. It should then be his decision, in the interests of good management, as to who should exercise those powers. He can then sub-delegate those powers accordingly.
12. Secondly it will enable the Council to operate in a more effective and efficient manner. Provided that the Council does not unduly restrict the sub-delegation of its powers the Chief Executive will be free to sub-delegate them to such persons from time to time as he sees fit and in a timely manner as circumstances may demand. The Council will not then be burdened with having to make decisions of a management nature every time it becomes necessary to reassign a particular power to a different person.

FINANCIAL IMPLICATIONS

13. The delegations recommended below will assist the Council's Inspections and Enforcement Unit in carrying out its functions within existing budgetary provisions.

Do the Recommendations of this Report Align with 2006-16 LTCCP budgets?

14. Yes

LEGAL CONSIDERATIONS

15. Clause 32(1) of the Seventh Schedule of the Local Government Act 2002 authorises the Council to delegate all of the powers listed in the staff recommendation to any officer of the Council. This includes the Chief Executive. In doing so it may impose any conditions, limitations or prohibitions on any such delegation.
16. Clause 32(3) of the Seventh Schedule would authorise the Chief Executive to sub-delegate any of the powers listed in the staff recommendation to any subcommittee or any person subject to any conditions, limitations or prohibitions that the Council may have imposed in making the original delegation to him.
17. Clause 32(6) of the Seventh Schedule requires the Council to consider whether or not to delegate to a community board if the delegation would enable the board to best achieve its role. This is obviously a decision for the Council itself to make. However it is the authors' view that because the powers in question are of a routine administrative nature it is quite unlikely that delegating them to community boards would enable the boards to best achieve their roles. It is also noted that the Council has resolved to review the delegations to Community Boards by 30 June 2008.

Have you considered the legal implications of the issue under consideration?

18. Yes. See above.

ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS

19. As below.

Do the recommendations of this report support a level of service or project in the 2006-16 LTCCP?

20. Yes. They are intended to support and enhance the delivery of the Council's regulatory services.

ALIGNMENT WITH STRATEGIES

21. Yes

Do the recommendations align with the Council's strategies?

22. Yes

CONSULTATION FULFILMENT

23. Yes

STAFF RECOMMENDATION

It is recommended that the Council:

- (a) Delegate to its Chief Executive all of its powers under the Dog Control Act 1996 other than the powers under:
 - (i) section 6(2)(b) (to make grants)
 - (ii) section 7 (to appoint joint committees for the purposes of the Act)
 - (iii) section 10 (to adopt policy on dogs)
 - (iii) section 16(2) (to enter into an agreement with any other territorial authority in respect of dog control services)
 - (iv) section 20 (to make bylaws)
 - (v) section 22 (to hear and determine an objection to a classification as a probationary owner)
 - (vi) section 23 (to terminate a probationary owner classification)
 - (vii) section 26 (to hear and determine an objection to the disqualification of an owner)
 - (viii) section 31 (to hear and determine an objection to a classification of a dog as dangerous)
 - (ix) sections 33B and 33D (to hear and determine an objection to a classification of a dog as menacing)
 - (x) sections 37 and 68 (to set fees)
 - (xi) section 55(3) (to determine an objection to a notice issued under section 55(1) in respect of a barking dog)
 - (xii) section 67 (to enter into an agreement with another territorial authority for the provision of pound facilities)
- (b) Delegate to its Chief Executive its powers to institute any prosecution for an offence against the Dog Control Act 1996, together with the power to make any decision pertaining to any such prosecution.
- (c) Delegate to its Chief Executive all of its powers under the Christchurch City Council Trade Waste Bylaw 2006, the Christchurch City Licensed Waste Handling Facilities Bylaw 2007, and the Christchurch City Urban Fire Safety Bylaw 2007 except the power to set fees under the provisions of those bylaws.
- (d) Delegate to its Chief Executive its powers to institute any prosecution for an offence against the Christchurch City Council Trade Waste Bylaw 2006, the Christchurch City Licensed Waste Handling Facilities Bylaw 2007, and the Christchurch City Urban Fire Safety Bylaw 2007, together with the power to make any decision pertaining to any such prosecution.
- (e) Delegate to its Chief Executive its powers under section 139 of the Animal Welfare Act 1999.
- (f) Delegate to its Chief Executive all of its powers under sections 171 (General powers of entry), 172 (Power of entry for enforcement purposes) and 173 (Power of entry in cases of emergency) of the Local Government Act 2002.

BACKGROUND (THE ISSUES)

Dog Control Act 1996

25. The 26th of February 2004 was the last time the Council undertook a revision of the delegations it had made to its officers of its powers under the Dog Control Act 1996 ("the Act") and its powers under its bylaws in relation to the control of dogs. Since then Parliament has enacted the Dog Control Amendment Act 2004 and the Dog Control Amendment Act 2006. Each of these enactments has conferred upon the Council new powers which should, in the interests of administrative efficiency, be delegated to staff.
26. The Dog Control Amendment Act 2004 conferred on the Council several new powers of a minor nature. These included amended powers to require a dog owner to make a dog available for verification that it has been implanted with a functioning micro-chip transponder (section 36A(3)) and the power to release a dog impounded under section 72A (section 72A authorises the seizure and impounding of a dog which has been unlawfully removed from the custody of a territorial authority, a police officer, a dog control officer, or a dog ranger).
27. The Dog Control Amendment Act 2004 also created several new offences. They are offences by probationary dog owners under sections 23A(2) and 24(5).
28. The Dog Control Amendment Act 2006 also conferred upon the Council a number of new powers. These include the power to require a dog which is registered with it to be neutered, where that dog was earlier classified by another territorial authority as menacing but which was not required by that other territorial authority to be neutered (section 33EB), the power to classify a dog as dangerous or menacing where the owner of the dog has been convicted of certain offences in relation to that dog but in respect of which the Court has not made a destruction order (section 33ED), and the power to dispose of a dog seized under section 15 (that is, where the dog was not provided with sufficient food, water or shelter) or seized under section 33EC (a menacing dog which has not been neutered) (section 71A).
29. The Dog Control Amendment Act 2006 also creates two new offences. They are failing to neuter a menacing dog (section 33EC) and falsely notifying the death of a dog (section 41A).
30. Since the 2004 review the Council has become responsible for administering the Banks Peninsula Dog Control Bylaw 2004. This bylaw still applies in the area which was formerly the district of the Banks Peninsula District Council. There are no specific powers given to the Council by this bylaw. However it does create a number of offences.
31. As the two amendments to the Act and the Banks Peninsula Dog Control Bylaw contain offence provisions the Council should delegate to the Chief Executive the power to undertake prosecutions for those offences. It should be noted however that such a delegation is not necessary where action in respect of any such offence is taken by a Dog Control Officer by way of an infringement offence notice.
32. If the Council makes the delegations set out in paragraphs (a), and (b) of the staff recommendation above those delegations will encompass all of the new powers referred to in the earlier paragraphs of this section of this report.

Trade Waste Bylaw

33. On 1 January 2007 the Christchurch City Council Trade Waste Bylaw 2006 came into force. It revoked the Christchurch City Council Trade Wastes Bylaw 2000. The new Bylaw confers on the Council a number of powers, which can be classified into two classes; those which fall within the ambit of governance and those which fall within the ambit of management. Under the bylaw the chief executive already has certain powers – to review any decision of an authorised officer (clause 6.1- authorised officers have power to enter premises and determine the characteristics of a discharge), and determine and prescribe the manner or time in which any forms are drafted or utilized, and flow metering, monitoring, sampling, or analysis is to be undertaken (clause 6.9).

34. The powers in the Bylaw which fall within the ambit of governance are the powers to set fees referred to in clauses 3.2 and 6.3.
35. The powers which are management powers are those in clause 2.1.2 (Council may physically prevent discharge to the sewerage system), clauses 3.2-3.6, and 4.1, 4.3, 5.1 (various powers in relation to an application for a consent from Council and the setting of conditions), clauses 3.7 and 3.8 (right to review a consent and require an application for consent to be made), clause 3.9 (suspension or cancellation of the right to discharge), clause 5.2 (relating to meters that measure discharges), clauses 5.3 and 5.4 (sampling and monitoring – although the Chief executive already has those powers by virtue of clause 6.9), and clause 6.5 (transfer a consent to another person or renew a consent).
36. There were delegations under the Trade Waste Bylaw 2000, which related to the power to grant consents and review them etc, and enforce the bylaw. Effectively, from the clauses above, there will be two new delegations made under the 2006 Bylaw, compared to those made by Council under the 2000 Bylaw. They are the power to physically prevent discharge to the sewerage system (cl 2.1.2), and the powers relating to meters that measure discharges (power to require a meter and approve its position, and the method of installation) (cl 5.2), but these are considered to be appropriate management matters.

Licensed Waste Handling Facilities Bylaw

37. On 1 October 2007 the Christchurch City Licensed Waste Handling Facilities Bylaw 2007 came into force and revoked the Christchurch City Licensed Waste Handling Facilities Bylaw 2005. This Bylaw is relatively short and provides for the licensing of operators for Waste Handling Facilities. The granting of, and administration of, such licences is a management matter, and should be delegated to the Chief Executive. This proposed delegation is new, as no delegations had ever been made under the 2005 bylaw, but these powers are also considered to be an appropriate management function.
38. The power to set the fees for the licences is however, a governance issue. This Bylaw sets out the licence fee in Schedule A of the Bylaw. The only way the fee can therefore be changed is by way of amending Schedule A of the Bylaw through the special consultative procedure (which the Council can do as part of its fees and charges setting carried out annually).

Fire Safety Bylaw

39. On 15 October 2007 the Christchurch City Urban Fire Safety Bylaw 2007 came into force. This bylaw confers on the Council a number of powers. Again, those powers may be classified into two classes, those which fall within the ambit of governance and those which fall within the ambit of management.
40. Those which are considered to fall within the ambit of governance are the powers to set fees. Clause 7(3) authorises the Council to charge an application fee for an exemption from a prohibition on lighting fires in the open air imposed by the Council under clause 6 for fire safety reasons. Clause 10 authorises the Council to charge an application fee for exemptions from the general restrictions, imposed by clause 8, on fires in the open air.
41. Those powers which are considered to fall within the ambit of management are the powers under clause 6 to prohibit the lighting of fires in the open air at times when there is likely to be high fire risk, the power under clause 7 to grant exemptions from a prohibition under clause 6, and the power under clause 10 to grant exemptions from some of the general restrictions prescribed in clause 8 on the lighting of fires in the open air. It is essential that the Council delegate the power under clause 6 as there must be a mechanism in place which will allow this power to be exercised at short notice should the circumstances require.

Other powers

42. There is one statutory power in relation to animals which has not been delegated to staff in the past and which, in the interests of administrative efficiency, should be. This is the power, under section 139 of the Animal Welfare Act 1999, to destroy, in certain circumstances, impounded animals that are diseased, injured or sick. While not really an issue in the past it may well be in the future now that the Council is responsible for administering the Banks Peninsula District Council Stock Control Bylaw (which, although it is proposed this Bylaw be revoked from 1 July 2008, there are new provisions on stock control to be inserted into the new Traffic and Parking Bylaw).
43. Section 171 of the Local Government Act 2002 provides the Council with a general power of entry on to any land or building (except a dwellinghouse) for the purpose of doing anything that the Council is authorised to do under that Act or any other Act. It also sets out requirements as to the giving of notice of such entry.
44. Section 173 of the Local Government Act 2002 provides the Council with a power of entry on to any land or building (including a dwellinghouse) without giving prior notice in cases of sudden emergency.
45. The powers of entry under sections 171 and 173 have been delegated in the past but only in relation to certain specific functions of the Council, for example its functions under the Building Act 2004. It is recommended that the Council delegate generally these powers of entry to the Chief Executive who may then sub-delegate them as circumstances require. It is important that the Council be able to act quickly when circumstances require, particularly in cases of emergency. These powers of entry are clearly routine administrative powers the exercise of which is a function of Council staff at the direction of management.

THE OBJECTIVES

46. The objective in requesting that the Council delegate the abovementioned powers is to enable the Council to execute its regulatory functions in a timely and efficient manner.

THE OPTIONS

47. Three options are identified:
 - (a) Option 1 is to make the delegations and authorisations referred to in the staff recommendation above.
 - (b) Option 2 is to make some of the delegations and authorisations referred to above.
 - (c) Option 3 is to not make any of the delegations and authorisations referred to above.
48. It is considered that Option 1 will best enable the Council to exercise the regulatory powers which are listed in the staff recommendation in an efficient and timely manner. In formulating this option the powers under consideration have been categorised into two classes, those which fall within the ambit of governance and which should properly be reserved for the Council itself and those which fall within the ambit of management and which should properly be exercised by way of delegation. Care has been taken to ensure that the powers in respect of which delegations are now sought are not powers which fall within the former category.
49. It is considered that Option 2, depending upon the extent that it is taken, would not enable the Council to exercise all of the regulatory powers concerned efficiently and effectively. It may also possibly lead to some blurring of the respective governance and management functions of Council.
50. Option 3 is simply not practicable if the Council wishes to be able to exercise the powers concerned in an efficient and effective manner.

THE PREFERRED OPTION

51. That the Council make the delegations and authorisations sought in the section of this report headed "Staff Recommendation" (paragraph 24)