

8. DELEGATIONS : GENERAL POWERS OF ENTRY ONTO PRIVATE LAND UNDER LOCAL GOVERNMENT ACT 2002

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The purpose of this report is to recommend that the Council delegate to the General Manager City Environment the powers of the Council under sections 171, 173 and 181(4) of the Local Government Act 2002 to enter upon private land for certain purposes, the power to give notice of such entry and the power to issue warrants under section 174 in respect of such entry.

Section 171(1) of the Local Government Act 2002 provides the Council with a general power of entry onto private land for the purpose of doing anything that the Council is empowered to do under that Act or any other Act. Sections 171(2)–171(4) provide that the Council must give notice of such entry. Section 173 provides that the Council may, for the purpose of doing anything that it is authorised to do under that Act or any other Act, enter occupied land or buildings without giving prior notice if there is a sudden emergency causing or likely to cause loss of life or injury to a person, or damage to property, or damage to the environment, or alternatively if there is danger to any works or adjoining property. Section 174 provides that if an officer of the Council or other person is authorised by that Act to enter private land on the Council's behalf, the Council must provide that person with a written warrant under the seal of the Council as evidence that that person is so authorised.

The above-mentioned powers do not relate to enforcement functions of the Council under the Local Government Act 2002. Powers in relation to enforcement functions are provided for in other sections of the Act.

It is recommended that the Council delegate to the General Manager City Environment its powers under sections 171 and 174 for the purpose of undertaking any works under sections 181 of the Local Government Act 2002 and section 460 of the Local Government Act 1974.

Section 181 of the Local Government Act 2002 provides –

“181 Construction of works on private land

- (1) *A local authority may construct works on or under private land or under a building on private land that it considers necessary for—*
 - (a) *the supply of drinking water by territorial authorities;*
 - (b) *the supply of water through water races;*
 - (c) *trade wastes disposal;*
 - (d) *land drainage and rivers clearance.*
- (2) *A territorial authority may construct works on or under private land or under a building on private land that it considers necessary for sewage and stormwater drainage.*
- (3) *A local authority or a territorial authority, as the case may be, must not exercise the power in subsection (1) or subsection (2) unless it has—*
 - (a) *the prior written consent of the owner of the land to the construction of the work; or*
 - (b) *complied with the requirements of Schedule 12.*
- (4) *A local authority may enter the land to inspect, alter, renew, repair, or clean any work constructed under this section or under the corresponding provision of a former Act.*
- (5) *The power in subsection (4) must not be exercised without first giving reasonable notice of the intention to enter the land to the owner and occupier (if any).*
- (6) *This section applies subject to the Public Works Act 1981 as to compensation for injurious affection to land.”*

Section 460 of the Local Government Act 1974 provides-

“460 Construction of private drains through adjoining premises

- (1) Where, in the opinion of the council, the only practical route of any new private drain is through one or more adjoining premises, and any owner or owners of any of those premises will not consent to its construction, the council may, pursuant to a resolution in that behalf, of which notice shall be given to the owner or owners withholding his or their consent as aforesaid, enter upon his or their premises and execute, provide, and do all or any of the works, materials, and things which the council considers necessary, in order that the drain shall be laid in an efficient manner.*
- (2) Before passing a resolution under subsection (1) of this section, the council shall give to every owner refusing his consent as aforesaid an opportunity to be heard before a committee of the council.*
- (3) The cost incurred by the council in carrying out the said work, including the payment of compensation for injurious affection to any premises through which the drain is laid, shall be payable by the council in the first instance, and may be recovered by it from the owner of the land to be served by the private drain; and section 465 of this Act shall apply with respect to the amount so recoverable as if it were an advance made by the council under section 463 of this Act.*
- (4) If agreement cannot be reached between the council and any claimant for any such injurious affection, the matter shall be determined as if the work were a public work and the claim were a claim for injurious affection in respect thereof under the [Public Works Act 1981.]”*

The Council may not undertake any works under sections 181(1) or 181(2) or 460 without the consent of the landowner unless the landowner has first been given the opportunity to have his or her objections considered by the Council. In the case of sections 181(1) and 181(2) this right, together with a further right of appeal to the District Court, is provided for in the 12th Schedule to the Local Government Act 2002.

It is also recommended that the Council delegate to the General Manager City Environment all of its powers under Section 173 of the Local Government Act 2002. That section provides:

“173 Power of entry in cases of emergency

- (1) A local authority may, for the purpose of doing anything that it is authorised to do under this Act or any other enactment, enter occupied land or buildings without giving prior notice, if—*
 - (a) there is a sudden emergency causing or likely to cause—*
 - (i) loss of life or injury to a person; or*
 - (ii) damage to property; or*
 - (iii) damage to the environment; or*
 - (b) there is danger to any works or adjoining property.*
- (2) If a local authority exercises the power in subsection (1), it must, as soon as practicable after doing so, inform the occupier and, if the occupier is not the owner, the owner of the land or building.”*

If these powers are delegated to the General Manager City Environment then Clause 32(3) of the Seventh Schedule to the Local Government Act 2002 will authorise her to subdelegate them to any person(s) required to undertake the particular works on any particular occasion.

Committee

Recommendation:

That the Council resolve, pursuant to Clause 32(1) of the Seventh Schedule of the Local Government Act 2002, that the General Manager City Environment be delegated the powers to:

1. Enter any land or building (other than a dwellinghouse), pursuant to Section 171 of the Local Government Act 2002, for the purpose of undertaking any works the Council is empowered to undertake under:
 - (a) Section 181 of the Local Government Act 2002; or
 - (b) Section 460 of the Local Government Act 1974.
2. Enter any land pursuant to Section 181(4) of the Local Government Act 2002 for any of the purposes set out in that section.
3. Give notice of entry under Sections 171 and 181 of the Local Government Act 2002.
4. Enter any occupied land or buildings under Section 173 of the Local Government Act 2002 for any purpose specified in that section.
5. Issue warrants under Section 174(1) of the Local Government Act 2002 for any of the above-mentioned purposes.