

9. BUILDING ACT 2004: COUNCIL DELEGATIONS

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| General Manager responsible: | General Manager Regulation and Democracy Services |
| Officer responsible: | Legal Services Manager |
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PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council delegate most of its powers under the Building Act 2002 to the Environmental Services Manager in order that that Act may be administered in an efficient and effective manner.

EXECUTIVE SUMMARY

2. The Building Act 2004 (BA 2004) was given the Royal Assent on 24 August 2004. Most of the provisions of this Act will come into force on 31 March 2005. This is the date upon which the Building Act 1991 (BA 1991) will be repealed.
3. To enable the Council to undertake its functions and responsibilities under the BA 2004 in an efficient and effective manner it is necessary that the Council delegate to staff the majority of its powers under that Act. This follows existing practice under the BA 1991. The powers in respect of which delegations are now sought are of a routine administrative nature. They include the issuing of Project Information Memoranda, the grant and refusal of building consents, code compliance certificates and certificates of acceptance, the various enforcement powers conferred on the Council in relation to dangerous, earthquake prone and insanitary buildings and the laying of informations for offences against the Act.
4. It is recommended that the Council delegate all of its powers under the BA 2004 except those powers which should properly be exercised by the Council itself. These latter powers are specified in the recommendation below. They include the setting of fees under that Act, and entering into agreements with other territorial authorities and third parties for the carrying out of various functions, duties and powers under that Act.
5. It is recommended that all of the delegations be made to the Council's Environmental Services Manager. The Environmental Services Manager may then, in turn, sub-delegate those powers to such other persons from time to time as she sees fit for the efficient and effective administration of the Act.

FINANCIAL AND LEGAL CONSIDERATIONS

6. Section 232 of the BA 2004 provides that the Council may delegate any of its powers under that Act in accordance with Clause 32 of Schedule 7 of the Local Government Act 2002 (LGA 2002). Clause 32(1) of the LGA 2002 authorises the Council to delegate to any officer of the Council any of its responsibilities duties or powers other than certain specified powers which, for present purposes are irrelevant. The Council may make any such delegation subject to any conditions limitations or prohibitions as it sees fit.
7. Clause 32(3) of Schedule 7 of the LGA 2002 authorises any officer, to whom a delegation is made under Clause 32(1), to sub-delegate that power, subject to any conditions, limitations or prohibitions imposed by the Council in making the original delegation.
8. It is considered that the decision now sought from the Council relates to a matter of routine administration. Consequently it is suggested that no further action need be taken in respect of the decision-making requirements of sections 77 and 78 of the LGA 2002.

STAFF RECOMMENDATIONS

It is recommended that the Council delegate to the Environmental Services Manager all of the Council's powers under the Building Act 2004 except:

- (a) Its powers under Sections 131 and 132 relating to the adoption or review of policies on dangerous, earthquake prone and insanitary buildings;

- (b) Its power under Section 213 to make arrangements for any other building consent authority to perform the Council's functions of a building consent authority;
- (c) Its power under Section 219(1)(a) to impose any fee or charge in relation to a building consent and for the performance of any other function or service under the Act;
- (d) Its power under Sections 233-236 to transfer any of its functions, duties or powers under the Act to another territorial authority;
- (e) Its power under Sections 233-236 to agree to undertake any function, duty or power of any other territorial authority under the Act.