

10. MISCELLANEOUS DELEGATIONS AND AUTHORISATIONS



General Manager responsible:	General Manager Regulation and Democracy Services DDI 941 8549
Officer responsible:	Inspections and Enforcement Manager, Environmental Policy & Approvals Manager
Author:	David Rolls, Solicitor

PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council make a number of delegations and authorisations of certain routine administrative powers.

EXECUTIVE SUMMARY

2. In order to enable the Council to undertake its statutory duties in an efficient manner and within the parameters of the relevant legislation it is recommended that the Council make the delegations detailed below.
3. Firstly, the Building Amendment Act 2005, which came into force on 14 April 2005, has conferred upon the Council several new minor administrative powers. It also created several new offences. It is recommended that these powers and the power to prosecute the new offences, be delegated to the Inspections and Enforcement Manager and the Environmental Policy and Approvals Manager severally. Details of these powers and offences are set out in paragraphs 9 and 10 below.
4. Secondly, it is recommended that the Council delegate to every Enforcement Officer appointed by it under the Local Government Act 2002, the power to give notice of intended entry onto land pursuant to Section 182(2)(b) of that Act. This is for the purpose of enabling them to exercise the power of entry on to private land, conferred on them by Section 182(1)(a) of that Act, for the purpose of checking utility services on that land.
5. Thirdly, it is recommended that the Council delegate to every Enforcement Officer appointed by it under the Local Government Act 2002 in relation to offences against its bylaws, its enforcement powers under clauses 14(a) and 14(b) of the Christchurch City General Bylaw 1990. These powers relate to the removal or alteration of works or things constructed in breach of any of the Council's bylaws.
6. Fourthly, it is recommended that the Council make new delegations of a number of its powers under the Christchurch City Cleanfill Licensing Bylaw 2003. This is necessary because neither the Council Subcommittee nor the officer position to which the Council delegated those powers on 26 February 2004 exist any longer.
7. Fifthly, it is recommended that the Council delegate a number of its powers under the Christchurch City Fires Bylaw 2006. This bylaw was passed by the Council at its meeting on 12 October 2006 and will come into force on 1 November 2006.
8. Finally, it is recommended that the Council authorise all persons it has appointed, and appoints in future, as Environmental Health Officers under Section 28 of the Health Act 1956, the power, under Section 128 of that Act to enter, at all reasonable times, any dwellinghouse, building, land, ship, or other premises and inspect the same, and to execute thereon any works authorised under or pursuant that Act. It appears that this particular authorisation has been overlooked in the past.

FINANCIAL AND LEGAL CONSIDERATIONS

9. The Building Amendment Act 2005 has amended the Building Act 2004 in a number of respects. These include conferring on the Council a new power to issue, in certain circumstances, a certificate allowing the public use of premises which are affected by building work (section 363A). It also has made some amendments of a minor nature to certain pre-existing powers. These concern the power to issue certificates of acceptance for building work (section 96), the power to give a notice concerning a proposed change of use of a building (section 115), and the power to give consent to the extension of the life of an existing building (section 116).

10. The Building Amendment Act 2005 has also amended the Building Act 2004 by creating a new offence of using a building for a use for which it is not safe or sanitary or for which it has inadequate means of escape from fire (section 116B). It has also made minor amendments to several existing offence provisions. These are offences relating to the carrying out or supervising of restricted building work (section 85) and offences relating to the use of premises which are open to the public or which are intended for public use (section 363).
11. It is recommended that the Council now delegate to the Environmental Policy and Approvals Manager and the Inspections and Enforcement Manager, severally, its new and amended powers under the Building Act 2004 which have been created by the Building Amendment Act 2005. It is considered that the simplest way to do this is for the Council to now make a new delegation of its powers under the Building Act 2004 in similar terms as it did on 24 March 2004.
12. On 24 March 2005 the Council delegated to the Environmental Services Manager (a position which has been disestablished) all of its powers under the Building Act except certain specified powers which, it considered, should properly be reserved for exercise by the Council itself. The Building Amendment Act 2005 now forms part of the Building Act 2004. Consequently if the Council now makes a delegation in similar terms as it did in 2004 the delegation will cover the Building Act 2004 as amended by the 2005 amendment Act. The purpose of this approach is to assist in present efforts to simplify the Council's delegations register.
13. Section 182(1) of the Local Government Act 2002 authorises Enforcement Officers appointed by the Council under that Act to enter any land or building (except a dwellinghouse) to check utility services. This is for the purpose of ascertaining whether or not any water supplied by the Council is being wasted or misused, whether any drainage works are being misused, or whether any appliance or equipment associated with a Council utility service on the land is in a condition that makes it dangerous.
14. Section 182(2)(b) of that Act provides that the power of entry may only be exercised if the Council has given reasonable notice to the occupier of the land or building of the intention to exercise that power. To enable the power of entry to be exercised in a timely and efficient manner it is recommended that the Council delegate the power to give notice of intended entry to every Enforcement Officer it has appointed, or appoints in future, under that Act.
15. Clause 14 of the Christchurch City General Bylaw 1990 authorises the Council to remove or alter a work or thing that is, or has been constructed, in breach of any of the Council's bylaws. Clause 14(a) provides that where the work or thing is situated on private land, the Council may serve, on the owner or occupier of that land, a notice requiring its removal. If the notice is not complied with, then the Council may itself effect the removal at the expense of the owner or occupier. Clause 14(b) provides that where the work or thing is on, over, or above a road, public place, or reserve, the Council may remove it without notice and at the cost of the person who placed it there.
16. In the past the Council has delegated these powers to its Enforcement Officers either individually or generically in respect of a particular bylaw at the time it appoints those officers. It is considered desirable that these powers be delegated generally to all Enforcement Officers so that they are not overlooked when making specific appointments.
17. It is recommended that the Council's powers in relation to the Christchurch City Cleanfill Licensing Bylaw 2003 which the Council delegated to the Sustainable Transport and Utilities Committee Hearings Panel and to the Solid Waste Manager on 26 February 2004 now be delegated to the Council Hearings Panel and the City Water and Waste Manager respectively. Neither the former Panel nor the former officer position exist any longer.
18. It is essential that the Christchurch City Fires Bylaw 2006 is able to be enforced in an efficient and effective manner. The Bylaw provides that the Council may appoint any person to administer it.

19. There are two classes of powers which the Council has under that Bylaw. The first relates to the declaring of prohibitions on the lighting of fires in the open air in order to prevent the outbreak or spread of fire. The power to prohibit such fires, advertise the prohibition, and to cancel a prohibition are contained in clause 9 of the Bylaw. It is essential that this power is able to be exercised at short notice. It is therefore recommended that the Council appoint the Principal Rural Fire Officer and every Deputy Principal Rural Fire Officer (severally) to administer clause 9 of the bylaw.
20. The second class of powers relates to the power to enforce the offence provisions of the Bylaw. It is recommended that the Inspections and Enforcement Manager be appointed to administer and exercise these powers.
21. Section 128 of the Health Act 1956 confers on any person authorised in writing by any local authority the power to enter, at all reasonable times, any dwellinghouse, building, land, ship or other premises and inspect the same and execute thereon any works authorised under the Act. In order that the Council is able to perform its duties under that Act in an efficient and timely manner it is considered necessary that the Council authorises every person it has appointed, and who it appoints in the future, as an Environmental Health Officer, to exercise these powers. Similar powers are conferred directly upon Environmental Health Officers by section 13 of the Food Act 1981. However those powers may only be exercised for the purposes of that particular Act.
22. It is considered that all of the decisions now sought from Council relate to matters of routine administration. Consequently it is considered that no further action need be taken in respect of the decision-making requirements of sections 77 and 78 of the Local Government Act 2002.
23. The purpose of recommending these delegations is to assist the Council in working in an efficient manner within its existing budgets.

STAFF RECOMMENDATIONS

It is recommended that the Council resolve:

- (a) To delegate to the Environmental Policy and Approvals Manager and to the Inspections and Enforcement Manager, severally, all of the Council's powers under the Building Act 2004 except:
 - (i) its powers under sections 131 and 132 relating to the adoption or review of policies on dangerous, earthquake prone and insanitary buildings;
 - (ii) its power under section 231 to make arrangements for any other building consent authority to perform the Council's functions of a building consent authority;
 - (iii) its power under section 219(1)(a) to set any fee or charge in relation to a building consent and for the performance of any other function or service under the Act;
 - (iv) its powers under sections 233-236 to transfer any of its functions, duties or powers under the Act to another territorial authority;
 - (v) its power under sections 233-236 to agree to undertake any function, duty or power of any other territorial authority under the Act.
- (b) To delegate to every Enforcement Officer appointed by it, either in the past or in the future, under section 177 of the Local Government Act 2002:
 - (i) the power to give notice, under section 182(2)(b) of that Act, of his or her intended entry to any land or building (except a dwellinghouse) for any of the purposes specified in section 182(1) of that Act.
 - (ii) its powers under clauses 14(a) and 14(b) of the Christchurch City General Bylaw 1990 for the purpose of enforcing those bylaws in respect of which the Enforcement Officer has been appointed to enforce.

- (c) To delegate to the City Water and Waste Manager:
 - (i) All of its powers under Clauses 3.1 and 3.3 of the Christchurch City Cleanfill Licensing Bylaw 2003; and
 - (ii) The power to issue and serve upon the holder of any licence issued under Clause 3.1 of the Christchurch City Cleanfill Licensing Bylaw 2003 a notice, pursuant to Clause 12(1) of the Christchurch City General Bylaw 1990, calling on that person to show cause why that person's licence should not be revoked or suspended; and
 - (iii) The power to initiate any prosecution for any offence against the Christchurch City Cleanfill Licensing Bylaw 2003, together with the power to make any decision on any matter relating to such prosecution; and
 - (iv) The power to apply to the District Court for an injunction restraining any person from committing a breach of any provision of the Christchurch City Cleanfill Licensing Bylaw 2003; and
 - (v) The power to take enforcement action against any person who breaches any such injunction and to make any decision on any matter relating to such action.
- (d) To delegate to the Council Hearings Panel, the powers under clause 3.5(b) of the Christchurch City Cleanfill Licensing Bylaw 2003 and under clause 12 of the Christchurch City General Bylaw 1990 to determine whether or not any licence issued under the Christchurch City Cleanfill Licensing Bylaw 2003 should be revoked or suspended.
- (e) To appoint the Principal Rural Fire Officer and every Deputy Principal Rural Fire Officer (severally) to administer Clause 9 of the Christchurch City Fires Bylaw 2006.
- (f) To delegate to the Inspections and Enforcement Manager:
 - (i) The power to initiate any prosecution for any offence against the Christchurch City Fires Bylaw 2006, together with the power to make any decision on any matter relating to any such prosecution.
 - (ii) The power to apply to the District Court for an injunction restraining any person from committing a breach of any provision of that Bylaw.
 - (iii) The power to take enforcement action against any person who breaches any such injunction and to make any decision on any matter relating to such action.
- (g) To authorise every person which it has appointed, and which it appoints in the future, as an Environmental Health Officer under section 28 of the Health Act 1956 to exercise the powers specified in section 128 of that Act.