

## 9. MISCELLANEOUS APPOINTMENTS AND DELEGATIONS

<b>General Manager responsible:</b>	General Manager Regulation and Democracy Services
<b>Officer responsible:</b>	Environmental Services Manager/Transport and City Streets Manager
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### PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council make several appointments and delegations in relation to certain routine administrative functions.

### 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 appointments and delegations described below.
3. Firstly it is recommended that the Council appoint several officers of the Environmental Services Unit as the principal administrative officer of the Council for the purpose of authenticating certificates under sections 77 and 83 of the Building Act 2004. These certificates relate to building consents which authorise the construction of a building across two or more allotments of land. This will avoid the need for such certificates to be signed by the Council's Chief Executive.
4. Secondly it is recommended that the Council delegate to the Environmental Services Manager the power to authorise officers of the Council to exercise the power of entry on to private land conferred by section 11(1) of the Fencing of Swimming Pools Act 1987. This section authorises entry on to private for the purpose of determining whether or not there is on that land a swimming pool that is not fenced in accordance with that Act.
5. Thirdly it is recommended that the Council delegate to the Transport and City Streets Manager all of the powers of the Council under section 5.1 of the Land Transport Rule Setting of Speed Limits 2003 Rule 54001. These powers relate to the setting of temporary speed limits on roads for which the Council is the road controlling authority.

### LEGAL AND FINANCIAL CONSIDERATIONS

6. Section 77 of the Building Act 2004 provides that a building consent authority may not grant a building consent for the construction of a building across two or more allotments of land until the territorial authority has issued a certificate imposing the condition referred to in Section 75(2) of that Act. That condition is that none of those allotments may be transferred or leased except in conjunction with each of the others. The certificate is required to be authenticated by the territorial authority, signed by the owner of the allotments and then lodged with the Registrar General of Land for entry upon the Certificates of Title to those allotments.
7. Section 83 of the Act sets out the circumstances in which certificates issued under Section 77 may be removed from the Certificates of Title upon which they have been registered. Those circumstances include the removal or demolition of the building or a boundary adjustment which results in the building being contained entirely within one single allotment. If the territorial authority approves its removal, its decision must be set out in another certificate which it must authenticate. That certificate is then signed by the owner and lodged with the Registrar General of Land. This is the authority for the removal of the original certificate from the certificates of Title.
8. Section 252 of the Local Government Act 1974 prescribes the manner in which a territorial authority may authenticate documents. It provides that they must either be signed by the Mayor or by any two Councillors or by the Principal Administrative Officer. Section 2 of that Act provides that the "Principal Administrative Officer" means, in relation to this Council, the Chief Executive and includes any person for the time being appointed by the Council to perform the duties or a particular duty of the Principal Administrative Officer. It is recommended that the Council appoint the Building Control Manager, the Team Leader, Civic Building Team, the Senior Building Control Engineer and each Area Development Officer (severally) as the Principal Administrative Officer for the purpose of authenticating such certificates. It is considered that the signing of such certificates is not an efficient use of the Chief Executive's time.

9. The Council had earlier made similar appointments in relation to certificates under section 37(2) of the Building Act 1991. Those certificates were the equivalent to certificates under section 77 of the Building Act 2004. The Council had not made similar appointments in respect of certificates under section 37(9) of the Building Act 1991, these equivalent to certificates under section 83 of the Building Act 2004. It is suspected that this was the result of an oversight.
10. Section 11(1) of the Fencing of Swimming Pools Act 1987 provides that any officer of the Council who has reasonable grounds to believe –
  - (a) that there is on any land within the Council's district a swimming pool to which that Act applies; and
  - (b) that pool is not fenced in accordance with the Actmay at any reasonable time enter that land and inspect it in order to determine whether or not the Act is being complied with. It should be noted that this power does not extend into entry into a dwellinghouse.
11. In the past it was considered, having regard to the wording of Section 11(1) that warrants could be issued to Council staff without any specific authorisation from the Council. However recently doubt has been cast on this view. It is now considered that the better view is that each person to whom a warrant is issued should be specifically authorised in that regard by Council.
12. The Fencing of Swimming Pools Act 1987 is administered by the Environmental Monitoring Team of the Environmental Services Unit. It is therefore recommended that the Council delegate to the Environmental Services Manager the power to authorise the Council officer who exercised the power of entry onto private land conferred by Section 11(1) of that Act.
13. Section 5 of the Land Transport Rule Setting of Speed Limits 2003 Rule 54001 ("the Rule") authorises the Council to set temporary speed limits on those roads for which it is the road controlling authority. Section 5.1(2) authorises the Council to set a temporary speed limit if it considers that:
  - (a) there is a risk of danger to the public or to a person working on or near a road, or a risk of damage to a road; or
  - (b) it is necessary for the safety of a special event.
14. Section 5.1(3) of the Rule provides that a temporary speed limit is set by the installation of signs in accordance with a traffic management plan approved by the Council. Section 5.1(6) of the Rule provides that a temporary speed limit must be removed immediately there is no longer any need for the temporary speed limit.
15. Unlike permanent or variable speed limits, temporary speed limits are not required to be set by way of bylaw. Furthermore, in setting temporary speed limits the Council is not required to undertake the public consultation procedure which is required in the case of permanent or variable speed limits. This is no doubt due to their transitory nature.
16. The setting of temporary speed limits is a routine administrative function which often must be carried out at short notice, for example in the case of urgent road works or emergencies. It is therefore recommended that the Council delegate all of its powers under Section 5 of the Rule, to the Transport and City Streets Manager. Once this has been done, Clause 32(3) of the Seventh Schedule to the Local Government Act 2002 will enable the Transport and City Streets Manager to sub-delegate these powers as he sees fit. This will allow the Council to have in place an efficient and effective system by which it can impose temporary speed limits as and when they are required.
17. It is considered that all of the decisions now sought from Council relate to matters of routine administration. Consequently it is suggested that no further action need to be taken in respect of the decision-making requirements of Sections 77 and 78 of the Local Government Act 2002.

## **STAFF RECOMMENDATIONS**

That the Council resolve:

- (a) That for the purposes of Sections 77 and 83 of the Building Act 2004 the principal administrative officer of the Council shall be the Building Control Manager, the Civic Building Team Leader, the Senior Building Control Engineer or each Area Development Officer.
- (b) That it delegate to the Environmental Services Manager the power to authorise any officer of the Council to exercise the power of entry on to private land conferred by Section 11(1) of the Fencing of Swimming Pools Act 1987.
- (c) That it delegate to the Transport and City Streets Manager all of the Council's powers under Section 5 of the Land Transport Setting of Speed Limits 2003 Rule 54001.

