

## 27. MISCELLANEOUS DELEGATIONS

<b>General Manager responsible:</b>	General Manager Regulation & Democracy Services, DDI 941-8462
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### PURPOSE OF REPORT

1. The purpose of this report is to recommend that the Council delegate routine administrative powers to the Chief Executive, and amend delegations to the Community Boards, in relation to the new bylaws adopted by the Council at its special meeting on 19 June 2008.

### EXECUTIVE SUMMARY

2. There are a number of routine administrative powers conferred on the Council under the new bylaws adopted by Council. Many of these administrative powers are similar to matters which the Council had delegated to staff under its previous bylaws that, as of 1 July 2008, will be revoked by the new bylaws. As of that date those delegations will no longer be valid (and can be removed from the Council's delegations register). There are also powers under the Traffic and Parking Bylaw 1991 which were delegated to the Community Boards which need to be amended to refer, and relate, to the Traffic and Parking Bylaw 2008.
3. To enable the Council to exercise the new bylaw powers in an efficient manner it is desirable that the Council delegate them to its staff or Community Boards. It is the Legal Services Unit view that the most effective way of ensuring that these powers are able to be exercised 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.
4. 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 (for example, in the case of a resignation or change of job title) 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.
5. In addition, delegation of each specific power in a bylaw may mean that a routine administrative power may be overlooked. We believe that the better approach is for the Council to delegate all its powers under each bylaw 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 to itself.
6. In delegating by exception the Council will generally reserve for itself powers to determine policy, to set fees, and to hear and determine objections, and other 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, and in relation to recent miscellaneous delegations of powers under the Dog Control Act and other recent Bylaws of the Council. It appears to work very well.
7. The delegation of routine administrative powers by way of exception and directly to the Chief Executive has two important advantages. Firstly it helps 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. Conversely it will delegate all routine administrative powers, the exercise of which is 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, and he can sub-delegate those powers accordingly.
8. 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.

9. The powers which are recommended to be delegated to the Community Boards under the Traffic and Parking Bylaw 2008 are largely the same as the current delegations to the Community Board under the 1991 Bylaw. We understand that the Community Board delegations are under review, but until the review is completed this amended delegation needs to be made to allow the new Traffic and Parking Bylaw to operate efficiently. Some changes are needed as a result of differences between the new and old bylaws, but these have generally been matters which the Council considered were appropriate to delegate to the Community Boards previously, so it seems likely that they are still appropriate. The Council should also note the requirement in the Local Government Act 2002 for the Council to consider whether or not a delegation to a community board would enable a community board to best achieve its role.
10. Some of the new bylaws contain clauses that delegate the power to the Chief Executive to provide approvals or written permissions, as specified in the bylaws. These delegations are already in place as a result of the adoption of the bylaws. These powers are found in the Water Related Services Bylaw 2008 (clause 46), the Stock Control Bylaw 2008 (clause 5), and the Public Places Bylaw 2008 (clause 4). There are also other specific powers given to the Chief Executive or an authorised officer in some bylaws, which do not need delegation. However, in some of these bylaws further powers also need to be delegated.
11. There is no need to delegate any powers under the Marine and River Facilities Bylaw 2008, because there are several powers already given in the bylaw itself to authorised officers (and the power to appoint authorised officers is also recommended to be delegated). All of the remaining powers in this bylaw should remain with the Council as they concern matters of governance.

#### **FINANCIAL IMPLICATIONS**

12. There are no financial implications in making these delegations. (The Council's Inspections and Enforcement Unit, and any other Unit who are sub-delegated any of these powers by the Chief Executive, are expected to carry out their functions within existing budgetary provisions.)

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

13. Yes.

#### **LEGAL CONSIDERATIONS**

14. 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.
15. Clause 32(3) of the Seventh Schedule authorises 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.
16. 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.

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

17. Yes. See above.

#### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

18. As below.

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

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

## **ALIGNMENT WITH STRATEGIES**

20. Yes.

### **Do the recommendations align with the Council's strategies?**

21. Yes.

## **CONSULTATION FULFILMENT**

22. Yes.

## **STAFF RECOMMENDATION**

A: It is recommended that the Council delegate to its Chief Executive:

- (a) all of its powers under the General Bylaw 2008 except the powers under clause 13 (dispensing powers)
- (b) all of its powers under the Public Places Bylaw 2008 (not already delegated) except the powers under:
  - (i) clause 8 (adoption of policies)
  - (ii) clause 12 (fees)
  - (iii) clause 13 (special use areas)
- (c) all of its powers under the Water Related Services Bylaw 2008 (not already delegated) except the powers under:
  - (i) clause 45 (fees)
- (d) all of its powers under the Dog Control Bylaw 2008 except the powers under clause 8 (prohibited dog areas, leashed dog areas and dog parks/exercise areas)
- (e) all of its powers under the Parks and Reserves Bylaw 2008 except the powers:
  - (i) under clauses 12(4) and (5) (resolving to set aside reserve areas for model aircraft and amendments or revocations of such resolutions)
  - (ii) under clause 17(4) (Council review of permissions given under the bylaw)
  - (iii) to set any fees
- (f) all of its powers under the Stock Control Bylaw 2008 (not already delegated) except the power under clause 9 (roads where stock droving is prohibited)
- (g) all of its powers under the Traffic and Parking Bylaw 2008 except the powers:
  - (i) which have been delegated to the Community Boards;
  - (ii) to prescribe fees
  - (iii) under clause 10 (heavy vehicles parking)
  - (ii) under clause 15 (prohibited times on roads)
- (h) its powers to appoint authorised officers for the purposes of performing duties under any of the Council's bylaws.
- (i) its powers to institute any enforcement action, including a prosecution for an offence against any of the Council's bylaws, together with the power to make any decision pertaining to any such enforcement or prosecution.

- B: It is recommended that the Council resolve to amend the delegation to the Community Boards set out in clause 8 of the delegations register to read as follows:

The power of the Council in respect of any roads or parts of roads or on any areas under its control (including car parks), subject to Council policy, pursuant to the Local Government Act 1974, the Transport Act 1962, the Land Transport Act 1998 and any rules made under that Act, and the Christchurch City Council Traffic and Parking Bylaw 2008:

- (a) To control, by the methods (signs, markings, etc) listed below, **traffic movement on any roads**, or parts of roads, or within carparks, or in other areas controlled by the Council and used by vehicles:
- (i) Stop:
  - (ii) Give way:
  - (iii) Roundabout:
  - (iv) No right turn (*clause 14(1) of the Christchurch City Council Traffic and Parking Bylaw 2008*):
  - (v) No left turn (*clause 14(1) of the Christchurch City Council Traffic and Parking Bylaw 2008*):
  - (vi) No u-turn (*clause 14(1) of the Christchurch City Council Traffic and Parking Bylaw 2008*):
  - (vii) No cycling:
  - (viii) No pedestrians:
  - (ix) No heavy motor vehicles.
- (b) To determine the location of **restricted parking areas on any roads**, or parts of roads, or within car parks, or in other areas controlled by the Council, and the following conditions which may apply to those restricted parking areas, but not limited to:
- (i) the time period or time periods between which the parking restrictions have effect:
  - (ii) the maximum time allowed for parking in any parking space in a restricted parking area:
  - (iii) that a parking space in a restricted parking area is for the specified class of vehicle (ie. motorcycle stands, cycle stands), class of road user (ie. disabled parking areas) or for a designated activity (ie. loading zones):

*(See clauses 5(1), (2) and (5) of the Christchurch City Council Traffic and Parking Bylaw 2008)*

- (c) To impose, on any roads or any parts of roads or any other areas controlled by the Council, **stopping or standing restrictions** whether by way of a time restriction, a restriction to a specified class, classes or description of vehicle (ie bus stops, taxi stands), a total prohibition or any combination of these (ie. clearways).

*(See clauses 5(3) and (5) of the Christchurch City Council Traffic and Parking Bylaw 2008)*

- (d) The delegations in (b) and (c) above do not include the powers under clauses 10 and 15 of the Christchurch City Council Traffic and Parking Bylaw 2008.

## BACKGROUND (THE ISSUES)

23. The powers delegated under the current bylaws, that are revoked by the new bylaws adopted on 19 June 2008 (and can therefore be removed from the delegations register) are as follows:

### To the Community Boards:

"8. The power of the Council in respect of any road or upon any areas under its control (including car parks), subject to Council policy, pursuant to the Transport Act 1962, the Land Transport Act 1998, the Traffic Regulations 1976 and, with the appropriate areas of control, the Christchurch City Traffic and Parking Bylaw 1991:

- (a) The placement of the following regulatory signs to control traffic movement at intersections on any roads, within car parks or in other areas controlled by the Council and used by vehicles:

- Stop
- Give Way
- No Entry
- No Right Turn
- No Left Turn
- No U Turn
- No Cycling
- No Pedestrians

- (b) The placement of the following parking signs to control the parking, standing or stopping of vehicles on any road or within car parks or in other areas controlled by the Council and used by vehicles:

- Parking Time Limit
- No Stopping
- Area Parking Sign
- Combination Sign
- Bus Stop
- Taxi Stand
- Cycle Stand
- Motorcycle Stand
- Loading Zone
- Goods Vehicle Loading Zone
- Clearway
- Mobility Parking Areas"

### In relation to Dog Control – to the Council Hearings Panel:

"To exercise all the powers of the Council under clause 12 of the Christchurch City General Bylaw 1990 in respect of any licence issued under Christchurch City Bylaws.

....

To determine, under clause 12 of the Christchurch City General Bylaw 1990, whether or not any licence issued under any bylaw made under the Act should be revoked or suspended."

### In relation to other bylaws – to the Council Hearings Panel:

"Bylaws

1. That pursuant to clause 7(1) of the Christchurch City General Bylaw 1990 the Council delegate to the Council Hearings Panel all of its powers under clause 12 of that bylaw in relation to the revocation and suspension of licences issued under the Public Places and Signs Bylaw 2003."

**Delegation to the Building Control Manager:**

"The following powers under the Christchurch City Public Places and Signs Bylaw 2003:

- (a) All of its powers under Part V (Signs Visible from Public Places) except the powers contained in clauses 32, 33(1), 33(2), 45 and 49; and
- (b) All of its powers under the following clauses of Part VI (Miscellaneous Provisions):
  - (i) Clause 55 (verandahs); and
  - (ii) Clause 57 (repairs of verandahs); and
  - (iii) Clause 58 (canopies, sun blinds and awnings)."

**Bylaw Inspectors**

"That in respect of any particular bylaw administered by the Council, the Council delegate its powers under clauses 14(a) and 14(b) of the Christchurch City General Bylaw 1990 to every person whom it has appointed as an inspector to ensure that the provisions of that particular bylaw are observed."

**City Water and Waste Enforcement Officers:**

"Delegate, pursuant to Clause 7(1) of the Christchurch City General Bylaw 1990, to each of the persons named in recommendation 1. (severally) its powers under Clauses 14(a) and 14(b) of that Bylaw for the purpose of enforcing the Christchurch City Trade Wastes Bylaw 2000 and the Christchurch City Water Related Services Bylaw 2001."

**City Water and Waste Manager:**

- "1. That pursuant to Clause 7(1) of the Christchurch City General Bylaw 1990 the Council delegate to the City Water and Waste Manager all of its powers under Christchurch City Water Related Services Bylaw 2001 except:
  - (i) the power to prescribe any fee, and
  - (ii) the powers of the Council under Clause 62 and 63
- 2. That pursuant to Clause 9 of the Christchurch City General Bylaw 1990 the Council delegate to the City Water and Waste Manager its powers to appoint inspectors to ensure that the provisions of the Christchurch City Water Related Services Bylaw 2001 are observed.
- 3. That the Council delegate to the City Water and Waste Manager the power to institute any prosecution and to make any decision in respect of any matter relating to any such prosecution for any offence under:
  - (a) The Christchurch City Water Related Services Bylaw 2001...
- 15. That pursuant to Clause 7(1) of the Christchurch City General Bylaw 1990 the Council delegate to the City Water and Waste Manager all of its powers under clauses 62 and 63 of the Christchurch City Water Related Services Bylaw 2001."

**Dog Control Officers:**

"All of the powers of the Council, under Clause 5 of the Christchurch City Dog Control Bylaw 1997, in respect of the issuing of licences to keep two or more dogs of a greater age than three months."

**Enforcement Officers:**

“Delegate, pursuant to clause 7(1) of the Christchurch City General Bylaw 1990, to each of the persons named in recommendation (1) (severally) its powers under clauses 14(a) and 14(b) of that bylaw for the purpose of enforcing the Christchurch City Animals (Other Than Dogs) Bylaw 2000, Christchurch City Fires Bylaw 1991 and Parts I to IV (inclusive) and clause 51 of the Christchurch Public Places and Signs Bylaw 2003...

...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.”

**Greenspace Manager:**

“The power to initiate any prosecution for an offence against Clauses 277(3) and 278(2) of the Waimairi County Bylaw 1966 (No. 1) together with the power to make a decision on any matter relating to such prosecution.”

**Inspections and Enforcement Manager:**

- “(4) To appoint Inspectors to ensure that the provisions of the Christchurch City Public Places and Signs Bylaw 1992 are observed.
  - (5) To initiate any prosecutions under Parts 1 to 5 (inclusive) of the Christchurch City Public Places and Signs Bylaw 2003, together with the power to make any decision on any matter relating to such prosecution.
  - (6) To apply to the District Court for an injunction restraining any person from committing a breach of any of the provisions of Parts 1 to 5 (inclusive) of the Christchurch City Public Places and Signs Bylaw 2003 and to take enforcement action against any person who breaches any such injunction and to make any decision in any matter relating to such action.
  - (7) To take enforcement action against any member of the public who breaches the provisions of the Christchurch City Public Places and Signs Bylaw 1992 relating to public speaking in the City Mall.
  - (8) The following powers under the Christchurch City Public Places and Signs Bylaw 2003, pursuant to clause 7(1) of the Christchurch City General Bylaw 1990 (severally with the Team Leader Environmental Monitoring):
    - (a) All of the Council’s powers under Parts 1 to 4 (inclusive) except:
      - (i) those powers specified as being exercisable by the Council by resolution;
      - (ii) the power contained in clause 20(1)(b) requiring the discontinuance of use of a motor vehicle.
    - (b) The following powers under Part 5 (signs visible from public places):
      - (i) clause 32 (issuing of permits);
      - (ii) clauses 33(1) and 33(2) (imposition of conditions on permits);
      - (iii) clause 49 (dispensing powers).
- (Same for Team Leader Environmental Monitoring).
- ....
- (18) The power to appoint Parking Wardens as Inspectors in terms of Christchurch City General Bylaw 1990 together with the power to revoke any such appointment so made.”

**Legal Services Manager:**

“...authorised to take such enforcement action as he considers appropriate for breaches of the Traffic and Parking Alteration Bylaw 2001 and that he be authorised to make applications for contempt of Court for breaches of any injunctions that may be obtained.

... the power to initiate any prosecution under Parts I to IV (inclusive) of the Christchurch City Public Places and Signs Bylaw 1992 together with the power to make any decision in any matter relating to any such prosecution.”

**Team Leader Animal Control:**

“To issue to the holder of any licence issued under any bylaw made by the Council under the Act a notice, pursuant to clause 12(1) of the Christchurch City General Bylaw 1990, calling on that person to appear before the Council Hearings Panel to show cause why that licence should not be revoked or suspended.”

**Transport and City Streets Manager :**

“... the power to initiate any prosecution under Part VI of the Christchurch City Public Places and Signs Bylaw 1992 together with the power to make any decision in any matter relating to such prosecution.

...

8. That pursuant to clause 7(1) of the Christchurch City General Bylaw 1990 the Council delegate to the Transport and City Streets Manager the following powers under the Christchurch City Public Places and Signs Bylaw 2003:

- (a) Under Part V (Signs Visible from Public Places) its powers in clause 45 (illuminated or flashing signs); and
- (b) Under Part VI (Miscellaneous Provisions) its powers in:
  - (i) Clause 50(1) (stormwater drains through footpaths); and
  - (ii) Clause 52 (vehicle crossings) except the power in clause 52(3)(a) to prescribe an inspection fee; and
  - (iii) Clause 53 (consent to use of construction machinery).

9. That the Council delegate to the Transport and City Streets Manager the power to initiate any prosecution under Part VI of the Christchurch City Public Places and Signs Bylaw 2003 together with the power to make any decision on any matter relating to such prosecution.

...

11. ... (c) The power to appoint Parking Wardens as Inspectors in terms of Christchurch City General Bylaw 1990 together with the power to revoke any such appointment so made.”

24. The powers that will be delegated to the Chief Executive under the new bylaws adopted on 19 June 2008 (not already delegated to the Chief Executive or other officers), if the above recommendation is accepted, include the following powers:

(a) under the General Bylaw 2008:

- clause 7 – appointment of enforcement officers
- clause 8 – granting licences
- clause 9 – suspension and revocation of licences
- clause 10 – removal of works executed contrary to a bylaw



- (b) under the Public Places Bylaw 2008:
    - clause 11 – alter, suspend or cancel a permit or its terms and conditions
  - (c) under the Water Related Services Bylaw 2008:
    - clause 19 - giving notice regarding deficient pipes
  - (d) under the Dog Control Bylaw 2008:
    - clause 5 – power to grant and revoke licences for keeping two or more dogs
  - (e) under the Parks and Reserves Bylaw 2008:
    - clause 5 – determining hours a reserve will be open
    - clause 7 – seize and confine any animal in a reserve or the Avon Heathcote Estuary
    - clause 10 – set aside specific areas for camping
    - clause 15 - waiver of clause 15 regarding the use of Rawhiti golf course
  - (f) under the Stock Control Bylaw 2008:
    - clause 7 – requiring a stock race to be constructed and giving notice to owners who have breached a permit
    - clause 8 – revoking consent for temporary roadside fencing
  - (g) under the Traffic and Parking Bylaw 2008:
    - clause 18 – regarding vehicle crossings
    - clause 24 – giving notice to any person to remove debris or material from road
25. The delegations recommended to be made to the Chief Executive also include the power of the Council to appoint authorised officers for the purposes of performing duties under any of the Council's bylaws. This power is an appropriate management matter which can be given to the Chief Executive.
26. Likewise, the use of appropriate enforcement powers, including whether or not a prosecution for an offence should be brought, under any of the Council's bylaws, are not decisions which concern a governance issue, and should not be influenced by political motivations. It is a power which has typically been delegated in the past to various Council officers and it is appropriate for the power to be delegated to the Chief Executive, who is in the best position to determine to which other officers this power should be sub-delegated.