

5.6	AMENDMENT TO COUNCIL DELEGATIONS - DELEGATION TO ISSUE INFRINGEMENT NOTICES UNDER THE BUILDING REGULATIONS 2012
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Attachments: 1. **New Delegation - Building Infringement Notices**

RECOMMENDATION:

That Council **DELEGATES BY ABSOLUTE MAJORITY** the power to appoint and revoke “authorised officers” and “approved officers” to issue infringement notices under Part 2 of the *Criminal Procedure Act 2004* for offences specified under Schedule 6 of the *Building Regulations 2012*, to the Chief Executive Officer, as detailed in Attachment 1.

PURPOSE OF REPORT:

To delegate power to the Chief Executive Officer to:

1. Appoint an “authorised officer” who is to have by virtue of that appointment, the power under the *Criminal Procedure Act 2004* (CP Act) Part 2, to issue infringement notices, for offences specified under *Building Regulations 2012* (Regulations) Schedule 6;
2. Appoint an “approved officer” who is to have by virtue of that appointment, the powers under the CP Act Part 2, to extend and withdraw infringement notices, for offences specified under Regulations Schedule 6; and
3. Revoke an appointment under (1) or (2) at any time.

BACKGROUND:

In April 2019 Schedule 6 of the Regulations was amended to prescribe offences and modified penalties for offences under the *Building Act 2011* (Building Act) and the Regulations. The power to issue infringement notices under the Building Act and Regulations have not been delegated to the Chief Executive Officer.

DETAILS:

Section 127 of the Building Act provides that a local government may delegate any of its powers or duties as a permit authority to a local government employee.

Existing Delegation 4.9 ‘Designate employees as Authorised Persons’ provides Authority to designate an employee as an “Authorised Person”, however this delegation does not include appointment of “authorised officers” and “approved officers” under the CP Act Part 2.

Part 2 of the CP Act provides that regulations made under a prescribed Act may prescribe an offence for which an infringement notice may be issued.

The offences prescribed under the Building Act and Regulations are:

Offence under the Act		Modified penalty
s. 33(1)	Failure to give notice of completion	\$500
s. 34(3)	Failure to give notice of cessation	\$250
s. 42	Failure to display or bring attention to occupancy permit details	\$250
s. 76(1)	Encroachment beyond boundaries without consent, court order or other authority	\$2 500

s. 80(1)	Removal of fence, gate or other barrier to land without consent, court order or other authority	\$1 000
s. 80(3)	Failure to erect adequate temporary barrier	\$1 000

Offence under the Regulations		Modified penalty
r. 50(1)	Failure to install barrier around private swimming pool	\$1 000
r. 56(1)	Failure to ensure smoke alarms compliant prior to transfer of dwelling	\$1 000
r. 58	Failure to ensure smoke alarms compliant prior to tenancy	\$1 000
r. 59	Failure to ensure smoke alarms compliant prior to hire of dwelling	\$1 000

The purpose of delegating this power is to enable enforcement action to be undertaken in accordance with the City's Prosecution and Enforcement Policy.

CONSULTATION/ADVERTISING:

Nil.

LEGAL/POLICY:

Part 2 of the CP Act.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to approve the new delegation.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Innovative and Accountable

Our community is aware of what we are doing and how we are meeting our goals.

We are open and accountable to an engaged community.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

Where appropriate, infringement notices for offences are much less time consuming and cost effective compared to prosecution proceedings.

4.12 Issue of Building Infringement Notices

Delegation from Council to CEO

Head of power to Delegate: <i>Power that enables a delegation to be made</i>	Section 127 of the <i>Building Act 2011</i>
Express Power or Duty Delegated:	Regulations 70(1), 70(2) and 70(3) of the <i>Building Regulations 2012</i>
Delegate:	Chief Executive Officer
Function: <i>This is a precis only. Delegates must act with full understanding of the legislation and conditions relevant to this delegation.</i>	<ol style="list-style-type: none"> 1. The power to appoint an "authorised officer" who is to have by virtue of that appointment, the power under the Criminal Procedure Act 2004 Part 2, to issue infringement notices, for offences specified under Building Regulations 2012 Schedule 6. 2. The power to appoint an "approved officer" who is to have by virtue of that appointment, the powers under the Criminal Procedure Act 2004 Part 2, to extend and withdraw infringement notices, for offences specified under Building Regulations 2012 Schedule 6. 3. Revoke an appointment under (1) or (2) at any time. 4. Give an identity card to an authorised person under (1). <p>Note: The CEO may appoint officers pursuant to the provisions identified, who then have the powers referred to, by virtue of Building Regulations 2012, Regulations 70(2) or 70(1) as applicable.</p>
Council Conditions on this Delegation:	<ol style="list-style-type: none"> (a) A person appointed under (1) or (2) must be an employee of the City. (b) A person cannot be appointed under (1) unless the person has already been authorised for the purpose of performing functions under Section 9.16 of the Local Government Act 1995. (c) A person cannot be appointed under (1) if the person holds an appointment under (2). (d) A person cannot be appointed under (2) unless the person has already been authorised for the purpose of performing functions under Section 9.19 and/or 9.20 of the Local Government Act 1995. (e) A person cannot be appointed under (2) if the person holds an appointment under (1). (f) Records of all appointments made under delegation to be kept on appropriate file or register. Statutory Power to Delegate: Building Act 2011, Section 127(6A).
Express Power to Sub-Delegate:	<i>Building Act 2011</i> Section 172 (6A) - CEO may delegate any of the CEO's powers and duties to other employees, other than power of delegation, subject to any conditions, qualifications, limitations or exceptions imposed on the delegation.