



Report 04.2
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Committee Policy, Finance and Strategy Committee
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Delegation for use of the common seal

1. Purpose

To seek delegated authority to affix the common seal of the Council to documents in instances where Council is required by law to fix its seal or it is prudent to do so and in the interests of good governance.

2. Background

At its meeting on 30 June 2003, and in line with legal advice received by officers prior to that meeting, the Council resolved, *inter alia*, to:

1. Delegate authority to the Chief Executive and Council Secretary to affix the common seal of the Council when it is required to be fixed to warrants in accordance with section 174(1) of the Local Government Act 2002.
2. Revoke all previous delegations relating to the affixing of the common seal.

A copy of the report - presented to this committee on 30 June 2003 - which dealt with the use of the common seal is attached at **appendix 1** to this report.

It has subsequently become apparent that this advice was incomplete and, to some extent, incorrect. For this reason, officers have sought additional legal advice regarding the use of the common seal and consider it is necessary to expand the scope of the authority delegated to the Chief Executive and Council Secretary to affix the Council seal to documents.

3. Comment

In addition to the requirement in section 174(1) of the Local Government Act 2002 (LGA 2002) to provide a written warrant under seal to any officer authorised to enter private land on behalf of the Council, it is also necessary to use the common seal in the following circumstances:

- When issuing a permit pursuant to 417(1)(b) of the Resource Management Act 1991 (RMA)
- When effecting any policy statement or plan (other than a regional coastal plan) under section 17(3)(a) of the first schedule to the RMA
- When effecting the adoption any regional coastal plan under section 18(2) of the first schedule to the RMA
- When executing any deed contemplated by the Property Law Act 1952 (PLA). This is because there is no provision in the LGA 2002 – such as section 12(5) of the Public Trust Act 2001 – which expressly exempts the Council from the requirement to comply with sections 4 and 5 of the PLA.
- When executing any Memorandum of Transfer pursuant to section 80 of the Local Government (Rating) Act 2002

The requirement to use the common seal in each of the circumstances described above is set down in statute and not open to contrary interpretation (notwithstanding previous advice). It is therefore recommended that the Council delegate authority to the Chief Executive and the Council Secretary to affix the common seal of the Council to a document in any circumstance where it is a requirement of law to use the seal.

The additional legal advice received by officers has confirmed that, even though there may be no legal requirement to do so, Council is entitled to seal documents if it considers this to be prudent and in the interests of good governance. For this reason, it is also recommended that the Council delegate a more general authority to the Chief Executive and the Council Secretary to affix the common seal to a document where these criteria are met.

While there are few circumstances where the seal would be used in this context, there are instances when the seal can – and perhaps *should* - be used as evidence that a document has a particular status or authority. For example, the Council is no longer required to seal bylaws when these are made, but may wish to do so as evidence of their validity. Similarly, the Council might wish to seal warrants issued to enforcement officers as additional evidence of an officer's authority to act should there be any immediate challenge by a member of the public when the officer is exercising powers.

It is worth noting that, the purpose of affixing the seal to a document is to acknowledge that it is a formal document of the Council. In this context, the seal will only be affixed to a document by the Chief Executive or Council Secretary in order to give effect to a decision of the Council or a decision validly made under delegated authority.

By delegating authority to the Chief Executive and Council Secretary to affix the seal to documents, the Council is *not* delegating the right to make decisions or adopt policies on behalf of the Council (to do so would breach the provisions of schedule 7, clause 32 of the Local Government Act 2002).

4. Communication

The change proposed in this paper will be communicated to Council officers and other people who prepare documentation to be sealed by the Council.

5. Recommendations

That the Committee recommend to Council:

1 That it delegates authority to the Chief Executive and to the Council Secretary to affix the common seal of the Council when it is required to be fixed by law, including:

- i. When issuing a warrant under seal to any officer authorised to enter private land on behalf of the Council pursuant to the Local Government Act 2002, or any other enactment (other than those enactments referred to in 174(5)).*
- ii. When issuing a permit pursuant to 417(1)(b) of the Resource Management Act 1991 (RMA)*
- iii. When effecting any policy statement or plan (other than a regional coastal plan) under section 17(3)(a) of the first schedule to the RMA*
- iv. When effecting the adoption of any regional coastal plan under section 18(2) of the first schedule to the RMA*
- v. When executing any deed contemplated by the Property Law Act 1952 (PLA).*
- vi. When executing any Memorandum of Transfer pursuant to section 80 of the Local Government (Rating) Act 2002*

and when it is prudent and in the interests of the good governance to affix the seal to a document.

2 That it revokes all previous delegations relating to the affixing of the common seal of the Council.

Report prepared by:

Report approved by:

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Wayne Hastie
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Attachment 1: Delegation for authorised signatories (report 03.363 to the Policy, Finance and Strategy Committee)