
REPORT 2
(1215/11/IM)

EXECUTION OF DEEDS

1. Purpose of Report

To inform Council of the new requirements for the execution of deeds, following the introduction of the Property Law Act 2007, and to seek agreement to implement a new process.

2. Executive Summary

The Property Law Act 1952 (PLA 1952) provided that a corporation (including a local authority) could execute a deed by affixing its common seal.

The Property Law Act 2007 (PLA 2007) came into effect on 1 January 2008. The Act repeals the PLA 1952 and includes new and different requirements in relation to the execution of deeds. In particular, the Act does not provide for execution by affixing a seal, but refers instead to execution by 'directors'.

A deed must now be executed by two elected members of the local authority if it is to be legally effective. Affixing the common seal is not required, but is not prohibited.

3. Recommendations

Officers recommend that the Council:

1. *Receives the information.*
2. *Notes the new requirements of the Property Law Act 2007 in regard to the execution of deeds.*
3. *Agrees that all deeds will in future be executed by any two elected members.*
4. *Agrees that as subject area knowledge is not required, the process for selection of elected members to execute each deed will be dictated by timeframes, and therefore, the availability of elected members.*
5. *Notes that the decision to enter into, negotiate and conclude transactions remains within the delegations of the CEO.*
6. *Notes the legal advice that all deeds executed since 1 January 2008, by way of the common seal, do not need to be reviewed and signed by two elected members.*

7. *Notes that the use of the council seal continues to be a requirement in regard to the execution of some documents, for example policy statements and plans under the Resource Management Act 1991, warrants for Council officers to enter private land under the Local Government Act 2002 and Councils adoption of Bylaws under the Bylaws Act 1910. Any documents that are required by legislation to be executed under seal, will continue to be executed under seal, in accordance with existing processes and the delegations of the CEO.*

4. Background

Historically, Council has executed deeds and certain other documents by way of the Council Common Seal where legally required by legislation, including the Resource Management Act 1991 (RMA 1991), Local Government Act 2002 (LGA 2002), and Land Transfer Act 1952.

The PLA 2007 came into effect on 1 January 2008. The Act repealed the PLA 1952 and the Contracts Enforcement Act 1956. In addition to specific property law provisions, the Act established a new set of general statutory rules governing the execution of deeds.

It dispensed with the need for body corporates to execute deeds by affixing the common seal, and requires instead that body corporates execute deeds by any two 'directors'.

There have been no changes to the requirements for executing contracts and other obligations entered into by body corporates.

5. Discussion

5.1 Property Law Act 1952

Section 4 of the PLA 1952 provided that a corporation (including a local authority) could execute a deed by affixing its common seal.

The Council Common Seal is used on formal documents where it is specifically required to be used under legislation; for example, warrants for Council officers to enter private land under the LGA 2002, the execution of policy statements and plans under the RMA 1991, the adoption of Bylaws under the Bylaws Act 1910 and, until recently, when the Council signed a document in the form of a deed.

A deed is required where:

- There is no consideration (an exchange of something in return for an undertaking),
- The Council is providing a guarantee or indemnity of a third party's obligations, or
- Legislation specifically requires it.

5.2 Property Law Act 2007

The PLA 2007 came into effect on 1 January 2008. It repeals the PLA 1952 and includes new requirements in relation to the execution of deeds. In particular, the Act no longer provides for execution by affixing a seal, but requires instead that directors execute deeds.

The LGA 2002 provides that a local authority is a body corporate. Section 9(3) of the PLA 2007 requires that a body corporate executes a deed by not fewer than two directors, unless it is authorised to execute a deed by any other enactment. As the LGA 2002 contains no provision for the execution of deeds by local authorities, section 9(3) of the PLA 2007 therefore applies.

The definition of a director contained in the PLA 2007, refers to a 'person occupying a position in the body corporate that is comparable with that of a director of a company'. A director of a company is a person with a governance, rather than management role, and accordingly the local authority equivalent of a director is an elected member.

Therefore, in order for a deed to be validly executed, it must be signed by two or more elected members.

Since the PLA 2007 came into effect in January 2008, a number of deeds have been executed by way of the Council seal, as officers were not aware of the new requirements. The Chief Executive has sought legal advice on whether those deeds executed by Council seal between January 2008 and now, need to be re-executed with the signatures of two elected members. The advice received is that this would be unnecessary as the intent to be bound, evidenced by the Council seal affixed to those deeds, should suffice.

5.3 Process

Council executes approximately six deeds per month. In order to comply with the legislation, all deeds from this point on should be executed with the signatures of two elected members.

The requirement for execution by elected members only applies to deeds. There is no requirement for other documents to be executed by elected members.

The existing process for execution will continue in regard to all documents that the Council is required to sign. All documents will continue to be approved for execution in accordance with existing processes and the CEO's delegations. However those documents that are in the form of a deed will be executed by two elected members.

We will continue to affix the seal to deeds for the sake of consistency, although this is no longer required. Any other documents that continue to require the affixing of the common seal will still be executed under seal in accordance with the existing process.

In affixing their signature to a deed, elected members are complying with a procedural step only to record the Councils execution of the deed. As such, members are not personally parties to the deed, and have no legal liability.

Decisions to enter into transactions, negotiate the forms of deeds and agreements and finalise those documents must still be made in accordance with the LGA 2002 requirements. Delegations to enter into, negotiate and conclude transactions remain with the CEO (as resolved by Council on 5 November 2004). Accordingly, there is no requirement for elected members to have any background knowledge on the nature of the deed in order to confidently affix their signature. However, as an added reassurance to elected members, an officers' certificate will be attached to the documentation confirming that all processes have been complied with.

6. Conclusion

The introduction of the PLA 2007 earlier this year has created new requirements in relation to the execution of deeds. They can no longer be executed using the Council Common Seal, but must now be executed with the signatures of two elected members.

Officers recommend that Council notes the new requirements of the PLA 2007 in regard to the execution of deeds and agree that all deeds will in future be executed by any two elected members.

Contact Officer: *Svea Cunliffe-Steel, Acting City Secretary*

Supporting Information

1) Strategic Fit / Strategic Outcome

Not applicable.

2) LTCCP/Annual Plan reference and long term financial impact

Not applicable.

3) Treaty of Waitangi considerations

Not applicable.

4) Decision-Making

This is not a significant decision.

5) Consultation

a) General Consultation

All affected parties have been identified.

b) Consultation with Maori

Not applicable.

6) Legal Implications

Council's lawyers have been consulted during the development of this report.

7) Consistency with existing policy

This report recommends amendments to policy to bring Council policy in line with the new legislation.