

COUNCIL POLICY EXE/CP-2 DOCUMENT EXECUTION AND APPLICATION OF THE COMMON SEAL



STRATEGIC OUTCOME SUPPORTED: 12 - A well respected, professionally run organisation.

1. OBJECTIVE

- 1.1. To provide guidance for affixing the Shire's common seal and determining whether a document is executed by way of common seal or signed by an authorised employee.

2. SCOPE

- 2.1. The provisions of this discretionary policy apply to all documents requiring the Shire's execution.

3. DEFINITIONS

- 3.1. **Authorised Officer** is a person or designated holder of an office; Council has conferred its power or imposed a duty on.
- 3.2. **Executed** means completed and formally signed a document, such as a deed, contract, or lease.
- 3.3. **Common Seal** is the official stamp or 'signature' of the corporate body 'Shire of Donnybrook Balingup'.
- 3.4. **CEO** means Chief Executive Officer, Shire of Donnybrook Balingup.
- 3.5. **Shire** means the Shire of Donnybrook Balingup.
- 3.6. **President** means Shire President, Shire of Donnybrook Balingup.

4. POLICY STATEMENT

- 4.1. In accordance with section 9.49A of the *Local Government Act 1995*, a document is duly executed by a local government if the common seal is affixed to it or it is signed by an officer authorised to do so.
- 4.2. The execution requirements, including the making, varying or discharge of documents pursuant to section 9.49B of the *Local Government Act 1995*, shall be as outlined in Table 1 of this policy.

Affixing the Common Seal

- 4.3. The common seal should be affixed as outlined in associated operational procedure - Method of affixing the common seal.

Witnessing of Signature

- 4.4. The common seal may only be affixed in the presence of both the President and the CEO (or the Deputy President and/or the Acting CEO), each of whom is to sign the document to attest that the common seal was so affixed.

COUNCIL POLICY EXE/CP-2 DOCUMENT EXECUTION AND APPLICATION OF THE COMMON SEAL



Register to be maintained

- 4.5. Details of all transactions where the common seal has been affixed shall be recorded in the common seal register, recording each date on which the common seal was affixed to a document, the nature of the said document, and the parties to any agreement to which the common seal was affixed. The register is to record each transaction with a record number that may be retrieved in the Shire's records management system.
- 4.6. A list of documents to which the common seal has been affixed will be provided in the quarterly Council Information Bulletin.

Deputising or Signing on Behalf of Another Person

- 4.7. In accordance with section 9.49A (4) of the *Local Government Act 1995*, which requires authority for execution of documents to be resolved by Council, a document may only be executed by a person who holds a position authorised by Council's adoption of this policy.
- 4.8. Therefore, in the absence of a person authorised by this policy another person may deputise where they have been appointed in writing to act in the authorised person.

5. DELEGATION AND AUTHORISATION

- 5.1. The President and CEO are authorised to affix and sign all documents to be executed under the common seal; however, in the absence of the President and/or the CEO, the Deputy President and the Acting CEO are authorised to affix the common seal.

Authority to Sign Documents on Behalf of the Shire

- 5.2. There is no legal requirement for the common seal to be affixed in order for a document to be executed where Council has resolved to authorise the CEO or any other employee to sign a document pursuant to section 9.49A of the *Local Government Act 1995*.
- 5.3. Employees authorised under section 9.49A of the *Local Government Act 1995* may sign the documents identified for that purpose in Table 1 of this policy. Despite the authorisation, the common seal may still be affixed in the following circumstances:
 - a. if the authorised officer is of the opinion the document carries a high level of financial risk, legal complexity or political sensitivity that the document should be executed by way of common seal; or
 - b. the other party has reasonably requested the document be executed by way of common seal.

COUNCIL POLICY EXE/CP-2 DOCUMENT EXECUTION AND APPLICATION OF THE COMMON SEAL



5.4. Table 1 – Execution of Documents

Document Type	Common Seal Required	Authorised Employee
Local Laws	Yes	None
Planning Schemes	Yes	None
State of Commonwealth Government Funding Agreements	Yes	None
Any document requiring the common seal pursuant to statutory obligation	Yes	None
Council has resolved that the document be executed by way of common seal	Yes	None
Power of Attorney to act for the Shire	No	CEO
Loans and Debentures	No	As per the WATC Master Lending Agreement
Grants and Funding Agreements with private agencies	No	CEO
Land Transaction documents including sale, purchase, vesting, leases, licences, transfers, contributed assets, easements, restrictive covenants, caveats, memorials, notifications, deeds and withdrawal of instruments.	No	CEO
Memorandum of Understanding	No	CEO
Ceremonial Certificates	No (but President must sign)	CEO
All other documents that were the subject of a Council decision including, but not limited to, procurement contracts, service agreements, non-disclosure agreements, enterprise bargaining agreement and employment contracts.	No	CEO
All other documents that are not the subject of a Council decision but are part of the ordinary operations of the local government including, but not limited to, casual hire agreements, procurement contracts (no Council decision), short term lease and sponsorship agreements.	No	CEO and Directors where the document concerns subject matter wholly within their directorate

COUNCIL POLICY EXE/CP-2 DOCUMENT EXECUTION AND APPLICATION OF THE COMMON SEAL



6. LEGISLATION

6.1. *Local Government Act 1995*

6.2. *Interpretations Act 1984*

7. POLICY VERSION

Related Policies:	N/A		
Related Procedure:	EXE/OP – Method of affixing the common seal		
Responsible Department:	Executive		
Reviewer:	Corporate Planning and Governance Officer		
Review Frequency:	Biennial	Next Due:	2023
Version Date:	21/12/2021	Synergy #:	NPP7996
Policy Version Details			
Initial Adoption Date:	27/01/2010	Decision Reference:	N/A
Version Decision Date:	21/12/21	Decision Reference:	213/21
Version Synopsis:	<ul style="list-style-type: none"> • Removed policy number 2.32 and added new policy ID; and • Added scope, definitions, legislation and delegation and authorisation; and • Added information on: <ul style="list-style-type: none"> - Affixing the common seal - Witness of signature - Deputising or signing on behalf of another person - Authority to sign documents on behalf of the shire - Included a table of execution of documents 		