

GOVERNANCE

G 1.24 Authorising Documents and Affixing the Common Seal

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| <i>Responsible Department</i> | Chief Executive Officer Office |
| <i>Resolution Number</i> | C.4839 |
| <i>Resolution Date</i> | 16/08/2023 |
| <i>Next Scheduled Review</i> | 2025 |
| <i>Related Shire Documents</i> | Delegated Authority Register |
| <i>Related Legislation</i> | Local Government Act 1995, section 9.49 and 9.49A |

OBJECTIVE

To establish protocols for authorisation of documents and the affixing of the Common Seal, according to the requirements of sections 9.49 and 9.49A of the *Local Government Act 1995*.

This policy provides guidance on the appropriate method of execution for the Shire's documents and ensures that the Shire's common seal is applied and documents executed in accordance with the provisions of the Local Government Act 1995 (the Act).

According to the Act, s9.49A, 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.

Under section 9.49A(3) of the Act, the common seal is to be affixed to a document in the presence of the President and the CEO, each of whom is to sign the document to attest that the common seal was so affixed.

SCOPE

This policy applies to all Shire of Northam officers who have been authorised through the provisions of this policy to execute documents on behalf of Council.

Executing documents through the use of the common seal or by signing a document does not constitute the decision to undertake a particular course of action. A Council resolution or a decision under delegated authority is required prior to executing documents pertaining to those decisions.

In the case of:

1. Legislation;

2. The formal requirements of a Commonwealth or State department, authority or agency (as described in a policy or procedure, etc); or
3. A Council decision;

expressly specifying a particular way in which a document is to be executed, that course of action is to take precedence over this policy.

Should ambiguity arise over what category might apply to a document i.e. two categories may have relevance to a document, then the higher category is to take precedence unless the decision has been made under delegated authority in which case it is a Category 2 document and can be executed by the officer exercising the delegated authority.

POLICY

1. CATEGORY 1 DOCUMENTS

Category 1 documents require a specific resolution of Council to sell, lease or enter into an agreement etc. as well as an authority to affix the seal.

Council acknowledges that some documents may be subject to time constraints for execution. These documents are to be sealed as part of a class of documents authorised by Council to be executed under the common seal without a specific Council resolution to affix the seal, e.g. a decision made under delegated authority.

| No. | Description | Specific resolution of Council required |
|-----|--|---|
| 1 | Deeds, including but not limited to: Deeds of Agreement; <ul style="list-style-type: none"> • Deeds of Release; and • Memorandum of Understanding, in respect to sale, purchase or other commercial dealing relating to Shire's assets including equitable interests. | Yes |
| 2 | Local Planning Schemes and Amendments. | Yes |
| 3 | Lease documents. This category includes, but is not limited to:- <ul style="list-style-type: none"> • Extension of Lease under original lease and new term not previously provided; • Variation of Lease; • Assignment of Lease; and • Surrender of Lease. | Yes except where granted under delegated authority. |
| 4 | Licence documents | Yes except where granted under delegated authority. |
| 5 | Local Laws | Yes |

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|---|---|--|
| 6 | Documents prepared for registration at Landgate that are mortgage documents and transfer of land forms. | Yes where the value of the land exceeds the amount determined by the Shire of Northam for the purpose of section 5.43 (d) of the Act as determined by delegated authority. |
| 7 | Agreements relating to grant funding, when the funder requires that the agreement be signed under seal. | No |
| 8 | General Legal and Service Agreements not already listed in this policy. | No |

2. CATEGORY 2 DOCUMENTS

Category 2 documents do not require the seal to be affixed.

Under section 9.49(A)(4) Council hereby authorises those officers listed in the table below to sign documents on behalf of the Shire of Northam.

| Description | Authority to Execute |
|---|--|
| Documents required in the management of land as a landowner. | Chief Executive Officer The responsible Executive Manager |
| Documents required to enact a decision of Council (i.e. contractual documents resulting from a tender process, transfer of lands forms, notification on title as required by a condition of approval, memorandum of understanding, adoption of a new Structure Plan etc.) | Chief Executive Officer The responsible Executive Manager |
| Documents that enact a decision made under delegated authority or as a condition of approval given under delegated authority. | Chief Executive Officer The responsible Executive Manager The Officer exercising the delegated authority |
| Agreements relating to grant funding | Chief Executive Officer The responsible Executive Manager |

3. CATEGORY 3 DOCUMENTS

Category 3 documents are those documents that are created in the normal course of business and are consistent with Shire's policies and procedures. Category 3 documents are to be executed by an Executive Manager or Manager, or a Shire officer where the authority and accountability has been extended through a policy or procedure.

These documents include but are not limited to the following:

| No. | Description |
|-----|--|
| 1 | Agreements in the normal course of business for the purchase of goods or services identified within the service unit's budget (other than for tenders awarded by Council) and conforming to the requirements of the Shire's Procurement Policy and other relevant policies |
| 2 | Debenture documents for loans which Council has resolved to raise. |
| 3 | General correspondence required to discharge the duties of the Officers position. |
| 4 | Contracts for grant funding conducted in accordance with the Shire's policies and procedures. |
| 5 | Regular hire arrangements. |

For templates and procedures regarding authorisation by signature and by execution under Common Seal, see the following sections.

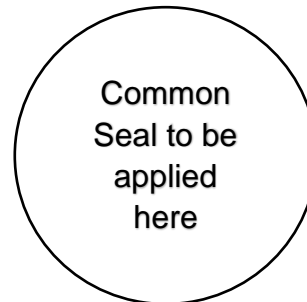
4. AFFIXING AND ADMINISTRATION OF THE COMMON SEAL

The Common Seal must be applied in the presence of the Chief Executive Officer and the Shire President. The execution clause must mirror the template as shown below.

The Chief Executive Officer must maintain a register recording occurrences where the common seal has been affixed.

THE COMMON SEAL OF
The Shire of Northam
was hereto affixed in the
presence of:

]
]
]
]



Shire President (signature)

Name of Shire President (print name)

Chief Executive Officer (signature)

Name of Chief Executive Officer (print name)

5. SIGNING UNDER AUTHORISATION

If the document is to be signed via authorisation by the Chief Executive Officer, the execution clause must mirror the template as shown below:

SIGNED FOR AND ON BEHALF OF]
The Shire of Northam]
by authority of a resolution of the Council]
being resolution number (insert no...)]

Chief Executive Officer (signature)

Name of Chief Executive Officer (print name)

If the document is to be signed by an Executive Manager, the execution clause must mirror the template as shown below:

SIGNED FOR AND ON BEHALF OF]
The Shire of Northam]
by authority of a resolution of the Council]
being resolution number (insert no...)]

Executive Manager (signature)

Name of Executive Manager (print name)