

Execution of Documents and Application of Common Seal

Council Policy: Pol/***	Execution of Documents and Application of Common Seal Policy		
Reference	<i>Strategic Community Plan 2013-2023</i> Priority Area: 6 Major Strategy: 6.2	<i>Corporate Business Plan 2020 - 2024</i> Priority Area: 6 Actions:	
Responsible Officer	Chief Executive Officer		
Policy Area	Executive Services		
Council Adoption Date	22/10/24	Version Number	1
Amendment Dates		Next Review Date	2 years

1. Policy Purpose

To establish procedures for:

- 1.1 Affixing the Town's common seal; and
- 1.2 Determining whether a document is executed by way of common seal or signed by an authorised employee.

2. Policy Scope

- 2.1 This Policy applies to all Town of Cottesloe officers who have been authorised through the provisions of this policy to execute documents on behalf of Council.

3. Policy Background

- 3.1 Pursuant to section 9.49A of the *Local Government Act 1995* (the Act), a document is duly executed by a local government if:

(a) The common seal is affixed to it in the presence of:

- (i) The Mayor or President; and
- (ii) The Chief Executive Officer (CEO) or a senior employee authorised by the CEO, each of whom must sign the document to attest the common seal was affixed; or

(b) It is signed by an Officer authorised to do so.

- 3.2 A Council resolution or a decision under delegated authority is required to approve a particular course of action prior to the execution of any document/s relating to that course of action. For example, until the Council makes a resolution approving the Town to enter into a lease on particular terms and conditions with another party, the Mayor and CEO are not authorised to execute the subject lease on behalf of the Town.
- 3.3 The following take precedent over this Policy, in the order listed below:
1. Legislation;
 2. The formal requirements of a Commonwealth or State department, authority or agency (as described in a Town policy or procedure);
 3. A Council decision; expressly specifying a particular way in which a document is to be executed.

4. Policy Statement

4.1 Procedure for Affixing the Common Seal

The Mayor and CEO are authorised to affix and sign all documents to be executed under the common seal; however, in the absence of the Mayor and/or the CEO, as the case may be, the Deputy Mayor and a Director are authorised in accordance with the provisions of the Local Government Act 1995 (WA).

4.2 Administration of the Common Seal

The CEO is to:

1. Be responsible for the safe custody and proper use of the Common Seal;
2. Maintain a register of each time the Common Seal is used; and
3. Provide a quarterly report to Elected Members listing the documents that the Common Seal has been applied to.

4.3 Category 1(A): Documents requiring the common seal and a specific Council resolution

Category 1(A) documents require a specific resolution of Council to sell, lease or enter into an agreement along with an authority to affix the common seal.

These documents are executed by having the common seal affixed, under the authorisation of Council, in the presence of and being attested to by the Mayor and CEO or (pursuant to s9.49A(3)(b) of the Act) the Mayor and a senior employee authorised by the CEO to do so.

The following is a list of Category 1(A) documents:

1. Deeds or contracts in respect to sale, purchase or other commercial dealings relating to Town assets including equitable interests;
2. Local Planning Schemes and amendments to the same;

3. Lease documents. This category includes, but is not limited to:
 - a. Variation of Lease;
 - b. Assignment of Lease; and
 - c. Surrender of Lease,except where granted under delegated authority;
4. Local Laws; and
5. Licence documents, except those licence documents specified in Category 1(B) or 2.

4.4 Category 1(B): Documents requiring the common seal without a specific Council resolution

Category 1(B) documents are those of a general form or category and which 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.

Please note that a Category 1(B) document may not require a specific Council resolution in order to be executed under seal however, the decision to undertake a particular course of action may still require Council approval.

The following is a list of Category 1(B) documents;

1. Agreements relating to grant funding, when the funder requires that the agreement be signed under seal;
2. Debenture documents for loans which Council has resolved to raise;
3. General legal and service agreements not already listed in this Policy;
4. Extension of Lease Deed, where the extension is occurring pursuant to an option term granted in accordance with a provision of the original lease;
5. Sub lease for a portion of the premises by the lessee; to a third party, where the Town’s consent (as landlord under the head lease) is required for the sub-lease; and
6. Variation of Lease Deeds or licences relating to minor variations that do not alter the substantive terms of the lease or licence as previously approved by Council (for example: where the lessee changes its name).
7. Licence documents, issued by the State Government and required to enable a Council decision to be implemented (for example: a licence required to allow the installation of infrastructure on State controlled land).
8. A purely ceremonial document, which does not create any additional financial or other obligations on the Town (for example: a certificate commemorating the awarding of a “freeman” honour by the Council to an individual).

4.5 Category 2 No common seal – Officers authorised by Council

Category 2 documents do not require the Town's common seal to be affixed.

In accordance with s9.49A(4) of the Act, the Council authorises the Officers listed in the table below to sign documents on behalf of the Town.

The following is a list of Category 2 documents:

Description	Authority to Execute
Documents required in the management of land as a landowner, including a development application, building permit application, easement or agreement in respect to Town owned or managed land.	CEO;
Documents required to enact a decision of Council or the Development Assessment Panel (i.e. contractual documents resulting from a tender process, transfer of land forms, notification on title as required by a condition of approval, memorandum of understanding etc.).	CEO; responsible Director; and responsible Manager.
Documents required to enact a decision made under delegated authority or as a condition of approval given under delegated authority (i.e. caveats, restrictive covenants and s 70A Notifications).	CEO; the responsible Director; and an Officer exercising the delegated authority.
Where a condition of approval given under delegated authority has subsequently been met, documents that are required to remove, withdraw or extinguish the earlier document or registration (e.g. withdrawal of caveat or a document that removes a restrictive covenant).	CEO; the responsible Director; and the Officer exercising the delegated authority.
Documents required to enable the Chief Executive Officer (CEO) or their delegate to perform the functions of the CEO, as prescribed under section 5.41 Local Government Act 1995.	CEO; Director, Manager or Officer exercising delegated authority from the CEO.

4.6 Category 3: No common seal – Officers defined in Policy

Category 3 documents are created in the normal course of business and are consistent with the Town's policies and procedures. Category 3 documents are to be executed by a Director, Manager, or an Officer where the authority has been extended to that Officer through a Town policy, procedure or delegated authority from the CEO.

These documents include but are not limited to the following:

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) and conforming to the requirements of the Town's Purchasing Policy and other relevant policies;
2. General correspondence required to discharge the duties of their position;

3. Contracts for grant funding conducted in accordance with the Town's policies; and
4. Regular hire arrangements.

5. Definitions

5.1 “CEO” means the Chief Executive Officer of the Town of Cottesloe.

“document” means any paper or electronic document, including communications such as letters and emails, which:

1. Conveys a decision; or
2. Establishes an obligation on the Town; or
3. Is ceremonial.

Document Control Council

Council Adoption Date:

Policy Number:

Policy Area:

Governance

Version Number:

V1

Responsible Officer:

Director of Corporate and
Community Services

Amendment Dates:

Next Review Date: