

Execution of Documents Policy

CEO



26 April 2023

This policy was adopted by Council to set governing principles in place that align with the Strategic community Plan 2040: *Performance: Responsible planning and ownership of outcomes.*

Objectives

The Shire's common seal is utilised, and documents are executed in a consistent and transparent manner, and in accordance with the provisions of section 9.49A *Local Government Act 1995* (LGA).

Application

This policy applies to the Shire of Augusta Margaret River Shire President, Chief Executive Officer, and all employees who have been authorised through the provisions of this policy to execute documents on behalf of the Shire of Augusta Margaret River.

Definitions

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

- a) conveys a decision;
- b) establishes an obligation on the Shire; or
- c) is ceremonial.

Policy

Pursuant to section 9.49A LGA, a document is duly executed by a local government if the common seal is affixed to it, or it is signed on behalf of the local government by an officer authorised to do so.

Under s9.49A(2), (3), LGA the affixing of the common seal to any document must be authorised by Council, and the seal is to be affixed in the presence of the Shire President and Chief Executive Officer (CEO), each of whom is to sign the document to attest that the common seal was so affixed (see Relevant Legislation for full excerpt of s9.49A LGA).

1. Authority to execute documents on behalf of the Shire

1.1 Specific Document Execution Authorities

Table 1 below provides for the authorisation for the execution of specific types of documents in accordance with s9.49A LGA.

In accordance with:

- i. s9.49A(2) LGA, the common seal is authorised to be affixed to the documents as listed in Table 1 below, on behalf of the Shire of Augusta Margaret River;
- ii. s9.49A(4,5) LGA, the following officers are authorised to execute (sign) deeds and documents on behalf of the Shire of Augusta Margaret River, as listed in Table 1 below;
- iii. s9.49A(4,5) LGA, the CEO is authorised to execute (sign) any deeds and documents on behalf of the Shire of Augusta Margaret River; and
- iv. s9.49A(4,5) LGA, the Director Sustainable Development and Infrastructure Services and Director Corporate and Community Services are authorised to execute (sign) any deeds and documents on behalf of the Shire of Augusta Margaret River when the CEO is unavailable.

Table 1: Authorisation for execution of specific types of documents in accordance with s9.49A LGA.

Document Type (✓) Common Seal <u>only</u> to be applied if specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Manager
(1) Local Planning Scheme and Local Planning Scheme Amendments	✓	✗	✗	✗	✗
(2) Local Laws – adoption, amendment or repeal	✓	✗	✗	✗	✗
(3) Any document relating to a disposition in property where that disposition is undertaken in accordance with section 3.58 LGA.	✓	✗	✗	✗	✗
(4) Any document required under a Development Approval or Subdivision condition that may also be required to be lodged with the Registrar of Titles (Landgate), including but not limited to: <ul style="list-style-type: none"> • Vesting documents • Caveats • Easements • Restrictive Covenants • Bonds and Contribution Agreements <p><i>Conditions: Director Sustainable Development and Infrastructure Services (DSDI) is authorised only where the document creates an interest in favour of the Shire.</i></p>	✓	✗	✓	✓ (only DSDI)	✗
(5) Ceremonial Certificates e.g. Volunteer of the year awards	✓	✓	✗	✗	✗
(6) Land transaction documents where the Shire is the purchaser or lessee and is in accordance with a Council resolution.	(✓)	✗	✓	✗	✗

Document Type (✓) Common Seal <u>only</u> to be applied if specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Manager
(7) Acceptance or variation of a management order or vesting of Crown Land in accordance with a Council resolution.	(✓)	x	✓	x	x
(8) Loan documents for loans which Council has resolved to raise.	(✓)	x	✓	✓	✓ (Only Manager Corporate Performance)
(9) State or Commonwealth Funding Applications and Agreements Conditions: Directors are only authorised to sign funding applications and agreements where: <ul style="list-style-type: none"> Funding value is \$100,000 or less; Project is within the Shire's Corporate Plan; Project is included in the Annual Budget or Long Term Financial Plan and all sources of funding have been confirmed to enable the project to proceed within the funding timeframe. 	(✓)	x	✓	✓	x
(10) Shire Grant and funding agreements with non-Government entities (incoming and outgoing) Conditions: Directors are only authorised to sign outgoing Shire funding agreements where: <ul style="list-style-type: none"> CEO has approved allocations of outgoing funding; and is in accordance with Shire's Community, Economic, Environmental and Events Funding Policy. 	x	x	✓	✓	x
(11) Memorandum of Understanding	(✓)	x	✓	x	x
(12) Contracts and contract variations for procurement of goods and services Conditions: <ul style="list-style-type: none"> Shire's Purchasing Policy and Procurement Procedures have been complied with. Contract value is within officer's purchasing authorisation limit. Contract value of goods/services is included in the Annual Budget. Where a contract variation is required: <ul style="list-style-type: none"> the accumulated contract value (original plus variation) of goods/services is included in the Annual Budget; and accumulated contract value is within officer's purchasing authorisation limit. If it exceeds the officer's limit, signing must be escalated to higher level officer. Directors and managers are not authorised to sign ICT related contracts where: <ul style="list-style-type: none"> value is over \$100,000 over a three-year period; or 	(✓)	x	✓	✓	✓

Document Type (✓) Common Seal <u>only</u> to be applied if specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Manager
<ul style="list-style-type: none"> ○ contract is for a new ICT system. • Directors and managers must undertake contract management training prior to signing any contracts. • Directors and managers are not authorised to sign contracts for supply of goods and services with a pre-qualified supplier who is part of a panel of pre-qualified suppliers for those goods and services. 					
(13) Licences, hire agreements of Shire property Directors' authorisation is subject to the following conditions: <ul style="list-style-type: none"> • the term of the agreement is less than one year; • excludes renewals of agreements. 	✘	✘	✓	✓	✘
(14) Documents required in the management of land as a landowner, or as the management body of Crown land Conditions: <ul style="list-style-type: none"> • Authorisation excludes acceptance of management orders or changes to management orders. • Director Sustainable Development and Infrastructure Services, Manager Planning and Regulatory Services are only authorised to sign letters permitting low impact filming on Shire managed or owned land where filming does not require a permit under a local law. 	✘	✘	✓	✓ (only DSDI)	✓ (only Manager LG, Manager Planning Regulatory Services)
(15) Development applications submitted by lessees / licensees where the Shire is the landowner	✘	✘	✓	✘	✓ (only Manager Legal Governance)
(16) Applications to other Government Agencies on behalf of the Shire Conditions: Authorisation excludes funding agreements. Examples include: clearing permit applications, commercial activity applications, jetty licence applications.	✘	✘	✓	✓	✘
(17) Enterprise Bargaining Agreements	✘	✘	✓	✘	✘
(18) Communications on behalf of the Shire with Commonwealth or State Ministers, Members of Parliament.	✘	✓	✓	✘	✘

Document Type (✓) Common Seal <u>only</u> to be applied if specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Manager
(19) Letters of support e.g. for community groups applying for grants.	x	x	✓	x	x
(20) Communications on behalf of the Shire with: <ul style="list-style-type: none"> • Directors General, Commissioners or CEOs of Commonwealth / State Government Departments • CEOs of industry representative bodies <p><i>Conditions:</i></p> <ul style="list-style-type: none"> • <i>Formal written communication from Directors must be under CEO direction.</i> 	x	x	✓	✓	x

NOTE:

- a) If a document requiring the common seal is not listed on Table 1 above, then a specific authorisation by Council resolution to have the common seal affixed is required.
- b) Where considered appropriate, an authorised officer may escalate a document for execution by a higher level authorised person.
- c) Documents relating to day-to day communications or transactions do not require specific authorisation through this policy as they are the subject of section 5.41(d) LGA prescribing the CEO's duty to manage day-to-day operations of the Shire. Such duties are undertaken by 'acting through' officers, where authority is extended through a Council Policy, operational practice or procedure, or position description. Examples include signing of purchase orders in accordance with Shire Purchasing Policy and Procedures.
- d) The signing of employment contracts does not require specific authorisation through this policy. Under sections 5.36 and 5.41 LGA, the CEO is responsible for employees and their contracts.

1.2 General Document Signing (Execution) Authorities

- 1.2.1 Where a person has the written authority to make a decision (“written decision-making authority”) that person also has the authority to sign documents which give effect to that decision.

Written decision-making authorities are:

- (a) Delegated Authority; or
- (b) Statutory Authorisation.

1.3 Recordkeeping obligations

A record of the use of the common seal is kept in the Shire’s Common Seal Register. All documents executed in accordance with this Policy will be registered in the Shire’s record keeping system. A CEO/authorised officer sign off sheet will also be completed for each document executed in accordance with this Policy and registered in the Shire’s record keeping system.

Relevant legislation

Section 9.49A *Local Government Act 1995*: Execution of documents

- (1) A document is duly executed by a local government if —
 - (a) the common seal of the local government is affixed to it in accordance with subsections (2) and (3); or
 - (b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.
- (2) The common seal of a local government is not to be affixed to any document except as authorised by the local government.
- (3) The common seal of the local government is to be affixed to a document in the presence of —
 - (a) the mayor or president; and
 - (b) the CEO,each of whom is to sign the document to attest that the common seal was so affixed.
- (4) A local government may, by resolution, authorise the CEO, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.
- (5) A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.
- (7) When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.

Related documents

Common Seal Register

Purchasing Authorisation limits

EXECUTION OF DOCUMENTS POLICY

Document and version control table

Responsible Directorate	CEO		
Contact officer	Governance (Legal, Risk) Officer		
Adopted / approved by:	Council		
Date of adoption / approval:	26 April 2023	Decision Ref: OM2023/47	
Date of next review	2027		
Document No.	N258237	File No.	GOV/38
Version	Date	Decision Ref.	Brief description
1.0	26/4/23	OM2023/47	Initial Issue
1.1	[TBD]	[TBD]	Example only