



ELM13 EXECUTION OF DOCUMENTS AND AFFIXING THE COMMON SEAL

Aim	To establish procedures for: (a) Affixing the Shire of Ashburton Common Seal; and (b) Determining whether a document is executed by way of common seal or signed by an authorised employee.
Application	Elected Members & Employees
Principles	Strategic Community Plan 2017 – 2027 (Desktop Review 2019) Goal 05 Inspiring Governance Objective leadership

1. Affixing the Common Seal

Documents that require the Common Seal are to be presented to Council for consideration within the Reports of Officers section at the appropriate meeting of Council. The report recommendation is to include the following or similar wording *“That Council approves the affixation of the Common Seal of the Shire of Ashburton to the document and authorises the Shire President and Chief Executive Officer to sign all documentation as required”*.

The attachment of the Common Seal requires attesting by both the Shire President, or in their absence the Deputy Shire President, and Chief Executive Officer or the person acting in that position.

2. Documents requiring the Common Seal to be affixed.

The Common Seal is to be affixed to documents. Set out in Appendix 1.

3. Authority to Sign documents on Behalf of the Shire

Where there is no legal requirement for the common seal to be affixed in order for a document to be executed, Council has resolved to authorise identified employees to sign a document pursuant to section 9.49A of the Local Government Act 1995.

Employees authorised under section 9.49A of the Local Government Act 1995 may sign the documents identified for that purpose in Appendix 1- Part B 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.



4. Procedures for the use of the Common Seal

The Chief Executive Officer is responsible for the security and proper use of the Common Seal.

The CEO is to make appropriate arrangements for –

- (a) keeping the seal in a safe and secure location; and
- (b) the appointment of a person who is to have custody of the seal.

5. Common Seal Register

Entries in the register are to indicate;

- (a) the document to which the seal was affixed;
- (b) the date the seal was affixed;
- (c) the people who have attested to the seal being affixed to the document;
- (d) the date on which the Council resolved to make the decision or enter into the contract to which the document relates; and the date on which the Council resolved to grant authorisation for the seal to be affixed to the relevant document.

5. Wording of the Common Seal clause

If the legislation is silent on the wording of the Common Seal clause then the following shall apply:

Example – Where the Common Seal is Affixed by Resolution of Council

DATED: _20_



The Common Seal of the Shire of [name] was affixed by authority of a resolution of the Council in the presence of:

[INSERT NAME OF PRESIDENT] PRESIDENT

[INSERT NAME OF CEO] CHIEF EXECUTIVE OFFICER

APPENDIX 1



PART A - EXAMPLES OF DOCUMENTS WHERE THE COMMON SEAL IS/OR MAY BE REQUIRED

1. New or Revised Town Planning Schemes
2. Commonwealth or State Governments documents requiring the seal.
3. Amendments to Town Planning Schemes
4. Documents of a Ceremonial Nature such as Sister City agreements
5. New, Revised or Amendments to Local Laws

PART B - EXAMPLES OF DOCUMENTS THAT CAN BE EXECUTED UNDER COUNCIL AUTHORISATION

1. Restrictive Covenants under s.129BA of the Transfer of Land Act 1893 and any discharge or modifications of covenants
2. Reciprocal Access agreements and withdrawal or modification of Reciprocal Access Agreements
3. Lodgment, modification, and withdrawal of Caveats
4. Management Statements and withdrawal or modification of Management Statements
5. Lodgment, modification, and withdrawal of Memorial
6. General Legal and Service Agreements
7. Leases where Council has previously resolved to enter into or have been approved under delegation, including renewals, extensions or modifications of leases, including leases for staff housing.
8. Contracts for the provision of services or goods, including those to be entered into following a tender process.
9. Deeds of Agreement, Development Contribution Deeds and Deeds of Release
10. Transfer of land documents where Council has previously resolved to either purchase or dispose of land or land is being transferred to the Shire for a public purpose.
11. Licences
12. Debenture documents for loans which Council has resolved to raise.
13. Covenants and any discharge or modification of covenants
14. New Funding or Contracts of Agreement between the Council and State or Commonwealth Governments or Private Organisations for programs to which Council has previously adopted, or additions to existing programs, which in the view of the Chief Executive Officer are in accordance with the original intent of the adopted program.
15. Easements and the surrender or modification of easements
16. Records Disposal Authorisation
17. Notifications on title and withdrawal or modification of notifications
18. Letters requested to be written by Council by resolution, which are not of a Political nature.
19. Rights of Carriageway agreements and withdrawal or modification of Rights of Carriageway agreements



Document Control Box							
Document Responsibilities:							
Owner:	Director Corporate Services			Owner Business Unit:	Corporate Services		
Reviewer:	Manager Governance			Decision Maker:	Council		
Compliance Requirements:							
Legislation:	Local Government Act 2.5(2) Local governments created as bodies corporate. 5.43 Limits on delegations to CEO 9.49A. Execution of documents 9.49B. Contract formalities						
Industry:							
Organisational:	Code of Conduct Record Keeping Plan SOA CEO 094 Use of Common Seal Register (Form).						
Document Management:							
Risk Rating:		Review Frequency:	Annual	Next Due:	2022	Records Ref:	
Version #	Decision Reference:		Synopsis:				
1.	722/2019		OMC 17 December 2019				
2.	59/2021		OMC 20 April 2021				