

Council Policy – Execution of Documents and Affixing the Common Seal

Responsible Directorate	Corporate Services
Responsible Business Unit/s	Governance
Responsible Officer	Manager Governance
Affected Business Unit/s	All

Objective

To establish guidelines for:

- Affixing the Shire of Ashburton (the Shire) Common Seal, and
- Determining whether a document is executed by way of Common Seal or signed by an authorised employee.

Scope

This policy applies to the Shire President (or Deputy Shire President when required), Chief Executive Officer (the CEO) and employees of the Shire.

Policy Statement

Affixing the Common Seal

Documents that require the Common Seal are to be presented to Council for consideration. The report recommendation is to include the following or similar wording:

“That Council authorises the Shire President and Chief Executive Officer to affix the Common Seal of the Shire of Ashburton to the [insert document name/type] and execute all documentation as required.”

The affixing 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.

Documents requiring the Common Seal

The Common Seal is to be affixed to documents as set out in Appendix 1 – Part A.

Authority to sign documents on behalf of the Shire

Where there is no legal requirement for the Common Seal to be affixed 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:

- Where the authorised employee 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
- The other party has reasonably requested the document be executed by way of Common Seal.

Procedures for the use of the Common Seal

The CEO is responsible for the security and proper use of the Common Seal.

The CEO is to make appropriate arrangements for:

- keeping the Common Seal in a safe and secure location, and
- the appointment of a person who is to have custody of the Common Seal.

Common Seal Register

Each use of the Common Seal must be entered in the Common Seal Register. Entries in the register are to indicate the:

- date the Common Seal was affixed,
- date and resolution number which Council resolved to enter into the contract/agreement and authorised the execution of the document,
- parties to the document executed,
- document details,
- people who attested to the Common Seal being affixed.

Common Seal execution format

The format of the affixing of the Common Seal to a document shall be as set out in Appendix 2.

Definitions

Nil

Relevant policies/documents

Nil

Relevant legislation/local laws

Local Government Act 1995

Section 9.49A Execution of documents

Section 9.49B Contract formalities

Section 9.49 Documents, how authenticated

Office use only				
Relevant delegations	Nil			
Council adoption	Date	11 October 2022	Resolution #	139/2022
Reviewed/modified	Date		Resolution #	
	Date		Resolution #	
	Date		Resolution #	
Next review due	2024			

Appendix 1

Part A – Documents where the Common Seal is/or may be required

1. New, revised or amendments to Town Planning Schemes
2. Commonwealth or State government documents requiring the seal
3. Documents of a ceremonial nature such as Sister City agreements
4. New, revised or amendments to local laws.

Part B – Documents that can be executed under Council authorisation

1. Restrictive Covenants under section 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. Lodgement, modification, and withdrawal of Caveats
4. Management Statements and withdrawal or modification of Management Statements
5. Lodgement, modification, and withdrawal of Memorial
6. General legal and service agreements
7. Leases where Council has previously resolved to enter or have been approved under delegation, including renewals, extensions, subleases, assignments, terminations or variations of leases, including leases and formal notices for employee 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 CEO 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 resolution, which are not of a political nature
19. Rights of Carriageway agreements and withdrawal or modification of Rights of Carriageway agreements.

Appendix 2

Dated: [insert date]

[Common Seal affixed here]

The Common Seal of the Shire of Ashburton was affixed, by authority of a resolution of Council, in the presence of:

[signature here]

[insert name], PRESIDENT

[signature here]

[insert name], CHIEF EXECUTIVE OFFICER