

POL 0036: Execution of Documents and Common Seal Usage

Purpose

To establish, in accordance with the requirements of section 9.49A of the *Local Government Act 1995*:

1. Protocols for affixing and administration of the Shire of Esperance's common seal; and
2. Authority for the Chief Executive Officer, another employee or agent to execute documents on behalf of the Shire.

Scope

This Policy outlines the terms of use for the Shire of Esperance Common Seal.

Definitions

Common Seal: a stamped imprint of a company's legal name. It is affixed on agreements and documents that act as evidence that an agreement, contract or document was executed by its authorised agents or officers on behalf of the company.

Authorised Officer: an authorised officer within the Shire of Esperance are determined by Appendix A in this Policy and include:

- a. Chief Executive Officer;
- b. Shire President; and
- c. Director

Practice

A document is considered to have been duly executed when signed in the following ways:

1. By affixing the common seal; or
2. By the Chief Executive Officer, another employee or agent of the local government who has been authorised by resolution of the Council to sign documents on behalf of the local government.

If any of the following specify a particular way that a document is to be executed, it will take precedence over this Policy.

1. Legislation;
2. The formal requirements of a commonwealth or state department, authority or agency (as described in a policy or procedure); or
3. A Council decision.

Affixing Common Seal

The common seal is not to be affixed unless authorised by Council and may only be affixed in the presence of the Shire President and Chief Executive Officer, each of whom is to sign the document to attest that the common seal was so affixed.

In the absence of the Shire President and/or the Chief Executive Officer, the Deputy Shire President and Acting Chief Executive Officer are authorised to affix the common seal.

Council authorisation may be in the form of a specific Council resolution or as detailed within this policy.

Common Seal Register

Details of all instances where the common seal has been affixed will be recorded in a signed register and on an electronic register, which shall be available for inspection by Councillors during normal office hours.

The common seal register will be presented to Council twice yearly to be reviewed.

Execution by Authorised Officers

Officers identified in Appendix A of this Policy are authorised for the purposes of section 9.49A of the *Local Government Act 1995* to sign those documents on behalf of the Shire of Esperance.

Officers are restricted to executing documents, in accordance with this Policy, that are directly related to their area of responsibility.

In the absence of an authorised officer, another officer may only execute the document where they have been appointed to act in the authorised officer's position.

It is the responsibility of the authorised officer to ensure they fully understand what they are executing on behalf of the Council and to assess the document to ensure it is appropriate for signing. Any queries must be addressed before this process is completed.

Documents and communications which relate to day-to-day routine communications or transactions do not require specific authorisation through this policy as they are the subject of Section 5.41(d) of the Act prescribing the Chief Executive Officer's duty to manage the day to day operations of the Shire of Esperance. Such duties are undertaken by "acting through" officers.

Appendix A – Authorised Signatories in Accordance with s.9.49A of the *Local Government Act 1995*

Document Type (✓) Common Seal <u>only</u> to be applied where specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Other Officer
(1) Local Laws – made and amended	✓	x	x	x	x
(2) Planning Schemes – adopted and amended	✓	x	x	x	x
(3) Land Transaction documents , including: <ul style="list-style-type: none"> • sale; <p>Note: a Council resolution is required for sale of Council real estate expressly stating that the final document is signed and sealed and the transaction finalised.</p> <ul style="list-style-type: none"> • purchase; • vesting; • contributed assets; • Notifications of factors affecting land under 70A of the <i>Land Transfer Act 1893</i> – lodge or withdraw • Easements – <u>by land transfer</u> <ul style="list-style-type: none"> ○ Rights of carriage way; ○ Rights of support to land burdened by buildings; ○ Rights to erect a party wall; ○ Rights to light and air (Property Law Act 1969); ○ Rights to take water from wells or bores; ○ Rights to install and operate drains and drainage works; ○ Rights to install, maintain and operate oil, gas or other pipelines; ○ Rights to install, maintain and operate electric power lines, telephone and other cables and supporting pylons. • Restrictive Covenants – by land transfer • Deeds – land transfer for public purposes 	✓				
	✓	x	✓	x	x

Document Type (✓) Common Seal <u>only</u> to be applied where specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Other Officer
(4) Mortgages, Loans and Debentures	✓	x	x	x	x
(5) Power of Attorney to act for the Shire Note: requires both Shire President and Chief Executive Officer signature	x	✓	✓	x	x
(6) Land Transaction documents , including: <ul style="list-style-type: none"> • Caveats - registering or removing • Leases/Licences • Easements – <u>by deed, deposited plan or other legal instrument</u> <ul style="list-style-type: none"> ○ Rights of carriage way; ○ Rights of support to land burdened by buildings; ○ Rights to erect a party wall; ○ Rights to light and air (Property Law Act 1969); ○ Rights to take water from wells or bores; ○ Rights to install and operate drains and drainage works; ○ Rights to install, maintain and operate oil, gas or other pipelines; and ○ Rights to install, maintain and operate electric power lines, telephone and other cables and supporting pylons. • Restrictive Covenants – lodge, modify or withdraw (other than by land transfer) • Deeds • Legal agreements 	(✓)	x	✓	x	x
(7) State or Commonwealth Government Funding Agreements Note: subject to relevant delegated authority, any of the identified authorised officers can execute	(✓)	x	✓	✓	x

Document Type (✓) Common Seal <u>only</u> to be applied where specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Other Officer
(8) Grants and Funding Agreements with private agencies (incoming and outgoing) Note: subject to relevant delegated authority, any of the identified authorised officers can execute	(✓)	x	✓	✓	✓
(9) Memorandum of Understanding	(✓)	x	✓	✓	x
(10) Contracts and legal instruments , including contract variations, related to: <ul style="list-style-type: none"> • Procurement Contracts* • Goods and/or Service Agreements (incoming or outgoing services)* • Heritage Agreements • Acquittal of planning conditions • Maintenance of the public realm *Limit: documents that arise from the exercise of purchasing authority delegated from/authorised by the Chief Executive Officer to the role	(✓)	x	✓	✓	Managers
(11) Development, subdivision and strata-title approvals for Shire Land	x	x	✓	✓	x
(12) Memorial <ul style="list-style-type: none"> • <u>Deed Poll Registration</u>: A document lodged under the Registration of Deeds Act 1856, notifying the change of name of a person. • <u>Memorial of Advertisement</u>: A document lodged at the Office of Titles by a Local Authority evidencing that the legal requirements necessary to sell land for the non-payment of rates, have been attended to. • <u>Prohibiting dealings in land</u>: A document lodged at the Office of Titles under one of a number of statutes, which 	x	x	✓	✓	x

Document Type (✓) Common Seal <u>only</u> to be applied where specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Other Officer
<i>when noted on a Certificate of Title acts as a caveat.</i>					
(13) Documents that fulfil a statutory local government duty or power , for which there is no power of delegation or authorisation and is a matter which constitutes a potential risk to the Shire.	x	x	✓	✓	x
(14) Communications on behalf of the Shire, with: <ul style="list-style-type: none"> Commonwealth or State Ministers Political or government leaders 	x	✓	✓	x	x
(15) Communications on behalf of the Shire, with CEO's of: <ul style="list-style-type: none"> Commonwealth or State Government Departments Industry representative bodies 	x	x	✓	✓	x
					<i>Note: Officers are authorised to sign routine day to day operational communications where the recipient is of a similar organisational level as the Shire Officer.</i>
(16) Communications on behalf of the Shire, relevant to the day-to-day operations of the Shire and which are subject of a level of political sensitivity or potential risk to the Shire.	x	x	✓	✓	Marketing & Communications
(17) Ceremonial Certificates - Common Seal may be affixed at the Shire President's discretion: <ul style="list-style-type: none"> Honorary Freeman Honorary Citizenship 	✓	✓	✓	x	x
(18) Deeds of Settlement – Employee matters	x	x	✓	x	x
(19) Enterprise Bargaining Agreements	x	x	✓	x	x

Document Type (✓) Common Seal <u>only</u> to be applied where specified in the relevant document.	Common Seal	EXECUTION BY SIGNATURE ONLY			
		Shire President	CEO	Director	Other Officer
(20) Documents where Shire of Esperance is required to sign as landowner	x	x	✓	x	x
(21) Prosecution notices and court documents Note: subject to relevant delegated authority, any of the identified authorised officers can execute	x	x	✓	✓	✓
(22) Lease/Licence documentation limited to; <ul style="list-style-type: none"> • Residential tenancy leases for employee housing • Disclosure Statements • Notices • Property Condition Reports 	x	x	✓	✓	Governance & Corporate Support
(23) Issuance of Section 30 and 40 certificates (statements of compliance) under the <i>Liquor Control Act 1988</i>	x	x	✓	✓	Development Services
(24) Facility Agreements, including variations	x	x	✓	✓	Manager Recreation & Culture, Coordinator Sport & Recreation

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Document Information

Responsible Position	Executive Assistant
Risk Rating	Medium

Referencing Documents

- *Local Government Act 1995*

Revision History

Date	Version	CM Reference	Reason for Change	Resolution #	Next Review
Sept 2003	1		New policy	O090-0697	Sept 2005
Sept 2007	2	D12/22			Sept 2009
Jul 2015	3		Change of wording to include Deputy President & Acting CEO	O0715-014	Jul 2017
Mar 2018	4	D16/29002	Addition of the wording 'and on an electronic register,' to recognise the digital version that is maintained Minor grammar changes	O0318-073	Mar 2020
Nov 2019	5	D16/29002[v2]	Change responsible officer, include register to be received by Council twice yearly.	O1119-248	Nov 2021
Feb 2022	6	D16/29002[v3]	Amend title of policy and rewrite to include document signing authority along with Common Seal usage.	O0222-033	Feb 2024
Jan 2024	7	D16/29002[v4]	Include scope and definitions, minor wording changes, include disclosure statements, notices and property condition reports to item 22 and add item 23 to table.	O0124-004	Jan 2026
Sept 2024	8	D16/29002[v5]	Update signing authority table to include Managers into (10) and include authority for facility agreements as (24) .	O0924-037	Sept 2026