



COUNCIL POLICY Administration

1.2.15

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| Title: | 1.2.15 USE OF COMMON SEAL POLICY |
| Adopted: | 14 December 2022 |
| Reviewed: | Biennially (NEW 14 December 2022) |
| Associated Legislation: | Local Government Act 1995 |
| Associated Documents: | Shire of Mingenew Standing Orders Local Law 2017 |
| Review Responsibility: | Governance & Community Manager |
| Delegation: | |

Previous Policy Number/s -

Objective:

The objective of this Policy is to establish, in accordance with the requirements of Part 9, Division 3 of the *Local Government Act 1995* (the Act), protocols and procedures for the execution of documents and the affixing and administration of the Shire of Mingenew's Common Seal.

Scope

This Policy applies to all officers preparing documents for execution and/or who have been authorised to execute documents on behalf of the Shire.

Documents and correspondence which relate to day-to-day routine communications or transactions (Category 3 documents) do not require specific authorisation through Council, as they are the subject of Section 5.41(d) of the Act, which provides that it is the CEO's duty to manage the day-to-day operations of the Shire. Such duties are undertaken by officers "acting through" another person, in accordance with section 5.45 of the Act.

Policy Statement:

This Policy covers four categories of documents as outlined below and is supported by clause 18.1 of the *Shire of Mingenew Standing Orders Local Law 2017*, and any Authorisations made in regard to the Execution of Documents.

The Shire of Mingenew authorises the Shire President and the Chief Executive Officer to sign and affix the Common Seal to documents using the execution clauses shown on page 4 of this policy.

Category 1(A) Documents

Category 1(A) documents require a specific resolution of Council to enter into an agreement as well as an authority to affix the seal. In accordance with s9.49A(2), these documents will be executed by having the common seal affixed under the specific authorisation of Council in the presence of, and attested by, the Shire President (or in their absence the Deputy Shire President) and CEO. Pursuant to s9.49A(3)(b) of the Act, the Shire President and a senior employee (if authorised by the CEO) can also affix and attest the common seal.

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

- Deeds of Agreement and Release in respect to sale or purchase relating to Shire land including equitable interests;
- Town Planning Schemes and Scheme Amendments;



- Local Laws;
- Documents of a ceremonial nature;
- Land transactions, including but not limited to sale, assignments, consent to mortgage, surrenders, transfers and memorials as resolved by Council (this does not include Category 2 land transactions i.e. disposal via leasing or licencing of land or properties and execution of Landgate documents);
- Licensing contracts where the Shire is the Licensor; and
- Documents specified by resolution of Council to be executed by the Common Seal.

Category 1(B) Documents

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 the document may not require a Council resolution (being a Category 1(B) document) however, the decision to undertake a particular course of action may still require Council approval.

The following list of documents are Category 1(B) documents:

- Agreements relating to grant funding when the funder requires that the agreement be signed under seal;
- Debenture documents for loans which Council has resolved to raise;
- General Legal and Service Agreements not already listed in this policy; and
- Any document stating that the Common Seal of the Shire of Mingenew is to be affixed provided it is not a Category 1(A) document.

In accordance with s9.49A(2), the attachment of the Common Seal requires attesting by both the Shire President (or in their absence the Deputy Shire President) and the Chief Executive Officer (or the person acting in that position). Section 9.49A(3)(b) of the Act, provides that the Shire President and a senior employee (if authorised by the CEO) can also affix and attest the common seal.

Category 2 Documents

Category 2 documents do not require the Common Seal to be affixed.

The execution of a document must not be inconsistent with a Council Policy or resolution.

Documents may only be executed where the funds are available and allocated for the proposed purpose in the approved budget.

The following are examples of Category 2 documents:

- Documents and/or deeds required in the management of land as a landowner or where land is a Reserve vested to the Shire of Mingenew;
- Documents required to enact a decision of Council or the Development Assessment Panel (e.g. contractual documents resulting from a tender process or a memoranda of understanding);
- Documents required to enact a decision made under delegated authority or as a condition or approval given under delegated authority;



- Legally binding contracts (other than tenders) that are required to engage services or purchase products when these documents are inconsistent with the Shire's purchasing and procurement terms and conditions;
- Contracts for incoming grant funding
- Other legally binding contracts outside of the normal course of business (e.g. confidentiality, indemnity, licensing, novation and sponsorship agreements); and
- Documents and/or deeds related to leases and licences of Shire land and properties. This category includes any arrangements relating to the disposal of property via a lease or licence (but not sale), and includes but is not limited to:
 - agreement to lease or licence;
 - variation of lease or licence;
 - assignment of lease or licence;
 - subleases; and
 - surrender of lease or licence.
- The following Landgate documents and/or deeds including lodgement, removal, withdrawal, surrender, cancel or modification:
 - Notifications in accordance with Section 70A of the Transfer of Land Act 1893; Covenants, easements and caveats under the Transfer of Land Act 1893
 - Reciprocal easements and/or parking agreements
 - Rights of carriageway agreements
 - Amalgamations
 - Easements or deeds of easement under the Land Administration Act 1997 and/or Strata Titles Act 1985.

Category 3 Documents

Category 3 documents are documents that are created in the normal course of business to discharge the duties of an Officer's position in a manner consistent with Shire policies and procedures.

Category 3 documents are to be executed by the CEO, a Manager, or a Shire officer, where the authority and accountability has been extended through an authorisation, policy, procedure, or a position description. It is therefore important to have a good knowledge of the documents that relate to the team that is responsible for the document.

These documents include but are not limited to the following:

- Agreements in the normal course of business for the purchase of goods or services identified within the business unit's budget (other than for tenders) and conforming to the requirements of the Shire's Purchasing Policy and other relevant policies (e.g. Contracts for outgoing grant funding);
- General correspondence required to discharge the duties of your position;
- Grant applications;
- Documents to authorise funding allocations for community groups; and
- Regular hire arrangements.

Common Seal Register

1. The Chief Executive Officer shall maintain a register of all documents executed with the Common Seal;



2. The register is to record each Common Seal transaction and include the date, the nature of the document and the parties to the document being executed.

Execution Clauses

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

THE COMMON SEAL of)
SHIRE OF MINGENEW)
(ABN 41 454 990 790))
in accordance with the provisions of the)
Local Government Act 1995 (WA))
in the presence of)

Date
by:

Signature of President

Print name of President

Signature of Chief Executive Officer

Print name of Chief Executive Officer