CITY OF Fremantle

Council Policy

Execution of Documents

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Execution of Documents

Policy scope

This policy provides guidance on the appropriate method of execution (including approval and signing) for the City's documents and ensures that the City's common seal is applied and documents executed in accordance with the provisions of the *Local Government Act 1995* (the Act).

This policy applies to all City of Fremantle officers who have been authorised through the provisions of this policy to execute documents on behalf of Council.

Policy statement

A Council resolution or a decision under delegated authority is required to approve a particular course of action prior to the execution of any document/s relating to that course of action.

The following take precedent over this Policy, in the order listed below:

1. Legislation;
2. The formal requirements of a Commonwealth or State department, authority or agency;
3. A Council decision expressly specifying a particular way in which a document is to be executed.

1. Use of the Common Seal

According to the Act, s9.49A, a document is duly executed by a local government if the common seal is affixed to it or it is signed by an officer authorised to do so.

Under section 9.49A(3) of the Act, the common seal is to be affixed to a document in the presence of the Mayor and the CEO, each of whom is to sign the document to attest that the common seal was so affixed.

The Chief Executive Officer is to maintain a register of the use of the Common Seal.

Documents that require a common seal are Category 1(A) and 1(B) documents.

2. Document Category

Should ambiguity arise over what category might apply to a document i.e. two categories may have relevance to a document, then the higher category is to take precedence unless the decision has been made under delegated authority in which case it is a Category 2 document and can be executed by the officer exercising the delegated authority.

2.1 Category 1(A) Documents

2.1.1 Category 1(A) documents require a specific resolution of Council to execute as well as an authority to affix the seal.

2.1.2 The following document types are a Category 1(A) document:

a. Deeds, including but not limited to:
   i. Deeds of agreements;
   ii. Deeds of release; and
   iii. Memorandum of understanding,

   In respect to sale, purchase or other commercial dealing relating to City assets including equitable interests.
b. Local Planning Schemes and scheme amendments
c. Lease documents, including but not limited to:
   i. Extension of lease under original lease and new term not previously provided;
   ii. Variation of lease;
   iii. Assignment of lease; and
   iv. Surrender of lease,

   except for any of the above that are grant under delegated authority.
d. License documents
e. Local laws
f. Documents prepared for registration at Landgate that are mortgage documents and transfer of land forms where the value of the land exceeds the amount determined by the City of Fremantle for the purpose of section 5.43 (d) of the Act.

2.2 **Category 1(B) Documents**

2.2.1 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.

2.2.2 Category 1(B) 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.

2.2.3 The following document types are a Category 1(B) document:

a. Agreements relating to grant funding, when the funder requires that the agreement be signed under seal
b. Debenture documents for loans which Council has resolved to raise
c. Extension of Lease under original lease clause or provision
d. Sub Lease of a portion of the premises by the Lessee
e. Minor Variation of Lease provided it does not alter the substantive terms of the Lease approved by Council (for example, changes a process within the lease)
f. General Legal and Service Agreements not already listed in this policy
g. Indemnity given by the City to a third party
h. A ceremonial document, which does not create additional financial or other obligations on the City.

2.3 Category 2 Documents

2.3.1 Category 2 documents do not require the seal to be affixed.

2.3.2 Under section 9.49(A)(4) Council hereby authorises the Chief Executive Officer, the responsible Director, or Delegated Officer to sign documents list below on behalf of the City of Fremantle:

a. Documents required in the management of land as a landowner
b. Documents required to enact a decision of Council (i.e. contractual documents resulting from a tender process, transfer of lands forms, notification on title as required by a condition of approval, memorandum of understanding, adoption of a new Structure Plan etc.)
c. Documents that enact a decision made under delegated authority or as a condition of approval given under delegated authority.

2.4 Category 3 Documents

2.4.1 Category 3 documents do not require the seal to be affixed.

2.4.2 Category 3 documents are those documents that are created in the normal course of business and are consistent with City policies and procedures.

2.4.3 Category 3 documents are to be executed by the Chief Executive Office, Director, Manager, or a City officer where the authority and accountability has been extended through a policy or procedure.

2.4.4 The following document types are a Category 3 document:

a. Agreements in the normal course of business for the purchase of goods or services identified within the service unit's budget (other than for tenders awarded by Council) and conforming to the requirements of the City's Purchasing Policy and other relevant policies
b. Debenture documents for loans which Council has resolved to raise
c. General correspondence required to discharge the duties of your position
d. Agreements to receive sponsorship
e. Contracts for grant funding conducted in accordance with the City's policies and procedures
f. Regular hire arrangements

3. Execution of Document

3.1 Electronic signatures may be used to execute documents where the method of execution does not require the affixing of the City's Common Seal and where the officer signing is authorised under a Council resolution or delegation.

3.2 Documents requiring the Common Seal must be executed in hard copy in the presence of the Mayor and CEO as required under s.9.49A of the *Local Government Act 1995.*

Definitions and abbreviations

Document means any paper or electronic document, including communications such as letters and emails, which convey a decision, establish an obligation of the City, or is ceremonial.

Execution of a document means applying the City of Fremantle's Common Seal in accordance with the Act, or having an authorised officer sign the document so that it becomes legally binding on the City.

Responsibility and review information	
Responsible officer:	Manager Governance
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