

## EXECUTION OF DOCUMENTS COUNCIL POLICY

### POLICY STATEMENT

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To ensure the City's common seal is correctly utilised and documents executed in accordance with the provisions of the *Local Government Act 1995* and in a consistent and transparent manner.

### POLICY SCOPE

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This Policy applies to all City of Bunbury Officers who have been authorised through the provisions of this policy to execute documents on behalf of Council and the City of Bunbury.

According to section 9.49A(1) of the *Local Government Act 1995* (the Act) 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.

Part 21 of the City of Bunbury Standing Orders Local Law 2012, provides for the execution and procedure of the Common Seal.

Pursuant to s.9.49A(4) of the Act the local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.

In the case of:

- (a) Legislation;
- (b) The formal requirements of a Commonwealth or State department, authority or agency (as described in a Policy or procedure); or
- (c) A Council decision;

expressly specifying a particular way in which a document is to be executed, that course of action is to take precedence over this Policy.

If it is unclear what category a document is, then the higher category is to take precedence.

If any documents are considered high risk and/or significant in nature having for example a political, historical/customary, controversial or financial impact on the City, the CEO or a Director can determine how such documents are to be executed.

### POLICY DETAILS

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#### **1(A) Category 1(A) Documents**

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

These documents will be executed by having the common seal affixed under the authorisation of Council with the affixing of the seal in the presence of and being attested to by the Mayor and CEO or pursuant to s9.49A(3)(b) of the Act, the Mayor and a senior employee authorised by the CEO to do so.

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

- (a) Deeds of Agreement and Release in respect to sale, purchase or other commercial dealing relating to City assets including equitable interests;
- (b) Local Planning Schemes and Amendments;
- (c) Landgate Transfer of Land forms;
- (d) Lease documents. This category includes, but is not limited to:
  - Variation of Lease;
  - Assignment of Lease; and
  - Surrender of Lease;
  - Extension of Lease;

except where granted under delegated authority;

- (a) Local Laws; and
- (b) Licence documents.

### **1(B) 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 is a list of Category 1(B) documents:

- (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) General Legal and Service Agreements not already listed in this policy; and
- (d) Extension of Lease/Licence under original lease clause or provision;
- (e) Sub Lease/Licence of a portion of the premises by the Lessee;
- (f) Minor Variation of Lease/Licence provided it does not alter the substantive terms of the Lease approved by Council (for example, changes a process within the lease).
- (g) Surrender of Lease/Licence

These documents will be executed by having the common seal affixed under the authorisation of Council (this Policy) with the affixing of the seal in the presence of and being attested to by the Mayor and CEO, CEO where delegated authority, or pursuant to s9.49A(3)(b) of the Act, the Mayor and a senior employee authorised by the CEO to do so (the Director where the document is related to their area of responsibility).

## 2 Category 2 Documents

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

Under section 9.49A(4) Council authorises the Officers listed in the Table below to sign documents on behalf of the City of Bunbury. Directors only have authority where the documents are related to their area of responsibility.

Description	Authority to execute	Typical documents include, but are not limited to:
Offer and Acceptance forms and associated documents required to enact a decision of Council to purchase or sell land. This does not include mortgage and Transfer of Land document which are Landgate forms listed as Category 1 documents.	CEO	<ul style="list-style-type: none"> <li>• standard REIWA terms</li> <li>• Special conditions of offer;</li> <li>• Contracts of sale, etc.</li> </ul>
General deeds, legal and service agreements	CEO; The Responsible Director;	<ul style="list-style-type: none"> <li>• settlement and/or releases;</li> <li>• confidentiality and non-disclosure;</li> <li>• sponsorship;</li> <li>• grant funding;</li> <li>• deferral of developer contributions;</li> <li>• bonding arrangements;</li> <li>• memorandums of understanding etc</li> </ul>
Leases, licences and access agreements associated documents,	CEO; the Responsible Director; the City officer delegated authority by the CEO;	<ul style="list-style-type: none"> <li>• any notices required to be given under a lease, etc.</li> </ul>
Documents required in the management of land as a land owner	CEO; Director of Planning and Development Services; Director of Infrastructure	<ul style="list-style-type: none"> <li>• subdivision applications;</li> <li>• development applications,</li> <li>• building applications</li> <li>• agreement for access and</li> </ul>

Description	Authority to execute	Typical documents include, but are not limited to:
		indemnity <ul style="list-style-type: none"> <li>• works agreement, etc</li> <li>• native vegetation clearing permit applications</li> </ul>
Documents required to enact a decision of Council or the Development Assessment Panel	CEO; The responsible Director	<ul style="list-style-type: none"> <li>• Contractual documents resulting from a tender process</li> <li>• Transfer of land forms</li> <li>• Notification on title as required by a condition of approval, etc</li> </ul>
Documents required to enact a decision made under delegated authority or as a condition of approval given under delegated authority.	CEO; The responsible director; The City officer exercising the delegated authority	<ul style="list-style-type: none"> <li>• Planning Approvals</li> <li>• Building Approvals, etc</li> </ul>
Other statements of intent and terms and conditions	CEO; the Responsible Director or Manager	<ul style="list-style-type: none"> <li>• Letters of employment for casual employees</li> <li>• hire agreements for city facilities;</li> <li>• Higher duties for positions up to and including team leader/supervisor, etc</li> </ul>

### 3 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 City policies corporate guidelines or procedures. Category 3 documents are to be executed by the CEO, a Director or Manager, or a City officer where the authority and accountability has been extended through an authorisation, policy, corporate guideline or a position description. It is therefore important to have a good knowledge of the documents that relate to the team which is responsible for the document.

These documents include, but are not limited, to the following:

- (a) Letters, correspondence and other documents that reflect an operational or procedural action required in the ordinary course of business;
- (b) Agreements for the purchase of goods or services identified within the department's budget (other than for tenders) and conforming to the requirements of the City's Purchasing Policy and other relevant policies.
- (c) when a responsible officer has a specific role such as applying for and organising receipt of grants, and which requires him/her to sign documents relevant to the grant; and
- (d) When a responsible officer is authorised by relevant laws or is delegated authority by Council to issue notices and infringements.

The above list is not intended to be exhaustive, but rather give context to the typical nature of a category 3 document.

#### General:

The responsible officer is required to assess the document to ensure it is appropriate for signing.

The CEO may nominate a Director to sign documents of their behalf for a specific period of time should the CEO be away from the office on City business.

All documents which provided to the CEO for execution should be accompanied by a completed "request for signature/approval" form.

## COMPLIANCE REQUIREMENTS

### LEGISLATION

- *Local Government Act 1995, s.2.7(2)(b), s.9.49A*

### INDUSTRY

### ORGANISATIONAL

- *Request for Signature/Approval Form*
- *City of Bunbury Style Guide*

Document Control					
<b>Document Responsibilities:</b>					
<b>Owner:</b>	Chief Executive Officer	<b>Owner Business Unit:</b>	Manager Governance		
<b>Reviewer:</b>	Manager Governance	<b>Decision Maker:</b>	Council		
<b>Document Management:</b>					
<b>Adoption Details</b>	<b>Res 184/18 26 June 2018</b>	<b>Review Frequency:</b>	biennial	<b>Next Due:</b>	2023
<b>Review Version</b>	<b>Decision Reference:</b>	<b>Synopsis:</b>			
DOC/441861[v3]	Council Decision 177/21 31 August 2021	Amended with the inclusion of Director Infrastructure for Category 2 documents			
DOC/441861[v2]	Council Decision 255/19 17/09/19	Amended with minor administrative changes			
<b>Date Printed</b>	3-Sep-21				