

GOVERNANCE POLICIES

Execution of Documents & Use of the Common Seal



Policy Number:	G21
Relevant Delegation:	Not Applicable
Adoption Details:	22 February 2016
Last Review Details:	25 November 2019

POLICY OBJECTIVE:

To ensure the Shire of York's documents are executed and the Common Seal is used in a consistent and transparent manner.

POLICY SCOPE:

This policy applies to all situations requiring execution of Council documents and application of the Common Seal of the Shire of York.

POLICY STATEMENT:

INTRODUCTION

Section 9.49A Local Government Act 1995 sets out the requirements in relation to the execution of documents and the affixing of the Common Seal to render certain documents official documents of the Shire of York. It is not essential to formally execute all Council documents, but certain documents require to be formally executed in this way. It is the decision of the Council as to which documents should be formally executed. As a minimum normal practice is to require execution of deeds of agreement, leases, land sales and certain contracts. This policy specifies which documents are to be formally executed.

PRINCIPLES

- (a) All relevant documents are properly executed according to the requirements of Section 9.49A of the Local Government Act 1995.

PROVISIONS

1. GENERAL

Where legislation, the formal requirements of a Commonwealth or State Department authority or agency, or a Council decision, expressly specify a particular way a document is to be executed, that course of action is to take precedence over this policy.

2. Category 1 Documents

Category 1 documents require a specific resolution of Council to sell, lease or enter into an agreement, as well as authority to affix the seal.

2.1 The following list are Category 1 documents:

- (a) Deeds of Agreement and Release in respect of the sale, purchase or other commercial dealing relating to the Shire's assets, including equitable assets.
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(b) Local Planning Schemes and Amendments.

(c) Lease documents:

(i) variation of lease.

(ii) assignment of lease.

(iii) surrender of a lease.

(d) Local Laws.

2.2 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 President and the CEO or pursuant to s9.49A (3) (b) of the Local Government Act, the President and a senior employee authorised by the CEO to do so.

3. Category 2 Documents

3.1 The following list of documents are Category 2 documents:

(a) Agreements relating to grant funding, when the funder requires that the agreement be signed under the seal.

(b) Debenture documents for loans which the Council has resolved to raise.

(c) General and legal service agreements not already listed in this policy.

(d) Extension of lease under original lease clause or provision.

3.2 Category 2 documents are those of a general form or category which may be subject to time constraints for execution. These documents are to be sealed as part of a 'class of documents' authorised to be executed under Common Seal without a specific Council resolution to affix the seal.

Note: the document may not require a Council resolution to affix the seal but the decision to undertake a particular course of action may still require Council approval.

4. Category 3 Documents

4.1 Category 3 documents do not require the Common Seal to be affixed.

4.2 Under Section 9.49A (4) the Council authorises the following to sign documents on behalf of the Shire of York.

Description	Authority to Execute
(a) Documents required in the management of land as a landowner.	Chief Executive Officer
(b) Documents required to enact a decision of Council or the Development Assessment Panel (i.e. contractual documents resulting from a tender process, transfer of land forms, notification on title as required by a condition of approval, memorandum of understanding etc.).	Chief Executive Officer
(c) Agreements relating to grant funding when the funder does not require the agreement to be signed under seal.	Chief Executive Officer

(d) Documents required to enact a decision under delegated authority or as a condition of approval given under delegated authority.	Chief Executive Officer The Responsible Executive Manager The officer exercising the delegated authority
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5. Category 4 Documents

5.1 Category 4 documents are created in the normal course of business and are consistent with the Shire’s policies and procedures. Category 4 documents are to be executed by a Shire officer where the authority has been extended through a policy or procedure.

PENALTIES:

Not applicable.

KEY TERMS/DEFINITIONS:

Not applicable.

Responsible Officer: Executive Manager Corporate & Community Services

Contact Officer: Executive Manager Corporate & Community Services

Relevant Legislation: Not applicable

Review History:

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Adopted - 22 February 2016	
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