

# Council Policy

## Execution of Documents



Legislation/local law requirements	Section 9.49A of the <i>Local Government Act 1995</i>
Relevant Delegation	see City of Kwinana Delegated Authority Register
Related policy procedures and documents	Appendix A – Execution Compliance Checklist (Category 1 and Category 2) Delegated Authority Register as detailed in Attain

## Introduction

This policy explains how documents are executed on behalf of the City of Kwinana (City), including when the common seal is used and who may sign documents. Efficient and consistent document execution supports good governance, timely service delivery and transparency.

This policy supports compliance with section 9.49A of the *Local Government Act 1995* and sets out the City’s internal authorisations for signing and sealing.

## Purpose

The purpose of this policy is to ensure the City’s documents are executed in a lawful, consistent and transparent way, including where the common seal is required.

## Objective

To ensure documents are executed only after an appropriate decision has been made (Council resolution, delegated authority, or other authorised mechanism) and are executed in accordance with the *Local Government Act 1995*.

## Scope

This policy applies to the Mayor, Chief Executive Officer (CEO) and employees of the City involved in preparing, approving, signing, witnessing or sealing documents.

## Policy Provisions

### Definitions

**Act** means the *Local Government Act 1995*

**Execute/execution** means completing the formal signing and/or sealing steps that make a document duly executed on behalf of the City.

**Common Seal** means the City's common seal used to execute documents under section 9.49A(1)(a)-(3) of the Act.

**Authorised person** means a person authorised by Council under section 9.49A(4) of the Act to sign documents on behalf of the City (either generally or subject to conditions/restrictions).

**Normal course of business** means routine operational activities of the City that are;

- Provided for within an approved budget;
- Consistent with Council adopted policies; and
- Expressly permitted under an applicable delegation

### Policy

Pursuant to section 9.49A of the Act, a document is duly executed by a City if either:

- the common seal is affixed to it to the document in accordance with section 9.49A(2) and (3), or
- the document is signed on behalf of the City by an officer authorised by Council under section 9.49A(4).

Executing (signing or sealing) a document is an administrative step. A document must only be executed after the City has authority to do so (for example, following a Council resolution, via the exercise of delegated authority, or as authorised by law or an applicable Council policy).

If there is any inconsistency, the following will take precedent over this Policy:

- any legislation;
- formal requirements of a Commonwealth or State department, authority, or agency; or
- Council decision.

An employee must not execute a document on behalf of the City if they have a financial or proximity interest in the matter, or a conflict of interest. In such cases, the document must be executed by another authorised officer or the CEO/Mayor.

In accordance with the *Electronic Transactions Act 2011*, Category 2 document may be validly executed using an electronic signature. However, the following documents must not be executed electronically:

- Documents requiring the common seal (Category 1 documents);
- Deeds; and
- Any document where a traditional "wet-ink" signature is required by law, a government agency (e.g., Landgate), or a financial institution.

The authority to execute a document under this policy does not override, extend, or replace an officer's financial authorisation limits as set out in the City's Purchasing Policy.

## 1. Execution of Documents

Council authorises the execution of documents on behalf of the City as follows:

<b>Category 1 Document – Common Seal</b>	
<p><b>Category 1(A): Documents requiring the common seal and a specific Council resolution</b></p> <p>Category 1A documents require a specific resolution of Council. These documents are executed by <b>affixing the common seal</b>, under the authorisation of Council, in accordance with section 9.49A(3) of the <i>Local Government Act 1995</i>.</p> <p>The following is a list of Category 1(A) documents:</p>	
#	Description
1	Local laws.
2	Documents of a ceremonial nature (e.g. sister city agreements).
3	Local Planning Schemes (including any amendments).
4	Mortgages and loan documents.
5	Documents requested to be duly executed by common seal.
<p><b>Category 1(B): Documents requiring the common seal without a specific Council resolution</b></p> <p>Category 1B documents are to be executed by <b>affixing the common seal</b> as part of a class of documents authorised by Council to be executed under the common seal without a specific Council resolution.</p> <p>The following is a list of Category 1(B) documents:</p>	
#	Description
1	General legal and service agreements not already listed in this Policy.
2	Agreements relating to grant funding, when the funder requires that the agreement be signed under seal.

### Category 2 Documents – No Common Seal

Pursuant to section 9.49A(4) of the *Local Government Act 1995*, Council authorises the Chief Executive Officer and officers listed within the table below the authority to execute Category 2 documents on behalf of the City of Kwinana **without affixing the common seal**.

**Note:** the below list excludes any Category 1 documents.

Description	Authority to Execute
Execute legal agreement (including making variations) in accordance with Local Planning Policy (LPP) No 4 – Administration of development contribution plans.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Director City Development and Sustainability</li> </ul>
Where there is no cost to the City, authorised to enter into and make variations in relation to the administration of a Corporate Discount Agreement on behalf of the City.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> </ul>
Documents required to enact a decision of Council.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> </ul>
Documents that enact a decision made under delegated authority or as a condition of approval given under delegated authority. Including planning, building and other development related applications where the City is the applicant.	<ul style="list-style-type: none"> <li>• Chief Executive Officer; or</li> <li>• Directors; or</li> <li>• Officers exercising a valid delegation and acting within the limits of that delegation</li> </ul>
<p>Documents that are created in the normal course of business and are consistent with City's local laws, policies and procedures.</p> <p>These documents <b><i>include but are not limited</i></b> to the following:</p> <ul style="list-style-type: none"> <li>• Agreements in the normal course of business for the purchase or hire of goods or services identified within the service unit's budget and conforming to the requirements of the City's Purchasing Policy and other relevant policies;</li> <li>• General correspondence;</li> <li>• Contracts for grant funding conducted in accordance with the City's policies and procedures;</li> <li>• Regular hire arrangements; and</li> <li>• Agreements associated with conditions of development approval and/or development contribution plans under the City's Local Planning Scheme.</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> <li>• Officers exercising a valid delegated and acting within the limits of that delegation, or where the authority has been extended to that officer through an authorisation, policy, procedure, or a position description</li> </ul>
The appointment of Acting Chief Executive Officer in accordance with the Council policy, Temporary Employment or Appointment of CEO, for periods greater than 7 days but not	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> </ul>

exceeding 6 weeks.	
Lease agreements and variations, assignment, novation or extension of a lease agreement approved by Council.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> </ul>
Lease for Banksia Park Retirement Estate and Callistemon Court Aged Persons Units (includes new lease variations to existing leases and deeds of surrender).	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Director City Life</li> </ul>
Notices issued under the <i>Retirement Villages Act 1992</i> and <i>Residential Tenancies Act 1987</i> for Banksia Park Retirement Estate and Callistemon Court Aged Persons Units.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Director City Life</li> <li>• Manager Community Facilities</li> <li>• Retirement Village Manager</li> <li>•</li> </ul>
Applying for and executing sponsorship and grant agreements where: <ul style="list-style-type: none"> <li>a) the City's contribution component falls within budget;</li> <li>b) it is consistent with a Council resolution to consider a budget allocation in a future budget;</li> <li>c) it relates to a future project that forms part of a forward works</li> <li>d) program;</li> <li>e) such grant or sponsorship is opportunistic in nature, not in current;</li> <li>f) plans but has a clear benefit to the community; or</li> <li>g) complies with relevant council policies</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> </ul>
Memorandums of Understanding (MOU) if they satisfy the following conditions: <ul style="list-style-type: none"> <li>a) there is no additional financial contribution in excess of existing budgets required to give effect to the City's obligations under the MOU; and</li> <li>b) it formalises an existing working relationship between the City and a government agency or department or another local</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> </ul>
Agreements in relation to, hiring promotional street banners, and illuminated street name signs in accordance with relevant council policies.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> </ul>
Agreements with successful applicants of a Local Commercial Support Grant, in accordance with the Local Commercial Support Grant Policy.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> <li>• Manager Economic Development</li> </ul>
The following land transaction documents and any associated agreements or documentation: <ul style="list-style-type: none"> <li>a) Notifications</li> <li>b) Caveats</li> <li>c) Easements</li> <li>d) Restrictive Covenants</li> </ul>	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> <li>• Manager Planning and Development</li> </ul>
Execute legal agreements (including making variations) in accordance with Local Planning Policy (LPP) No 2 – Streetscapes.	<ul style="list-style-type: none"> <li>• Chief Executive Officer</li> <li>• Directors</li> </ul>

Note that in the event an Officer assumes a higher position, they may only authorise documents if they have received full delegations and/or authorisation for that role and are acting comprehensively within the scope of the position.

## 2. Common Seal

The common seal must only be used for City business and in accordance with this policy and section 9.49A of the Act.

In accordance with Section 9.49A(3) of the *Local Government Act 1995*, the common seal must be affixed in the presence of:

- the Mayor (or, if applicable, the Deputy Mayor acting as the Mayor); and
- the Chief Executive Officer (CEO) (or a person acting as CEO).

Each of those persons is to sign the documents to attest that the common seal was affixed in their presence.

A register must be maintained of all documents executed under the common seal (including document description, parties, date of sealing, and where the executed is stored).

### OFFICER USE ONLY

Officers may amend this section without council approval.

Responsible Team	Governance and Legal	
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## Appendix A – Execution Compliance Checklist (Category 1 and Category 2)

### Category 1 – Common Seal

Confirm the document is <b>Category 1A</b> (needs a specific Council resolution) or <b>Category 1B</b> (authorised class).	
Confirm the underlying authority exists; <ul style="list-style-type: none"> <li>• Council resolution number/date (1a); or</li> <li>• Council approval of the class (1B)</li> </ul>	
Confirm the final document matches the approved form (incl. schedules/attachments)	
Arrange with the Executive Assistant to the CEO and Mayor (EA) for the sealing in presence of; <ul style="list-style-type: none"> <li>• Mayor (or Deputy Mayor), and</li> <li>• CEO (or acting CEO)</li> </ul>	
EA to record within the Common Seal Register (description, parties, date, reference number)	
File executed version in records system with supporting authority attached	

### Category 2 – No Common Seal

Confirm the document is <b>NOT Category 1</b> (i.e., does not require sealing)	
Confirm the City has authority; <ul style="list-style-type: none"> <li>• Council resolution; or</li> <li>• Valid delegated authority; or</li> <li>• Other lawful authorisation.</li> </ul>	
Confirm signatory; <ul style="list-style-type: none"> <li>• Is authorised under s 9.49A(4) of the Act; or</li> <li>• Holds a current delegation in accordance with the Delegated Authority Register (where applicable) for the type/value.</li> </ul>	
Check financial thresholds, within budget and consistent with procurement procedures/rules (if relevant).	
Confirm any conditions precedent are met.	
Confirm the document is complete (no blanks), correct entity names, correct execution block, attachments included.	
Ensure execution meets any stricter external formalities required by funder/agency/counterparty.	
Record executed document + supporting authority in records system	