

Execution of Documents

Policy Objective

The objective of this policy is to ensure that the Town's common seal is used appropriately and that documents are executed in a consistent and transparent manner and in accordance with the provisions of the *Local Government Act 1995*.

Policy scope

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

According to the Act, section 9.49A (1a), 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.

Policy Statement

Section 9.49A(1) of the Act, states that a document is duly executed by a local government if –

- (a) The common seal is affixed to it in the presence of –
 - (i) the Mayor or President; and
 - (ii) the Chief Executive Officer (CEO) or a senior employee authorised by the CEO,each of whom must sign the document to attest the common seal was affixed;
or
- (b) it is signed by an Officer authorised to do so.

Pursuant to section 9.49A(4) of the Act, a 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.

The following take precedence over this Policy, in the order listed below –

1. Legislation.
2. The formal requirements of a Commonwealth or State department, authority or agency (as described in a policy or procedure); or
3. A Council decision.

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

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.

Category 1(A) Documents

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

These documents are executed by having the common seal affixed under the authorisation of Council in the presence of and being attested to by the Mayor and CEO. or pursuant to section 9.49A(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 –

1. Deeds, or contracts with respect to sale, purchase or other commercial dealing relating to the Town's assets including equitable interests.
2. Local Planning Schemes and Amendments.
3. Landgate Transfer of Land forms.
4. Lease documents. This category includes, but is not limited to:
 - Extension of Lease under original lease and new term not previously provided.
 - Variation of Lease.
 - Assignment of Lease; and
 - Surrender of Lease,except for any of the above that are granted under delegated authority.
5. Local Laws; and
6. Licence documents, except those licence documents listed in Category 2.

Category 1(B) Documents requiring the common seal but not a specific Council resolution

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 –

1. Agreements relating to grant funding, when the funder requires that the agreement be signed under seal.
2. Debenture documents for loans which Council have resolved to raise.
3. Extension of Lease under original lease clause or provision.
4. Sub-Lease of a portion of the premises by the Lessee.
5. Minor Variation of Lease provided it does not alter the substantive terms of the Lease approved by Council.
6. General Legal and Service Agreements not already listed in this policy.

These documents will be executed by the common seal being 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.

Category 2 Documents (does not require the Common Seal)

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

Under section 9.49(A)(4) Council hereby authorises the Chief Executive Officer to sign documents on behalf of the Town of Bassendean.

Description	Authority to Execute	Documents include, but not limited to –
Authority to Execute Documents required in the management of land as a landowner. This does not include mortgage and Transfer of Land document which are listed in Category 1.	Chief Executive Officer	<ul style="list-style-type: none"> • Subdivision applications • Development applications • Building applications
General deeds, legal and service agreements.	Chief Executive Officer	<ul style="list-style-type: none"> • Settlement and/or releases • Confidentiality and non-disclosure • Sponsorship • Grant funding • Deferral of developer contributions • Memorandum of understanding
Documents required to enact a decision of Council.	Chief Executive Officer	<ul style="list-style-type: none"> • Contractual documents resulting from a tender process • Transfer of lands forms

		<ul style="list-style-type: none"> • Notification on title as required by a condition of approval memorandum of understanding • Adoption of a new Structure Plan
Documents that enact a decision made under delegated authority or as a condition of approval given under delegated authority.	Chief Executive Officer	<ul style="list-style-type: none"> • Planning approvals • Building approvals
Where a condition of approval given under delegated authority has subsequently been met, documents that are required to remove, withdraw or extinguish the earlier document or registration.	Chief Executive Officer	<ul style="list-style-type: none"> • Withdrawal of caveat or a document that removes a restrictive covenant

Category 3 Documents

Category 3 documents are those documents that are created in the normal course of business and are consistent with the Town's policies and procedures. Category 3 documents are to be executed by a Director, Executive Manager or Manager, or a Town officer where the authority and accountability have been extended through a policy or procedure. These documents include but are not limited to the following –

1. 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 awarded by Council) and conforming to the requirements of the Town's Purchasing Policy and other relevant policies.
2. General correspondence required to discharge the duties of the officer's position.
3. Contracts for grant funding conducted in accordance with the Town's policies and procedures.
4. Regular hire arrangements.

Document responsibilities:			
Owner:	Chief Executive Officer	Owner Business Unit:	Office of the Chief Executive Officer
Inception date:	OCM 12/12/21 December 2021	Decision maker:	Council
Review date:	OCM - 24/02/2026 Item – 12.11	Repeal and replace:	N/A
Compliance requirements:			
Legislation	Local Government Act 1995		