



POLICY NO:-
CP1-015 – EXECUTION OF DOCUMENTS & APPLICATION OF THE COMMON SEAL POLICY

GOVERNANCE INFORMATION			
Procedure Link:	N/A	Administrative Policy Link:	

ADMINISTRATION INFORMATION							
History	1	CP1-015	OCM	10/12/24	Res: 9520	Synopsis:	Policy created.
Version:	2						

1. RESPONSIBLE DIRECTORATE

Chief Executive Officer

2. PURPOSE OR OBJECTIVE

To establish, in accordance with the requirements of Division 3 sections 9.49 and 9.49A of the *Local Government Act 1995* (the Act):

- Protocols for affixing and administration of the Shire of Collie Common Seal; and
- Authority for the Chief Executive Officer to execute (sign) documents on behalf of the Shire of Collie.

3. POLICY

3.1 Policy Statement

The attachment of the Common Seal requires the accompanying signatures of both the Shire President, or in their absence the Deputy Shire President, and the Chief Executive Officer or the person acting in that position. In the absence of the requirement to affix a Common Seal, the Chief Executive Officer is empowered under the Local Government Act to authenticate a document. The requirement for the Common Seal to be affixed is therefore a question of balancing good governance with operational efficiencies.

3.2 Guidelines

The Chief Executive Officer may by general authority of Council, affix the Shire of Collie Common Seal to the below listed “Documents to which the Common Seal may be affixed under General Authority of Council”:

1. Restrictive Covenants – under s.129BA of the *Transfer of Land Act 1893* and any discharge or modifications of covenants;
2. Lodgement, modification and withdrawal of Caveats;

3. Lodgement, modification and withdrawal of Memorials;
4. Leases where Council has previously resolved to enter into including renewals, extensions or modifications of leases;
5. Deeds of Agreement, Development Contribution Deeds and Deeds of Release;
6. Licences;
7. Covenants and any discharge or modification of covenants;
8. Easements and the surrender or modification of easements;
9. Notifications on title and withdrawal or modification of notifications;
10. Rights of Carriageway agreements and withdrawal or modification of Rights of Carriageway agreements;
11. Reciprocal Access agreements and withdrawal or modification of Reciprocal Access agreements;
12. Management Statements and withdrawal or modification of Management Statements;
13. General Legal and Service Agreements;
14. Transfer of land documents where Council has previously resolved to either purchase or dispose of land or land is being transferred to the Shire of Collie for a public purpose;
15. Debenture documents for loans which Council has resolved to raise;
16. New Funding or Contracts of Agreement between the Council and State or Commonwealth Governments or Private Organisations for programs to which Council has previously adopted, or additions to existing programs, which in the view of the Chief Executive Officer are in accordance with the original intent of the adopted program;
17. Town Planning Schemes and Scheme Amendments;
18. Local Laws;
19. Documents of a ceremonial nature (where the affixing of the Common Seal is for posterity rather than as a legal requirement);
20. Any other documents arising from conditions of subdivision, survey strata, strata title or development approvals or provisions of a Structure Plan or Detailed Area Plan;
21. Any other documents stating that the Common Seal of the Shire of Collie is to be affixed.

3.3 Execution of Documents Where Common Seal Not Required

Council authorises the Chief Executive Officer to sign:

- Deeds, contracts, leases, licences, service agreements, funding/grant agreements and other documents not requiring the use of the Common Seal, on behalf of the Shire of Collie.
- Documents that are created in the normal course of business to discharge the duties of an officer's position in a manner consistent with the Shire of Collie policies, procedures and relevant guidelines.
- Documents that relate to day-to-day routine communications or transactions that are necessary or appropriate to enable the Chief Executive Officer to carry out their functions under any delegation or authorisation from the Council and under any written law. This includes sub-sections 5.41(c) and (d) of the *Local Government Act 1995*, requiring the

Chief Executive Officer to cause Council decisions to be implemented and manage the day to day operations of the local government.

3.4 Security and Process

The Chief Executive Officer is to have charge of the Common Seal and is responsible for the safe custody and proper use of it.

The Common Seal may only be used on the authority of the Council given either generally or specifically and every document to which the seal is affixed must be signed by the Shire President or in their absence the Deputy Shire President, and the Chief Executive Officer or an Acting Chief Executive Officer authorised by him or her.

The Administration is to record in a register each date on which the Common Seal was affixed to a document, the purpose of the document, and the number of copies sealed. A report listing the documents to which the Common Seal has been affixed is to be presented to the next Councillor Information Bulletin.

4. STATUTORY IMPLICATIONS

4.1 Common Law

Under common law principles originally, the Common Seal of a body corporate was the only legally recognised expression of an act of that body corporate and the affixing of the seal was sufficient to be legally binding. However these days, generally, this requirement is no longer in operation.

4.2 Agency Law

A body corporate has the legal capacity of a natural person and may act or express its intentions and enter into legal relations through authorised human agents. As such, a body corporate may enter into a contract regardless of whether or not the Common Seal is used to execute a document.

4.3 Corporations Law

Sections 126 and 127 of the *Corporations Act 2001* address the use of a Common Seal. These provisions do not apply to local governments which whilst a body corporate, falls within the definition of "exempt public authority" in section 9 of that Act.

4.4 Local Government Act 1995

Section 2.5(2) of the *Local Government Act 1995* stipulates that a local government is "a body corporate with perpetual succession and a Common Seal". Whilst it is clear that a local government, as a body corporate, has a Common Seal, there is no stipulated requirement for the use of the Common Seal in particular circumstances.

Section 9.49 stipulates that a document, is, unless this Act requires otherwise, sufficiently authenticated by a local government without its Common Seal if signed by the Chief Executive Officer or an employee of the local government who purports to be authorised by the Chief Executive Officer to so sign.

Section 9.49(A) stipulates that a document is duly executed by a local government if the Common Seal is affixed in accordance with the Act; or it is signed on behalf of the Local Government by a

person authorised by resolution to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.

5. REFERENCE DOCUMENTS

Local Government Act 1995

Local Government (Administration) Regulation 1996