

Execution of Documents

Introduction

This policy ensures that documents are executed, and the Common Seal is used, in accordance with legislative provisions contained in Division 3 of the *Local Government Act 1995* (the Act).

Objective

To provide guidance to all workers as to who can sign various types of documents representing the Shire of Toodyay (the Shire), including when to apply the Common Seal.

Scope

This policy applies to the Chief Executive Officer (CEO), Shire Officers and Authorised Agents; preparing documents for execution and/or who have been authorised either by a specific resolution of Council, or through the provisions of delegation, to execute documents on behalf of the Shire of Toodyay.

Definitions

Term	Definition
Act	<i>Local Government Act 1995</i> .
Authorised Agent	The Shire's legal advisor(s) or settlement agent(s), as appointed from time to time, who are authorised to the extent described within a written instruction approved by Council to execute documents on behalf of the Shire.
Common Seal	The official stamp of the Shire of Toodyay, confirming the Shire's consent to the provisions contained in the document to which it is affixed.
Council	The local government, responsible for making decisions in formal meetings held under the auspices of Part 5 of the <i>Local Government Act 1995</i> and under the <i>Shire's Standing Orders Local Law 2008</i> .
Delegated Officer	means an Officer of the Shire who has the appropriate delegated authority to execute documents on behalf of the Council.
Document	means, in accordance with the <i>Freedom of Information Act 1992</i> : (a) any record; or (b) any part of a record; or (c) any copy, reproduction or duplicate of a record; or

Term	Definition
	(d) any part of a copy, reproduction or duplicate of a record. The above includes any written paper or electronic document including Notices, flyers, letters, memorandums and emails that: i. Convey a decision; or ii. Establish an obligation on the Shire; or iii. are ceremonial.
Execute	Doing all that is ready to make the deed, agreement or document operative.
Senior Employee	means an employee designated as a Senior Employee by Council under s.5.37 of the <i>Local Government Act 1995</i> including the CEO and Senior Management Group.
Shire	Shire of Toodyay
Shire Officers	means an employee of the Shire who has the appropriate authorisation to sign a document on behalf of the Shire.
Workers	Employees, contractors and volunteers are now all classed as workers as per the WHS legislation and regulations.

Policy Statement

This Policy covers four categories of documents as outlined below and is supported by Clause 20.1 of the *Shire of Toodyay Standing Orders Local Law 2008* and Authorisation by way of an Instrument of Delegation ES2 – Execution of Documents in the Shire’s Register of Delegations.

1. Category One Documents - documents requiring both the CEO and the Shire President to execute

These types of documents will require a specific resolution of Council to enter into an agreement as well as an authority to affix the common seal to that type of document in accordance with s.9.49A(2) of the Act.

The Shire President and CEO will execute documents under the provisions of s.9.49A(3) of the Act.

Documents may be executed by another Shire Officer or an agent of the local government in accordance with s.9.49A(4) provided that there has been authority given by way of a Council Resolution or through an instrument of delegation.

2. **Category Two Documents – documents requiring the CEO only to authorise**

Under s.9.49A(4) of the Act Council authorises the CEO, listed in the Instrument of Delegation ES2 Execution of Documents, to sign documents and/or deeds on behalf of the Shire.

Documents may be executed by another Shire Officer or an agent of the local government in accordance with s.9.49A(4) provided that there has been authority given by way of a Council Resolution or through an instrument of delegation .

Category 2 documents can be described as documents arising out of a matter that:

- Requires Council approval;
- Arises out of delegated authority from Council; or
- Are operational in nature and due to its significance should only be signed by the CEO, as a delegated representative of the Shire.

The CEO is permitted, through this policy, to execute documents that:

- Have an unlimited \$ value subject to “Budget constraint;”
- Have a commitment period that is specifically resolved by Council or in any other case, no greater than a seven-year period; and/or
- Moderate or lesser level of financial risk, legal complexity or political sensitivity, unless specifically resolved by Council.

3. **Category Three Documents - documents within Delegated Authority**

Under s.9.49A(4) of the Act Council authorises Delegated Officers, listed in the Instrument of Delegation ES2 Execution of Documents, to sign documents and/or deeds on behalf of the Shire. These Delegated Officers only have authority where the documents are related to their area of responsibility.

Category 3 documents can be described as documents arising out of a matter that:

- Requires Council approval;
- Arises out of delegated authority from Council; or
- Are operational in nature and due to its significance should only be signed by a Senior Employee as defined in the Act.

The positions of Manager Corporate and Community Services, Manager Infrastructure and Assets and the Manager Development and Regulation are permitted, through this policy, to execute documents that:

- Are to the value of \$250,000 or less;
- Have a commitment no greater than a five-year period; and/or
- Moderate or lesser level of financial risk, legal complexity or political sensitivity.

4. Category Four Documents - documents operational in nature.

These types of documents will include correspondence relating to day-to-day routine communications or transactions related to the operations of the Shire. They will include documents that are created in the normal course of business to discharge the duties of an Officer's position in a manner consistent with Shire policies and procedures.

Category 4 documents do not require specific authorisation through Council as they are subject of s.5.41(d) of the Act which provides that it is the function of the CEO to manage the day-to-day operations of the Shire. Shire Officers undertake such duties "acting through" another person, in accordance with s.5.45 of the Act.

Category 4 documents are to be executed by the CEO, a Manager, or a Shire Officer where the authority and accountability has been extended through an authorisation, policy, procedure, or a position description.

It is therefore important to have a good knowledge of the documents that relate to the team that is responsible for the document.

Shire Officers, with the relevant authority are permitted, through this policy, to execute documents that:

- Are to the value of \$50,000 per annum or less;
- Have a commitment no greater than a two-year period; and/or
- Minor or lesser level of financial risk, legal complexity or political sensitivity.

5. Signing documents (other than by Common Seal) during temporary or unplanned absence of the CEO

A temporary, unplanned absence refers to the CEO being unable to carry out the duties as described in this policy due to but not limited to:

- Delayed travel arrangements;
- Incapacitation due to accident or illness; and
- Personal reasons.

If the temporary, unplanned absence is not expected to exceed 48 hours, the appointment of an Acting CEO via a line of succession shall be in accordance with Appointment of Acting or Temporary CEO Council Policy.

Where:

- The CEO is temporarily unavailable or incapacitated to execute documents requiring the CEO's signature; and
- An Acting CEO has not been appointed by Council

The Shire's Senior Managers are authorised to execute documents that the CEO is authorised to sign where it is predicted that delaying the execution of a document would have financial or legislative repercussions for the Shire.

6. Consequences

This policy represents the formal policy and expected standards of the Shire. Appropriate approvals need to be obtained prior to any deviation from the policy. Elected Members and Shire officers are reminded of their obligations under Council's Code of Conduct to give full effect to the lawful policies, decisions and practices of the Shire.

7. Execution Clause

The correct execution clause for Shire of Toodyay documents is below. Officers must ensure the document being executed contains the correct execution clause.

(a) Executed as an Agreement (Council Resolution)

THE COMMON SEAL OF THE)
SHIRE OF TOODYAY WAS)
HEREUNTO AFFIXED BY)
AUTHORITY OF COUNCIL)
AND IN THE PRESENCE OF:)

Shire President

Chief Executive Officer

Name of Shire President
(PLEASE PRINT)

Name of Chief Executive Officer
(PLEASE PRINT)

Date

Date

(b) Executed as an agreement (non-Council resolution)

THE COMMON SEAL OF THE)
SHIRE OF TOODYAY WAS)
HEREUNTO AFFIXED IN THE)
PRESENCE OF:)

CEO

Shire President

8. Roles and Responsibilities & Documents Table

The roles and responsibilities of the Shire President, CEO, Senior Managers and Shire Officers with respect to the execution of documents are outlined in the table below.

It is the responsibility of the executing parties to ensure they fully understand what they are executing on behalf of the Shire and any queries are addressed before this process is completed.

On the occasions where a Common Seal is required of the Shire, it is the responsibility of all executing parties to ensure that the Common Seal Register is updated and the Shire is notified of its application as part of the Council Information Bulletin.

Relevant Council Policies ought to be referred to as consideration must be given to the potential risks exposed to the Shire of Toodyay when executing a document. This includes the potential financial, service commitments, service interruption, environmental, reputation and compliance implications.

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Adoption, Amendment or Repeal of a local law	1	✓	✓	✓	✓
Any document where the Common Seal is requested by other party or legally required	1	✓	✓	x	x
Deeds in respect to sale, or purchase relating to property including equitable interests	1	✓	✓	x	x
Documents of a ceremonial nature (where affixing the common seal is for posterity rather than a legal requirement).	1	✓	✓	x	x

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Documents that enable compliance with a local government statutory obligation which, if not signed, constitutes a possible risk to the Shire.	1	✓	✓	✓	✓
Easements and the surrender or modification of easements.	1	✓	✓	✓	✓
Offer and Acceptance forms and associated documents required to enact a decision of Council to purchase or to sell land. <i>This does not include mortgage and Transfer of Land documents.</i>	1	✓	✓	x	x
Other legally binding contracts outside of the normal course of business (e.g. confidentiality, indemnity, licensing, novation and sponsorship agreements)	1	✓	✓	✓	✓
Power of Attorney to act for the Shire	1	✓	✓	x	x
Communication on behalf of the Shire, relevant to the day-to-day operations of the Shire which are the subject of a level of political sensitivity or potential risk to the Shire.	2	x	✓	x	x
Memorandum of Understanding	2	✓	✓	✓	✓

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Authority to sign documents on behalf of the Shire: <ul style="list-style-type: none"> • That are within the scope of an Officer's position description; or • That has been extended through a Council decision; • That has been extended through an authorised officer appointment; • That has been extended through delegated authority or policy. 	3	x	✓	✓	✓
Commercial Leases / Peppercorns (including assignment of, extensions, renewals, variations, sub-leases and surrender)	3	✓	✓	✓	✓
Communications on behalf of the Shire: <ul style="list-style-type: none"> • To Commonwealth or government ministers; • To Commonwealth or government department heads; • To Industry representative bodies; • Concerning day-to-day operations that are politically sensitive or a potential risk to the Shire. 	3	✓	✓	✓	✓

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Community & User Agreement Licenses or Lease / Peppercorns (including assignment of, extensions, renewals, variations, sub-leases, and surrender)	3	✓	✓	✓	✓
Contract documents arising from tenders	3	x	✓	✓	✓
Deeds of Settlement – employee matters	3	x	✓	✓	✓
Documents arising out of instances that require Officers to enact a decision of Council or the Development Assessment Panel	3	✓	✓	✓	✓
Documents related to approvals for Subdivision, Survey Strata, Strata Title or Development Approvals or provisions of a Structure Plan, Activity Centre Plan or Local Development Plan	3	✓	✓	✓	✓
Documents required to enact a decision made under delegated authority or as a condition or approval given under delegated authority	3	✓	✓	✓	✓
Employment Contracts (Managers – casual contracts only)	3	✓	✓	✓	✓
Enterprise Bargaining Agreements	3	x	✓	✓	✓

Other documentation not listed in the Appendix Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
<p>Land Transaction documents where the Shire is required to sign as a landowner. This includes but is not limited to:</p> <ul style="list-style-type: none"> • Landgate documents and/or deeds including lodgement, removal, withdrawn, surrender/cancel or modification of documents such as: <ul style="list-style-type: none"> ➢ Notifications in accordance with section 70A of the Transfer of Land Act 1893; ➢ Covenants, easements and caveats under the Transfer of Land Act 1893; ➢ Reciprocal easements and/or parking agreements; ➢ Rights of carriageway agreements; ➢ Amalgamations ➢ Easements or deeds of easement under the Land Administration Act 1997 and/or Strata Titles Act 1985. • Documents and/or deeds required in the management of land as a landowner or where the land is a reserve vested to the Shire; and • Deeds of Agreement and Release in respect to sale or purchase relating to Shire land including equitable interests. 	3	✓	✓	✓	✓

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Licences to occupy land or premises	3	✓	✓	✓	✓
Local Planning Scheme and any Planning Scheme Amendments	3	x	✓	✓	✓
Management statements and withdrawal or variation of management statements	3	x	✓	✓	✓
Mortgages, loans and debenture documents for loans which Council has resolved to raise	3	x	✓	✓	✓
Other statements of intent and terms and conditions such as: <ul style="list-style-type: none"> • Letters of employment for casual employees; • Hire agreements for Shire Facilities; or • Higher duties for positions. 	3	x	✓	✓	✓
Prosecution notices and court documents	3	x	✓	✓	✓
Regular hire arrangements	3	✓	✓	✓	✓
Residential tenancy leases	3	✓	✓	✓	✓

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Service agreements / Contract as a result of procurement process (above Manager delegation)	3	x	✓	✓	✓
State, Commonwealth or other funding agreements (within delegation)	3	✓	✓	✓	✓
When a responsible officer has a specific role such as applying for and organising receipt of grants, and which required them to sign documents relevant to the grant.	3	x	✓	✓	✓
When a responsible officer is authorised by relevant laws or is delegated authority by Council to issue notices and infringements.	3	x	✓	✓	✓
Agreements in the normal course of business for the purchase of goods or services identified within the department's budget (other than for tenders) and conforming to the requirements for the Shire's Purchasing Policy and other relevant policies.	4	x	✓	✓	✓
Any type of legally binding contract, instrument or service agreement binding the organisation to some form of commitment	4	x	✓	✓	✓

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Documents arising out of any matter in which delegated authority has been exercised	4	✓	✓	✓	✓
Documents to authorise funding allocations for various community groups.	4	x	✓	✓	✓
Documents which arise out of the general operation of a department directorate and/or a matter an Officer of a directorate has the authority to deal with	4	✓	✓	✓	✓
Goods and/or Service agreements / Contracts as a result of procurement process (where total consideration is within delegation).	4	x	✓	✓	✓
Grants applications and Grant funding agreements	4	x	✓	✓	✓
Heritage agreements	4	x	✓	✓	✓
Letters, correspondence and other documents that reflect an operational or procedural action required in the ordinary course of business.	4	x	✓	✓	✓

<i>Other documentation not listed in the Appendix</i> Liaise with your Manager or Compliance Officer for advice		Signatures Required			
Document	Document Category	Shire President	CEO	Senior Employee / Manager	Authorised Shire Officers
Licences	4	✓	✓	✓	✓
Lodgement, modification and withdrawal of caveats	4	x	✓	✓	✓
Lodgement, registration, modification, transfer and/or withdrawal of memorials	4	x	✓	✓	✓
Notifications on title and withdrawal or variation of same	4	x	✓	✓	✓
Outgoing general correspondence for a departmental team	4	x	✓	✓	✓
Reciprocal access agreements and withdrawal or variation of reciprocal access agreements	4	x	✓	✓	✓
Restrictive Covenants – under s.129B of the Transfer of Land Act 1893 and any discharge or variation of covenants	4	x	✓	✓	✓
Rights of carriageway agreements and withdrawal or variation of rights and carriageway agreements	4	x	✓	✓	✓

Reference Information

The following Council Policies ought to be referred to as consideration must be given to the potential risks exposed to the Shire of Toodyay when executing a document. This includes the potential financial, service commitments, service interruption, environmental, reputation and compliance implications.

- [All Purchasing Policies](#);
- [Risk Management](#) (ADM18) – containing the Risk Matrix tables;
- [Internal Control](#) (ADM19);
- [Legislative Compliance](#) (ADM20);
- [Appointment of Acting or Temporary CEO](#) (GOV15).

Legislation

Local Government Act 1995

- s.5.41 functions of CEO.
- s.5.45 Other matters relevant to delegations under Division 4 (local government employees).
- s.9.49A (1) document executed by person under an authority is permitted to do so by this authorisation.
- s.9.49 'documents, how authenticated'

Local Government (Functions and General) Regulations 1996

- r.34 Common seal, unauthorised use of

Interpretation Act 1984

- Terms used in written laws - **sign** includes the affixing or making of a seal, mark or thumbprint;

Associated documents

Instrument of Delegation: ES2 Execution of Documents contained in the Shire of Toodyay Register of Delegations.

Shire of Toodyay Local Law (Standing Orders) 2008.

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