

POLICY			
TITLE:	EXECUTING DOCUMENTS	CODE:	CM.109
PURPOSE or OBJECTIVE:	To provide guidance on the appropriate method of execution of documents and use of the Common Seal.		
LEGISLATION:	Section 9.49A (2), (3) and (4) of the <i>Local Government Act 1995</i>		

POLICY STATEMENT
Establish protocols for affixing and administration of the City of Canning’s Common Seal, and establish authority for the Chief Executive Officer, other employees and Authorised Agents to execute documents on behalf of the City of Canning in accordance with the provisions of the <i>Local Government Act 1995</i>.

1. Scope

This policy applies to the Chief Executive Officer (CEO), City employees 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 this policy, to execute documents on behalf of the City.

2. Definitions

<i>Act</i>	<i>Local Government Act 1995</i>
<i>Authorised Agent</i>	The City’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 the City to execute documents on behalf of the City.
<i>City</i>	The City of Canning.
<i>Common Seal</i>	The official stamp of the City of Canning, confirming the City’s consent to the provisions contained in the document to which it is affixed.
<i>Document</i>	Any paper or electronic document, including communications such as letters and emails, which: <ul style="list-style-type: none"> a) Conveys a decision; or b) Establishes an obligation on the City; or c) Is ceremonial.
<i>Execute</i>	Doing all that is ready to make the deed, agreement or document operative.

3. Common Seal (ways in which a documents may be executed)

- a) A document is considered validly executed if the document has been signed in one of the following ways:
 - i. **By affixing the Common Seal** of the Council in the presence of:
 - a. The Mayor and the CEO; or
 - b. The Mayor and a Senior Employee authorised by the CEO.³
 - ii. **Without affixing the Common Seal, by the CEO, another employee or agent of the local government who** has been authorised by resolution of the Council to sign documents on behalf of the City². Such resolution may be specific to the nature of the document or may be by way of this policy.

- b) The City shall maintain a Register of Documents executed under Common Seal that:
 - i. Details all transactions where the Common Seal has been affixed;
 - ii. Records each date on which the Common Seal was affixed to a document;
 - iii. Records the nature of the said document; and
 - iv. Records the parties to any agreement to which the Common Seal was affixed.
- c) The CEO, or an employee nominated by the CEO, shall be responsible for the safe custody and proper use of the Common Seal.

4. Categories of documents and authorised signing authorities

Documents, common to the City, are grouped into three categories. The way in which a document is to be executed and who has the authority to execute a document is based upon its category. This policy defines those categories and the City employees (or agents in some cases) who are authorised to execute listed documents.

Category 1

Category 1 documents require the City’s common seal to be validly affixed and requires that:

- a) The matter is specifically resolved by Council, inclusive of a resolution to execute the resulting document under the Common Seal¹.
- b) Council, by way of a specific resolution, has authorised the CEO, another employee or an Authorised Agent to sign the documents on behalf of the City².
- c) Documents are to be recorded in the Register referred to in part 3. b) of this policy.
- d) Documents classed as Category 1 and the person(s) authorised to execute the documents are defined as:

i. Local Laws - made and amended	Executed under Common seal in accordance with part 3. a) i of this policy
ii. Planning Schemes - adopted and amended	
iii. Financial Contracts	
iv. Mortgages (that encumber City assets)	
v. Loans and Debentures	
vi. Power of Attorney to act for the City	

Category 2

- e) Council has authorised, via this policy, the CEO, another employee or an Authorised Agent to sign documents on behalf of the City².
- f) The common seal is not required to be affixed. However, due to an internal or external historical practice, or in the opinion of the CEO, the document is sufficiently complex, or significant in nature to warrant the affixing of the Common Seal.
- g) If the Common Seal is to be affixed, it will be carried out in accordance with part 3. a), and the document is to be recorded in the Register referred to in part 3. b) of this policy.
- h) The Mayor may be requested to execute documents as a co-signatory with the CEO, if considered appropriate by the CEO.

i) **Documents classed as Category 2 and the person(s) authorised to execute the documents are defined as:**

i. Land Dealings – sale*, purchase*, easements, restrictive covenants <i>Note:Based on execution clause and requirements of specific documents.</i>	CEO and Mayor (where required)
ii. Landgate Instruments of Registration/Notification: a. Caveats – registering or removing b. Notifications under s.70A of the <i>Transfer of Land Act 1893</i> c. Memorial of Advertisement d. Leases (which are approved by Council) e. Deeds f. Legal agreements	CEO
iii. Deeds of settlement	CEO
iv. Memorandum of Understanding	CEO or Director
v. *Procurement Contracts including contract variations <i>*can only execute documents up to a maximum of their authorised financial limit, as determined by the CEO.</i>	CEO, Director, Executive Manager or Manager
vi. Service Agreements (incoming or outgoing services)	CEO or Director
vii. Grants and Funding Agreements (incoming and outgoing)	CEO or Director

Category 3

a) Documents and correspondence that are created in the normal course of business to discharge the duties of an officer’s position, in a manner consistent with section 5.41(d) of the *Act*, do not require specific authorisation through this policy. Such duties may be undertaken by employees where the authority and accountability has been extended through an authorisation, delegation, policy, CEO Instruction, position description or ‘acting through’.

b) The following documents are authorised to be administered and executed as Category 3 documents in the manner as described:

i. Administer and execute leases or licenses to occupy the City’s owned, operated or managed facilities relating to: Retirement Villages, Independent Living Units, Community Houses, Canning Lodge and Crisis Accommodation	CEO or Director or Executive Manager
i. Administer Offer and Acceptance forms and associated documents relating to the purchase or sale of property. a. **All offer and acceptance forms must include a condition stating: <i>“Subject to approval by way of resolution of the Council of the City of Canning.”</i>	CEO or Director Canning Community & Commercial

5. Interpretations

- a) In the event of any inconsistency, the following takes precedence over this policy:
- i. Legislation.
 - ii. Formal requirements of a Commonwealth or State department, authority or agency.
 - iii. Specific Council Resolution.
 - iv. The City’s Register of Delegated Authority (including the CEO’s Register of Sub-delegations).
- b) Should ambiguity arise over what category might apply to a document, then the lower category is to take precedence.

6. Conditions / Restrictions

- a) Where the document proposed to be executed has a nominated financial impact, employees can only execute documents up to a maximum of their authorised financial limit, as determined by the CEO.
- b) Employees are restricted to executing documents, according to this policy, that are directly related to their area of responsibility.
- c) It is the responsibility of the employee authorised to fully inform themselves of the matter they intend to execute on behalf of the City.

- d) The CEO will ensure suitable systems and procedures are in place for the effective and compliant administration and authorisation of this policy.

7. Execution of documents by Authorised Agents on behalf of the City

- a) Lawyers, including any lawyer employed by the City to act on its behalf for a matter may, where so instructed:
- i. Sign and lodge court documents on behalf of the City
 - ii. Electronically execute land transaction documents identified in the table in Part 4 i) i. and ii. in accordance with the Property Exchange Australia (PEXA) process;
 - iii. Sign such other documents as instructed by the City from time to time.
- b) Employees are to ensure an appropriate level of authority and approved budget is obtained prior to instructing lawyers to act.

8. Signing documents on behalf of another person

- a) A document may only be executed by a person who holds a position authorised to sign documents:
- i. Through Council's adoption of this policy; or
 - ii. By a specific resolution of Council.

In the absence of an authorised person, another person may only execute the document where they have been appointed to act in the authorised person's position.

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

- a) In this section, 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:
- i. Delayed travel arrangements;
 - ii. Incapacitated due to accident or illness;
 - iii. Personal reasons.

And such temporary, unplanned absence is not expected to exceed 48 hours, after which time, the CEO would consider appointing an Acting CEO, in accordance with *Delegation No. 51 – Appointment of Acting Chief Executive Officer*.

- b) Where the CEO:
- i. is temporarily unavailable or incapacitated to execute documents requiring the CEO's signature; and
 - ii. no Acting CEO has been appointed.

The City's Directors are authorised to execute documents that the CEO is authorised to sign under this policy, subject to the following:

- i. This authority does not apply to Category 1 documents identified in Part 4 of this policy.
- ii. It is predicted that delaying the execution of a document would have financial or legislative repercussions for the City.
- iii. This authority does not apply where an Acting CEO has been appointed.

GOVERNANCE REFERENCES

Statutory Compliance	<ol style="list-style-type: none"> 1. <i>Local Government Act 1995 s.9.49A (2) and (3)</i> 2. <i>Local Government Act 1995 s.9.49A(4)</i> 3. <i>Local Government Act 1995 s.9.49A(3)(b)</i>
Process Links	

POLICY ADMINISTRATION

Program responsible		Officer Title	
Canning Community & Commercial		Executive Manager Governance Canning	
Version	Decision Reference	Meeting type and date	Delegation No.
1	Governance 24/2/2014	Policy reformatted to new template	N/A
2	Governance 12/8/2014	Template amended	N/A
3	Governance 9/9/2014	Template amended	N/A
4	Governance 16/11/2018	Template amended	N/A
5	CC-027-20	OCM 16 June 2020	51