

## 2.33 EXECUTION OF DOCUMENTS

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### OBJECTIVE

To establish guidelines for the execution of documents and the application of the Shire of Gingin Common Seal, in accordance with s.9.49A of the *Local Government Act 1995*.

### SCOPE

This policy applies to all Shire officers preparing documents for execution and/or who have been authorised through the provisions of this policy to execute documents on behalf of the Shire.

Executing documents through the use of the Common Seal or by signing a document does not constitute the decision to undertake a particular course of action. A Council resolution or a decision under delegated authority is required prior to executing any resulting documents.

In instances where:

1. legislation; or
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;

expressly specifies a particular manner in which a document is to be executed, then that course of action is to take precedence over this policy.

Should ambiguity arise over what category might apply to a document, then the higher category is to take precedence.

### POLICY

Section 9.49A of the *Local Government Act 1995* requires that, in order for a document to be executed by a local government, there must either be:

1. A Council resolution to:
  - a. apply the Common Seal to that particular document; or
  - b. permit the application of the Seal to a range of documents which includes the document in question; or
2. A Council resolution authorising the Chief Executive Officer or another employee, or an agent of the Shire, to sign documents on behalf of the Shire.

The following categories set out how various types of document should be dealt with.

#### Category 1A 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. For example, in the case of the sale of land, the Council resolution would need to both approve the sale, and authorise the affixing of the Common Seal to the resulting deed of sale.

1. Deeds of Agreement and Release and Memorandums of Understanding in relation to the sale or purchase of, or other commercial dealings in relation to, Shire-owned land (including equitable interests).
2. Local Planning Schemes and Scheme Amendments.
3. Lease documents relating to the commercial lease of Shire owned or controlled land, including (but not limited to):
  - a. New lease agreements;
  - b. Extension of lease where a further term is not provided under the original lease;
  - c. Variation of lease;
  - d. Assignment of lease;
  - e. Surrender of lease;except where delegated authority has been granted.
4. Local laws.

### **Category 1B Documents**

Category 1B 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.

**Note:** Although the document may not require a Council resolution to affix the Seal, a Council decision may still be required before undertaking the particular course of action that results in the document requiring execution.

1. Agreements relating to grant funding, where the funder requests that the agreement be executed under Seal.
2. Debenture documents for loans which Council has resolved to raise
3. Any other legal and service agreements or contracts not already listed in this policy which require the Seal to be affixed.
4. Other documents relating to land matters including lodgement of caveats, memorials, leases, transfers, deeds, licences, covenants, easements and withdrawal of such instruments.
5. Sublease of a portion of a premises by the Lessee.
6. Minor variation of lease provided it does not alter the substantive terms of the lease as approved by Council (for example, changes to a process within the lease, updating of contact details etc).

## Category 2 Documents

Category 2 documents do not require the Common Seal to be affixed in order to be executed.

Under s.9.49A(4), Council authorises the officers listed in the table below to sign documents on behalf of the Shire of Gingin.

Document Description	Authority to Execute
Documents required to enact a decision of Council (other than Category 1A and 1B documents)	Chief Executive Officer Relevant Executive Manager
Documents required to enact a decision made under delegated authority or as a condition of approval given under delegated authority	Chief Executive Officer Relevant Executive Manager Officer with delegated authority
Documents required in the management of land as a landowner	Chief Executive Officer
Documents required to be signed as the management body of Crown land where a decision is being made under delegated authority	Chief Executive Officer

## Category 3 Documents

Category 3 documents are those documents that are created in the normal course of business and are consistent with Shire policies and procedures.

These documents include (but are not limited to):

1. Agreements in the normal course of business for the purchase of goods or services identified within the adopted budget. Signing must be in accordance with Council's Policy 3.10 Purchasing and any other relevant policies or delegations.
2. General correspondence.
3. Other documents necessary to the day to day functioning of the administration.

Category 3 documents do not require a specific authorisation through this policy. As part of the day to day operations of the Shire, they are administered by the Chief Executive Officer under s.5.41(d) of the *Local Government Act 1995*.

## Other Matters Relating to the Execution of Documents

1. Where possible, documents requiring execution must be duly executed by the other parties to the document before being executed by the Shire of Gingin (either by application of the Common Seal or by signature). Exceptions may arise in regard to Scheme Amendment and Structure Plan documents, which may be certified prior to certification by the Western Australian Planning Commission.
2. Documents should be executed in original (paper) form.

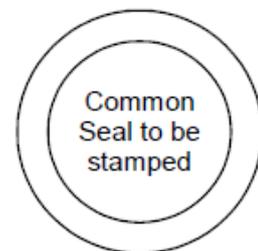
3. Details of all transactions where the Common Seal has been affixed shall be recorded in a register kept by the Chief Executive Officer, with such register to record each date on which the Common Seal was affixed to a document, the nature of the document, and the parties to the document. The register is to record each transaction by an identifying sequential number and this number is to be recorded against the Common Seal as it is affixed (refer \* shown in examples below).
4. Sealing clauses are to be in accordance with the following:
- a. Category 1A documents (where the Common Seal is affixed by specific resolution of Council)

DATED: \_\_\_\_\_ 20\_\_

The Common Seal of the Shire of Gingin was affixed by authority of a resolution of the Council in the presence of:

\_\_\_\_\_  
[INSERT NAME OF PRESIDENT]  
SHIRE PRESIDENT

\_\_\_\_\_  
[INSERT NAME OF CEO]



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- b. Category 1B documents (where the Common Seal is affixed in other circumstances)

DATED: \_\_\_\_\_ 20\_\_

The Common Seal of the Shire of Gingin was affixed in the presence of:

\_\_\_\_\_  
[INSERT NAME OF PRESIDENT]  
SHIRE PRESIDENT

\_\_\_\_\_  
[INSERT NAME OF CEO]  
CHIEF EXECUTIVE OFFICER



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## GOVERNANCE REFERENCES

<b>Statutory Compliance</b>	<i>Local Government Act 1995</i> – s.2.5(2) Local governments created as bodies corporate <i>Local Government Act 1995</i> – s.5.42 Delegation of some powers and duties to CEO <i>Local Government Act 1995</i> – s.9.49A(4) Execution of documents
<b>Industry Compliance</b>	N/A
<b>Organisational Compliance</b>	Council Policy 3.10 Purchasing Shire of Gingin Delegated Authority Register

## POLICY ADMINISTRATION

<b>Review Cycle</b>	2 years	<b>Next Review</b>	2023
<b>Department</b>	Office of the CEO - Governance		

Version	Decision Reference	Synopsis
1.	16/03/2021 - Item 11.1.4	Policy adopted.