

# Council Policy 1.1.4 – Execution of Documents and Use of the Common Seal

Attachment 2

<b>Responsible Directorate</b>	Executive Services
<b>Responsible Business Unit/s</b>	Governance
<b>Responsible Officer</b>	Manager Governance
<b>Affected Business Units</b>	All

## Objective

The objective of this Policy is to establish, in accordance with the requirements of Part 9, Division 3 of the *Local Government Act 1995* (the Act), protocols and procedures for the execution of documents and the affixing and administration of the Shire of Serpentine Jarrahdale's Common Seal.

## Scope

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

Documents and correspondence which relate to day to day routine communications or transactions (Category 3 documents) do not require specific authorisation through Council, as they are the subject of Section 5.41(d) of the Act, which provides that it is the CEO's duty to manage the day to day operations of the Shire. Such duties are undertaken by officers "acting through" another person, in accordance with section 5.45 of the Act.

This policy does not include the making, varying or discharging of contracts that were formed through a tender as these are subject to regulation 21A of the *Local Government (Functions and General) Regulations 1996* and delegation 1.1.15 Tenders for Goods and Services, in the Shire's Register of Delegations and Authorisations.

## Policy

This Policy covers four categories of documents as outlined below and is supported by clause 19.1 of the *Shire of Serpentine Jarrahdale Standing Orders Local Law 2002 (as Amended)*, and Authorisation 1.11 – Execution of Documents, in the Shire's Register of Delegations and Authorisations.

The Shire of Serpentine Jarrahdale authorises the Shire President and the Chief Executive Officer to sign and affix the Common Seal to documents using the sealing clauses shown on page 4 of this policy.

### Category 1(A) Documents

Category 1(A) documents require a specific resolution of Council to enter into an agreement as well as an authority to affix the seal. In accordance with s9.49A(2), these documents will be executed by having the common seal affixed under the specific authorisation of Council in the presence of, and attested by, the Shire President and CEO. Pursuant to s9.49A(3)(b) of the Act, the Shire President and a senior employee (if authorised by the CEO) can also affix and attest the common seal.

The following is a list of Category 1(A) documents:

- Deeds of Agreement and Release in respect to sale or purchase relating to Shire land including equitable interests;
- Town Planning Schemes and Scheme Amendments;
- Local Laws;
- Documents of a ceremonial nature;



## Council Policy 1.1.4 – Execution of Documents and Use of the Common Seal

- Land transactions, including but not limited to sale, assignments, consent to mortgage, surrenders, transfers, memorials, covenants and easements, lodgement and withdrawals of caveats and amalgamations as resolved by Council; but not in relation to disposal via leasing or licencing of land or properties;
- Licensing contracts; and
- Documents specified by resolution of Council to be executed by the Common Seal.

### Category 1(B) Documents

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.

The following list of documents are Category 1(B) documents:

- Agreements relating to grant funding, when the funder requires that the agreement be signed under seal;
- Debenture documents for loans which Council has resolved to raise;
- General Legal and Service Agreements not already listed in this policy; and
- Any document stating that the Common Seal of the Shire of Serpentine Jarrahdale is to be affixed provided it is not a Category 1(A) document.

In accordance with s9.49A(2), the attachment of the Common Seal requires attesting by both the Shire President (or in their absence the Deputy Shire President) and the Chief Executive Officer (or the person acting in that position). Section 9.49A(3)(b) of the Act, provides that the Shire President and a senior employee (if authorised by the CEO) can also affix and attest the common seal.

### Category 2 Documents

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

Under section 9.49A(4), Council authorises the Officers listed in Authorisation 1.11 – Execution of Documents, in the Shire’s Register of Delegations and Authorisations, to sign documents on behalf of the Shire of Serpentine Jarrahdale. Directors only have authority where the documents are related to their area of responsibility.

The positions of Deputy CEO / Director Community Services; Director Corporate Services; Director Development Services; Director Infrastructure Services are restricted to executing documents that are to a value of \$150,000 or less.

The execution of a document must not be inconsistent with a Council Policy or resolution.

The following are examples of Category 2 documents:

- Documents required in the management of land as a landowner or where land is a Reserve vested to the Shire of Serpentine Jarrahdale;
- Documents required to enact a decision of Council or the Development Assessment Panel, for example, memoranda of understanding;
- Documents required to enact a decision made under delegated authority or as a condition or approval given under delegated authority;
- Notifications in accordance with Section 70A of the *Transfer of Land Act 1893*;



## **Council Policy 1.1.4 – Execution of Documents and Use of the Common Seal**

---

- Legally binding contracts (other than tenders) that are required to engage services or purchase products when these documents are inconsistent with the Shire's purchasing and procurement terms and conditions; and
- Documents related to leases and licences of Shire land and properties. This category includes any arrangements relating to the disposal of property via a lease or licence (but not sale), and includes but is not limited to:
  - agreement to lease or licence;
  - variation of lease or licence;
  - assignment of lease or licence;
  - subleases; and
  - surrender of lease or licence.

### **Category 3 Documents**

Category 3 documents are 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 3 documents are to be executed by the CEO, a Director or 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.

These documents include but are not limited to the following:

- 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) and conforming to the requirements of the Shire's Purchasing Policy and other relevant policies;
- General correspondence required to discharge the duties of your position;
- Contracts for grant funding conducted in accordance with the Shire's Policies; and
- Regular hire arrangements.

### **Common Seal Register**

1. The Chief Executive Officer shall maintain a register of all documents executed with the Common Seal;
2. The register is to record each Common Seal transaction and include an identification number, date, the nature of the document and the parties to the document being executed; and
3. The Common Seal identification number is to be recorded on the document being executed.



### Sealing Clauses

The correct sealing clauses for Shire of Serpentine Jarrahdale documents are as follows:

Category 1(A) documents:

THE COMMON SEAL of )  
**SHIRE OF SERPENTINE JARRAHDAL** )  
was hereunto affixed by a )  
resolution of Council )  
in the presence of )

---

President

---

Chief Executive Officer

Category 1(B) documents:

The Common Seal of )  
**SHIRE OF SERPENTINE JARRAHDAL** )  
was hereunto affixed in the presence of: )

---

President

---

Chief Executive Officer

**Definitions**

Not applicable

**Relevant Policies/Council Documents**

- Register of Delegations and Authorisations
- Common Seal Register

**Legislation/Local Law Requirements**

- *Local Government Act 1995*
- *Shire of Serpentine Jarrahdale Standing Orders Local Law 2002 (as Amended)*

Office Use Only				
Relevant Delegations/Authorisations	Authorisation 1.11 - <i>Local Government Act 1995</i> - Execution of Documents			
Council Adoption	Date	13/05/2002	Resolution #	C130/05/02
Reviewed/Modified	Date	24/05/2004	Resolution #	SM047/05/04
Reviewed/Modified	Date	15/12/2008	Resolution #	CGAM050/12/08
Reviewed/Modified	Date	29/09/2015	Resolution #	OCM187/09/15
Reviewed/Modified	Date	18/12/2017	Resolution #	OCM179/12/17
Reviewed/Modified	Date	15/06/2020	Resolution #	OCM