8.2 ADVERTISING OF AMENDED EXECUTION OF DOCUMENTS POLICY

Attachments:
1. **Execution of Documents Policy (Marked up)**
2. **Execution of Documents policy (Clean copy)**
3. **Delegated Authority 2.2.18 Proposed Amendments**

RECOMMENDATION

That Council APPROVES the proposed amendments to the Execution of Documents Policy, at Attachment 1, for the purpose of community consultation.

PURPOSE OF REPORT:

For Council to approve, for the purpose of community consultation, the amended Execution of Documents policy as detailed at **Attachment 1**.

DELEGATION:

Section 2.7 of the *Local Government Act 1995* sets out the Role of Council as being to 'determine the local government's policies'. There is no delegation to Administration to make, review or repeal policies.

BACKGROUND:

The City's Execution of Documents Policy (Policy) was last reviewed on 15 September 2020 and was due for periodic review in 2024.

The review is required to ensure that the appropriate officers at the City who have delegated authority have corresponding authority to execute the documents related to their delegated functions.

DETAILS:

Requirement for a documented City position (including community need or legislative requirement):

Unlike other provisions that are delegated through Council to the CEO there is not clear criteria outlining the limits or who may exercise the function. This policy provides a necessary documented position to set out how these functions are required to be exercised and who has authority for signing various documents.

Review of Execution of Documents Policy

A review of the existing Policy:

- clarifies existing responsibilities and streamlines the execution process reducing any potential risk to the City associated with the execution of documents;
- ensures compliance with the provisions of the *Local Government Act 1995* while promoting consistency, efficiency and transparency.

The tracked changes to the Policy are shown in **Attachment 1**. The substantial changes to the Policy are to align the changes to the specific delegations below:

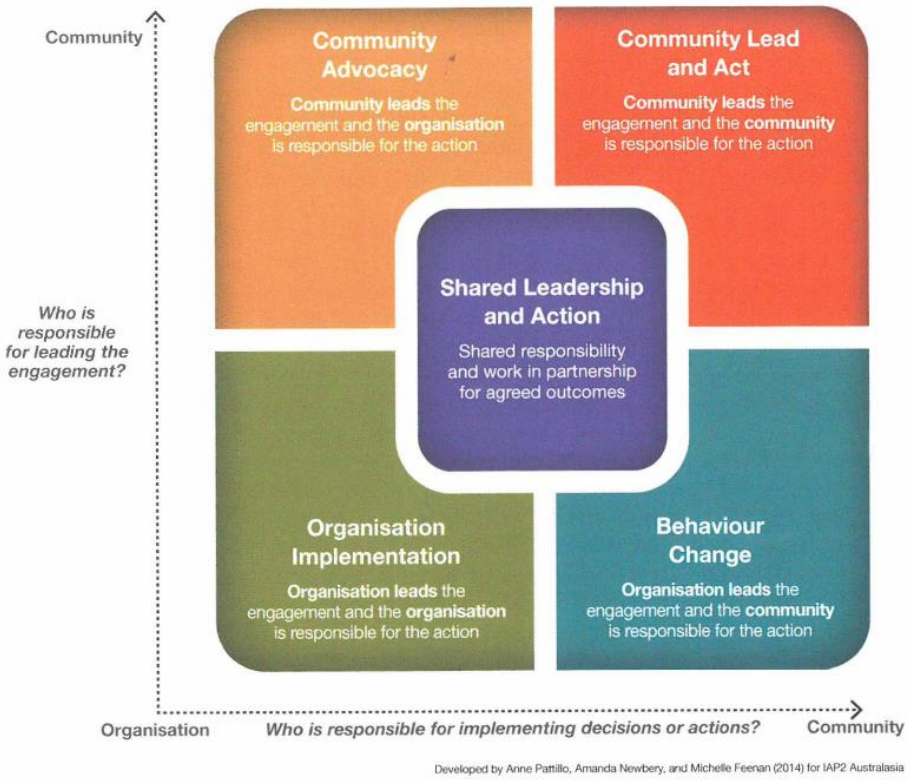
Delegation	Changes
2.2.18 Disposing of Property by Leases and Licenses	This delegation was amended 20 June 2023 (agenda item 12.1) to include the authority to approve and execute: 1. variation, extension, assignment, termination, surrender, special conditions and payment schedules of an approved lease, licence or management agreement for Category 1 - Small Community Group, or Category 2 - Sporting Clubs and Community Groups and Organisations; and

Delegation	Changes
	2. any minor variations (being non-material and does not alter the substantive terms of a lease or licence), extension, assignment (including consent to a deemed assignment), termination, surrender, subletting, special conditions or payment schedules of an approved lease or licence for Category 3 – Commercial Entities, State and National clubs, Associations and Community Organisations; and Category 4 – Government Agencies. The Policy now reflects the authority to execute documents approved for the above as a Category 2 document.
2.2.30 Execution of documents	This delegation will be deleted from the Register of Delegations, Authorisations and Appointments as s9.49A(4) of the Act requires Council to authorise (*and not delegate*) the CEO or another employee to sign documents on behalf of the City. The specific functions of this delegation have been incorporated into this Policy.
2.2.33 Power to modify documents in the control and management of City	Documents relating to this delegation have been incorporated as a Category 2 document for execution.

Changes to Register of Delegations, Authorisations and Appointments (Delegations Register)

As a result of the review of the Policy, changes to Delegation 2.2.18 of the Delegations Register are proposed. The tracked changes of delegation 2.2.18 are at **Attachment 3**.

CONSULTATION/ADVERTISING:



Organisation Implementation

Organisations lead engagement and seek input, shape the policies, projects and services for which they are responsible. This is a familiar and traditional approach to policy development, project management and service delivery.

Tension: People feel forced leading to an unresponsive process.

Mitigation: Increasing the level of influence, and implementing a transparent, robust process.

In accordance with the City's Community and Stakeholder Engagement Policy, community consultation of all new and significantly amended policies must be provided for a period exceeding 21 days in the following ways:

- notice published on the City's website; and
- notice posted to the City's social media.

Public notice of this proposed new policy will be provided following endorsement from Council to advertise.

LEGAL/POLICY:

Section 2.7(2)(b) of the *Local Government Act 1995* provides Council with the power to determine policies.

Section 9.49A of the *Local Government Act 1995* governs the execution of documents by local governments, particularly when the common seal is required to be affixed and who can witness the affixation of the common seal.

Subsection (1) provides that:

"*A document is duly executed by a local government if –*

(a) the common seal of the local government is affixed to it in accordance with subsections (2) or (3); or
(b) it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so."

Subsection (3) provides that:

"*The common seal of the local government is to be affixed to a document in the presence of –*

(a) the mayor or president; and
(b) the chief executive officer or a senior employee authorised by the chief executive officer,

each of whom is to sign the document to attest that the common seal was so affixed."

Subsection (4) provides that:

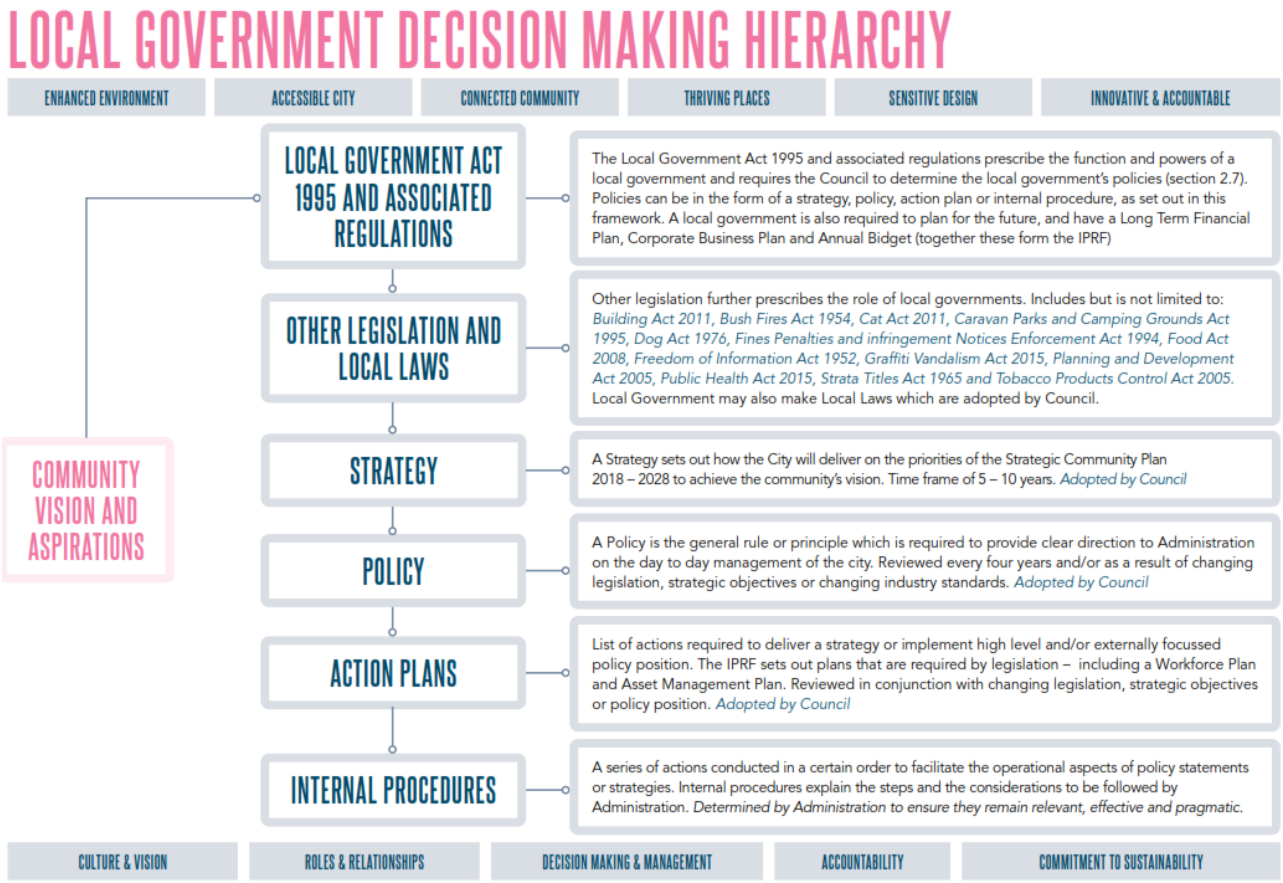
"*A local government may, by resolution, authorise the chief executive officer, or another employee or an agent of the local government to sign documents on behalf of the local government, either generally to subject to conditions or restrictions specified in the authorisation*."

The City's Policy Development and Review Policy sets out the process for the development and review of the City's policy documents.

In accordance with section 2.3 of the Policy Development and Review Policy:

The purpose of a policy is to provide a general rule or principle to guide Administration and the community on the City's decision making and advocacy;

The purpose of the proposed policy is to provide authority to appropriate officers at the City to execute the documents related to their delegated functions.



RISK MANAGEMENT IMPLICATIONS

Risk Category	Risk Appetite/ Tolerance Statement	Descriptor/clarification
Less than better practice for Governance, Due diligence, Accountability and Sustainability	The City has a ***low risk tolerance*** for less that better practice decision making for governance, due diligence, accountability, and sustainability, as measured by accepted industry standards and practices.	The City's Governance Framework (Framework) supports this tolerance level by defining the systems, policies, processes, and a methodology for ensuring accountability and openness in the conduct of City business. The Framework describes the principles and key roles that guide Council in its decision-making and demonstrates to the community the processes which the City uses to achieve its strategic priorities and undertake its service delivery.
A breach in Delegated Authority	The City has a ***very low risk tolerance*** for breach in delegated authority.	

Low: It is low risk for Council to undertake community consultation of the proposed Amended Execution of Documents policy. The proposed changes correctly identify that the applicable clause of the *Local Government Act 1995* does not provide a delegation and the existing delegations within Council's adopted register are incorrect. The reviewed policy more appropriately captures administrative decisions that would have accompanying documents to be executed. This review aligns with Council's Adopted Appetite and Tolerance Statements above.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2022-2032*:

Innovative and Accountable (select the priority outcome below or delete if not applicable)

Our decision-making process is consistent and transparent, and decisions are aligned to our strategic direction.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025.*

FINANCIAL/BUDGET IMPLICATIONS:

Nil.

EXECUTION OF DOCUMENTS POLICY

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Legislation / local law requirements	Section 9.49A of the *Local Government Act 1995* Execution of documents
Relevant delegations	~~Delegation 2.2.29 – Execution of Documents~~ *2.2.18 Disposing of Property by Leases and Licenses* *2.2.33 Power to modify documents in the control and management of City*
Related policy procedures and documents	Nil

OBJECTIVE

For the City to execute documents in a consistent and transparent manner, in accordance with the *Local Government Act 1995* (Act).

PURPOSE

The purpose of this Policy is to ensure that the City's common seal is used, and documents are executed in accordance with the provisions of the ~~*Local Government Act 1995* (~~Act~~)~~.

Pursuant to section 9.49A of the Act, a document is duly executed by a local government if:

(a) the common seal is affixed to it in the presence of:

(i) the Mayor ~~or President~~; and

(ii) the Chief Executive Officer (CEO) or a senior employee authorised by the CEO (Senior Employee),

each of whom must sign the document to attest the common seal was affixed; or

(b) it is signed on behalf of the local government by a person authorised by the Council ~~by an Officer authorised~~ to do so (Officer).

A Council resolution or a decision under delegated authority ~~is required to approve~~ approving a particular course of action is required prior to the execution of any document/s relating to that course of action. For example, until the Council makes a resolution approving the City to enter into a lease on particular terms and conditions with another party, the Mayor and CEO are not authorised to execute the subject lease on behalf of the City.

~~The following takes precedentce over this Policy, in the order listed below:~~

EXECUTION OF DOCUMENTS POLICY

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1. legislation;
2. the formal requirements of a Commonwealth or State department, authority or agency (as described in a City policy or procedure);
3. a Council decision; expressly specifying a particular way in which a document is to be executed.

SCOPE

This Policy applies to all City of Vincent officers who have been authorised through the provisions of this policy to execute documents on behalf of Council.

POLICY

Category 1(A): ~~Documents requiring the~~ Ccommon seal & a specific Council resolution

Category 1~~(A)~~ documents require: ~~require a specific resolution of Council to sell, lease or enter into an agreement along with an authority to affix the common seal; are executed by having the common seal affixed, under the authorisation of Council, in~~

(a) the ~~the presence of and being attested to by the Mayor and CEO or (pursuant to s9.49A(3)(b) of the Act) the Mayor and a senior employee authorised by the CEO to do so.~~City's common seal to be affixed. The Act requires the common seal to be affixed in the presence of the Mayor and CEO or a Senior Employee;

(b) at least two specific Council resolutions; the approval to:
(i) do the act or enter into an agreement; and
(ii) execute the document related to the approval in (b)(i) above in accordance with the Policy.

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

	Description
1	Deeds or contracts in respect to sale, purchase or other commercial dealing relating to City assets including equitable interests.
2	Local Planning Schemes and Amendments to the same.~~;~~
3	Lease and licence documents, except those lease or licence documents specified in Category 2. ~~This category includes, but is not limited to:~~ ~~Variation of Lease;~~ ~~Assignment of Lease; and~~ ~~Surrender of Lease,~~ ~~except where granted under delegated authority;~~

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	Description
3	Transfer of Land forms.
4	Local Laws.
5	Agreements relating to grant funding or contribution, when the funder requires that the agreement be signed under seal.
6	General legal and service agreements not listed in this Policy.
~~5~~	~~Licence documents, except those licence documents specified in Category 2.~~

~~1. Category 1(B) Documents requiring the common seal without a specific Council resolution~~

~~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 A Category 1(B) document may not require a specific Council resolution in order to be executed under seal however the decision to undertake a particular course of action may still require Council approval.~~
~~The following is a list of Category 1(B) documents;~~

	~~Description~~
~~1~~	~~Agreements relating to grant funding , when the funder requires that the agreement be signed under seal.~~
~~2~~	~~Debenture documents for loans which Council has resolved to raise.~~
~~3~~	~~General legal and service agreements not already listed in this Policy.~~
~~4~~	~~Extension of Lease Deed, where the extension is occurring pursuant to an option term granted in accordance with a provision of the original lease.~~
~~5~~	~~Sub lease for a portion of the premises by the lessee; to a third party, where the City's consent (as landlord under the head lease) is required for the sub-lease.~~
~~6~~	~~Variation of Lease Deeds relating to minor variations that do not alter the substantive terms of the lease as previously approved by Council (for example: where the lessee changes its name).~~

Category 2: No common seal – Officers authorised by Council

Category 2 documents do not require the City's common seal to be affixed.

In accordance with s9.49(A)(4) of the Act, the Council authorises the Officers listed in the table below to sign documents on behalf of the City.

~~The following is a list of~~ Category 2 documents and the corresponding authorised Officers:

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Description	Authority to Execute
Documents required in the management of land as a landowner, including a development application, building permit, easement or agreement in respect to City owned or managed land.	CEO; Executive Manager Corporate Strategy and Governance; ~~and~~ ~~the~~ responsible Executive Director; Director Major Projects and Deputy Director Major Projects.
Documents required to enact a decision of Council, a Council Committee or the Development Assessment Panel (i.e. contractual documents resulting from a procurement~~tender~~ process, ~~transfer of land forms,~~ Landgate documents ~~notification on title~~ as required by a condition of approval, memorandum of understanding etc.).	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects; ~~and~~ responsible Executive Manager and the Officer exercising the delegated authority.
Documents required to enact a decision made under delegated authority or as a condition of approval given under delegated authority (i.e. caveats, restrictive covenants, ~~and~~ or s 70A Notifications).	CEO; ~~the~~ responsible Executive Director; Director Major Projects; Deputy Director Major Projects and the Officer exercising the delegated authority.
Where a condition of approval given under delegated authority has subsequently been met, documents that are required to remove, withdraw or extinguish the earlier document or registration (e.g. ~~withdrawal of caveat or a document that removes a restrictive covenant~~modification or removal of an existing encumbrance, right or burden)	CEO; ~~the~~ responsible Executive Director; Director Major Projects; Deputy Director Major Projects; Executive Manager Corporate Strategy and Governance; and the Officer exercising the delegated authority.
Debenture documents for loans which Council has resolved to raise.	CEO
Leases, licences, management agreement and other land agreements including: • Approved grant of lease, licence or management agreement • Variation, extension, assignment, termination, surrender, special conditions and payment schedules of an approved lease, licence or management agreement of lease, licence or management agreement consistent with delegated authority • Sublease or sublicence	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and Executive Manager Corporate Strategy and Governance.
Sponsorship, grant or contribution agreements and related documents (incoming or outgoing) which Council has resolved to receive or grant.	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and responsible Manager.

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Description	Authority to Execute
Finance leases, contracts, agreements or service legal agreements	CEO; the responsible Executive Director; Director Major Projects; Deputy Director Major Projects and Executive Manager Corporate Strategy and Governance.
Memorandum of Understanding	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and Executive Manager Corporate Strategy and Governance.

Category 3: No common seal – Officers defined in Policy

Category 3 documents are created in the normal course of business and are consistent with the City's policies and procedures. Category 3 documents are to be executed by an Executive Director, Director, Executive ~~or~~ Manager~~,~~ or an Officer where the authority has been extended to that Officer through a City policy~~,~~ ~~or~~ procedure or position description.

Category 3 ~~These~~ documents include but are not limited to the following:

	Description
1	Agreements in the normal course of business for the purchase of goods or services identified within the service unit's budget (other than for tenders) and conforming to the requirements of the City's Purchasing Policy and other relevant policies
2	General correspondence required to discharge the duties of your position
~~3~~	~~Contracts for grant funding conducted in accordance with the City's policies~~
43	Regular hire arrangements.

EXECUTION OF DOCUMENTS POLICY

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OFFICE USE ONLY	
Responsible Officer	Executive Manager Corporate Strategy and Governance
Initial Council Adoption	04/11/2003 REF#D20/165439
Reviewed / Amended	DATE: 22/04/2008, 26/02/2013, 07/03/2017, 04/04/2018 DATE: 22/04/2018, 15/09/2020
Next Review Date	MM/YYYY

EXECUTION OF DOCUMENTS POLICY

CITY OF VINCENT

Legislation / local law requirements	Section 9.49A of the *Local Government Act 1995* Execution of documents
Relevant delegations	*2.2.18 Disposing of Property by Leases and Licenses* *2.2.33 Power to modify documents in the control and management of City*
Related policy procedures and documents	Nil

OBJECTIVE

For the City to execute documents in a consistent and transparent manner, in accordance with the *Local Government Act 1995* (Act).

PURPOSE

The purpose of this Policy is to ensure that the City's common seal is used, and documents are executed in accordance with the provisions of the Act.

Pursuant to section 9.49A of the Act, a document is duly executed by a local government if:

(a) the common seal is affixed to it in the presence of:

(i) the Mayor; and

(ii) the Chief Executive Officer (CEO) or a senior employee authorised by the CEO (Senior Employee),

each of whom must sign the document to attest the common seal was affixed; or

(b) it is signed on behalf of the local government by a person authorised by the Council to do so (Officer).

A Council resolution or a decision under delegated authority approving a particular course of action is required prior to the execution of any document/s relating to that course of action. For example, until the Council makes a resolution approving the City to enter into a lease on particular terms and conditions with another party, the Mayor and CEO are not authorised to execute the subject lease on behalf of the City.

The following takes precedence over this Policy, in the order listed below:

1. legislation;
2. the formal requirements of a Commonwealth or State department, authority or agency (as described in a City policy or procedure);
3. a Council decision; expressly specifying a particular way in which a document is to be executed.

EXECUTION OF DOCUMENTS POLICY

CITY OF VINCENT

SCOPE

This Policy applies to all City of Vincent officers who have been authorised through the provisions of this policy to execute documents on behalf of Council.

POLICY

Category 1: Common seal & a specific Council resolution

Category 1 documents require:

(a) the City's common seal to be affixed. The Act requires the common seal to be affixed in the presence of the Mayor and CEO or a Senior Employee;

(b) at least two specific Council resolutions; the approval to:
  (i) do the act or enter into an agreement; and
  (ii) execute the document related to the approval in (b)(i) above in accordance with the Policy.

Category 1 documents:

	Description
1	Deeds or contracts in respect to sale, purchase or other commercial dealing relating to City assets including equitable interests.
2	Local Planning Schemes and Amendments to the same.
3	Lease and licence documents, except those lease or licence documents specified in Category 2.
3	Transfer of Land forms.
4	Local Laws.
5	Agreements relating to grant funding or contribution, when the funder requires that the agreement be signed under seal.
6	General legal and service agreements not listed in this Policy.

Category 2: No common seal – Officers authorised by Council

Category 2 documents do not require the City's common seal to be affixed.

In accordance with s9.49(A)(4) of the Act, the Council authorises the Officers listed in the table below to sign documents on behalf of the City.

Category 2 documents and the corresponding authorised Officers:

Description	Authority to Execute
Documents required in the management of land as a landowner, including a development application, building permit, easement or agreement in respect to City owned or managed land.	CEO; Executive Manager Corporate Strategy and Governance; responsible Executive Director; Director Major Projects and Deputy Director Major Projects.

EXECUTION OF DOCUMENTS POLICY

CITY OF VINCENT

Description	Authority to Execute
Documents required to enact a decision of Council, a Council Committee or the Development Assessment Panel (i.e. contractual documents resulting from a procurement process, Landgate documents as required by a condition of approval, memorandum of understanding etc.).	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects; responsible Executive Manager and the Officer exercising the delegated authority.
Documents required to enact a decision made under delegated authority or as a condition of approval given under delegated authority (i.e. caveats, restrictive covenants, or s 70A Notifications).	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and the Officer exercising the delegated authority.
Where a condition of approval given under delegated authority has subsequently been met, documents that are required to remove, withdraw or extinguish the earlier document or registration (e.g. modification or removal of an existing encumbrance, right or burden)	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects; Executive Manager Corporate Strategy and Governance; and the Officer exercising the delegated authority.
Debenture documents for loans which Council has resolved to raise.	CEO
Leases, licences, management agreement and other land agreements including: • Approved grant of lease, licence or management agreement • Variation, extension, assignment, termination, surrender, special conditions and payment schedules of an approved lease, licence or management agreement of lease, licence or management agreement consistent with delegated authority • Sublease or sublicence	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and Executive Manager Corporate Strategy and Governance.
Sponsorship, grant or contribution agreements and related documents (incoming or outgoing) which Council has resolved to receive or grant.	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and responsible Manager.
Finance leases, contracts, agreements or service legal agreements	CEO; the responsible Executive Director; Director Major Projects; Deputy Director Major Projects and Executive Manager Corporate Strategy and Governance.

EXECUTION OF DOCUMENTS POLICY

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Description	Authority to Execute
Memorandum of Understanding	CEO; responsible Executive Director; Director Major Projects; Deputy Director Major Projects and Executive Manager Corporate Strategy and Governance.

Category 3: No common seal – Officers defined in Policy

Category 3 documents are created in the normal course of business and are consistent with the City's policies and procedures. Category 3 documents are to be executed by an Executive Director, Director, Executive Manager or an Officer where the authority has been extended to that Officer through a City policy, procedure or position description.

Category 3 documents include but are not limited to the following:

	Description
1	Agreements in the normal course of business for the purchase of goods or services identified within the service unit's budget (other than for tenders) and conforming to the requirements of the City's Purchasing Policy and other relevant policies
2	General correspondence required to discharge the duties of your position
3	Regular hire arrangements.

OFFICE USE ONLY	
Responsible Officer	Executive Manager Corporate Strategy and Governance
Initial Council Adoption	04/11/2003 REF#D20/165439
Reviewed / Amended	DATE: 22/04/2008, 26/02/2013, 07/03/2017, 04/04/2018 DATE: 22/04/2018, 15/09/2020
Next Review Date	MM/YYYY

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Delegation of authority

Delegation	**2.2.18 - Disposing of Property by Leases and Licenses**
Head of power	02 Delegations made under the Local Government Act 1995
Delegator	Local Government
Express power to delegate	*Local Government Act 1995:* s.5.42 Delegation of some powers or duties to the CEO s.5.43 Limitations on delegations to the CEO
Express power or duty delegated	*Local Government Act 1995:* s.3.58 Disposing of Property
Function	1. Authority to approve ~~and execute~~ variation, extension, assignment, termination, surrenders, special conditions or payment schedules of an approved lease, license or management agreement for Category One (1) – Small Community Group, or Category Two (2) Sporting Clubs and Community Groups and Organisations; and 2. Authority to approve ~~and execute~~ any minor variations (being non-material and does not alter the substantive terms of a lease or licence), extension, assignment (including consent to a deemed assignment), termination, surrender, subletting, special conditions or payment schedules of an approved lease or licence for Category Three (3) – Commercial Entities, State and National clubs, Associations and Community Organisations; and Category (4) – Government Agencies. 3. Authority to provide consent to any assignment, sublease or sublicence where there is a request by a lessee or licensee under a land arrangement.
Delegates	CEO
Conditions	1. Requests from community or sporting groups not currently occupying a City building in Category One (1) or Category Two (2), will require a specific resolution of Council. 2. The delegation does not extend to Category Three (3) or Four (4) of the Property Management Framework. Any leases or licences in accordance with Category Three (3) or Four (4) will require a specific resolution of Council.
Express power to subdelegate	*Local Government Act 1995:* s.5.44 CEO may delegate some powers and duties to other employees
Subdelegates	Deputy Director Major Projects Director of Major Projects Executive Director Community and Business Services Executive Director Infrastructure and Environment Executive Director Strategy and Development Executive Manager Corporate Strategy and Governance
Statutory framework	*Local Government Act 1995 –s.3.58* Disposal of Property *Local Government (Functions and General) Regulations 1995 –r.30* Dispositions of property excluded from Act.

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Delegation of authority

Date adopted	20 June 2023
Adoption references	20/06/2023 - Item 12.1

Last reviewed	21 May 2024