

EXECUTION OF DOCUMENTS POLICY



Legislation / local law requirements	Section 9.49A of the <i>Local Government Act 1995</i> – Execution of documents
Relevant delegations	Delegation 2.2.29 – Execution of Documents
Related policy procedures and documents	Nil

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)*.

BACKGROUND

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,each of whom must sign the document to attest the common seal was affixed; or
- (b) it is signed by an Officer authorised to do so.

A Council resolution or a decision under delegated authority is required to approve 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.

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The following take precedent 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.

OBJECTIVE

For the City to execute documents in a consistent and transparent manner, in accordance with the Act.

POLICY

1. **Category 1(A): Documents requiring the common seal & a specific Council resolution**

Category 1(A) documents require a specific resolution of Council to sell, lease or enter into an agreement along with an authority to affix the common seal.

These documents are executed by having the common seal affixed, under the authorisation of Council, in 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.

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

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 documents. This category includes, but is not limited to:
 - Variation of Lease;
 - Assignment of Lease; and
 - Surrender of Lease,except where granted under delegated authority;
4. Local Laws; and
5. licence documents, except those licence documents specified in Category 2.

2. **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.

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The following is a list of Category 1(B) documents-;

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; and
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).

3. 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:

Description	Authority to Execute
Documents required in the management of land as a landowner, including a development application, building permit application, easement or agreement in respect to City owned or managed land.	CEO; Executive Manager Corporate Strategy and Governance; and the responsible Executive Director
Documents required to enact a decision of Council, a Council Committee or the Development Assessment Panel (i.e. contractual documents resulting from a tender process, transfer of land forms, notification on title as required by a condition of approval, memorandum of understanding etc.).	CEO; responsible Executive Director; and responsible Manager.
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 s 70A Notifications).	CEO; the responsible Executive Director; 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)	CEO; the responsible Executive Director; and the Officer exercising the delegated authority.

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4. 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 a Director or Manager, or an Officer where the authority has been extended to that Officer through a City policy or procedure.

These documents include but are not limited to the following:

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; and
4. regular hire arrangements.

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.

OFFICE USE ONLY	
Responsible Officer	Executive Manager Corporate Strategy and Governance.
Initial Council adoption	DATE: 04/11/2003 REF# D20/165439
Reviewed / Amended	DATE: 22/04/2008, 26/02/2013, 07/03/2017, 04/04/2018, 22/04/2018 DATE: 15/09/2020, REF#: D20/165439
Next Review Date	DATE: 15/09/2024,