

USE OF COUNCIL COMMON SEAL

Date May 2022

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Clause Number CCL22/125

Responsible Position Executive Manager Governance and Internal Control

Branch Governance and Internal Control

Division Executive Services

Version 2

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Document Revision History	
Description	Date
Updated to Western Plains Regional Council	22 June 2016
Updated to Dubbo Regional Council	May 2022
Notes	
Brought in line with current Council template, slight amendments to who may sign documents, in line with legislation.	

POLICY

PURPOSE

A Council seal is like the signature of a Council. Affixing the seal demonstrates approval of the content of a document and shows what Council has done or agreed to do.

Council's seal can only be used following a resolution of Council. However, not all documents created to implement decisions of Council require the affixing of a seal.

This policy sets out the situations in which a seal is required, and how the seal is to be used.

BACKGROUND AND RELATED LEGISLATION

Local Government Act 1993 (The Act)

Section 377 of the Act allows Council to delegate any of its functions (except those enumerated in the section) to the General Manager (Chief Executive Officer) or any other person or body.

Interpretation Act 1987

Section 50 of Part 8 of the Interpretation Act requires Council to have a seal. This is because Council is a statutory corporation. In addition, it requires that the seal be kept by the president, chairperson or other principal officer of the corporation and affixed to a document only in the presence of at least two members of the corporation, and with an attestation by the signatures of those members of the fact of the affixing of the seal.

Local Government (General) Regulation 2021 (the Regulation)

Requirements in relation to Council's seal are further detailed in clause 400 of the Regulation, which states that:

1. *The seal of a council must be kept by the mayor or the general manager, as the council determines.*
2. *The seal of a council may be affixed to a document only in the presence of:*
 - *the mayor and the general manager, or*
 - *at least one councillor (other than the mayor) and the general manager, or*
 - *the mayor and at least one other councillor, or*
 - *at least 2 councillors other than the mayor.*

3. *The affixing of a council seal to a document has no effect unless the persons who were present when the seal was affixed (being persons referred to in subclause (2)) attest by their signatures that the seal was affixed in their presence.*
4. *The seal of a council must not be affixed to a document unless the document relates to the business of the council and the council has resolved (by resolution specifically referring to the document) that the seal be so affixed.*
5. *For the purposes of subclause (4), a document in the nature of a reference or certificate of service for an employee of the council does not relate to the business of the council.*

SCOPE

The Chief Executive Office is to arrange safekeeping of the Council Seal. The seal is to be kept under lock except when it is required for affixing to a document.

POLICY

In line with its legislative requirements, Council has determined that:

- A decision to affix Council's seal to a document can only be made by a resolution of Council. It is not a matter that can be delegated.
- Council's seal will be held by the Chief Executive Officer. Following a decision by Council that a document will be issued under seal, the Chief Executive Officer will ensure that the requirements of sections 400(2) and (3) of the Regulation are met whenever the Council Seal is to be affixed to a document.
- Council's seal will be used only for documents that relate to the business of Council, and without limiting the use of the seal, will normally only include specifically:
 - the exercise by Council of its functions in relation to the purchase, exchange, leasing, disposal of, and otherwise dealing with, real property, or
 - executing a contract of employment for the Chief Executive Officer , or
 - completing agreements or contracts from state or federal government departments where they have requested the agreements or contracts be under seal, or
 - entering into planning agreements.
- Council's seal will not be used for documents such as references or certificates of service for Council employees.
- The Chief Executive Officer will not witness the affixing of Council's seal to the contract of employment for the Chief Executive Officer.

- In accordance with section 440(2) of the Regulation, the seal of Council may be affixed to a document only in the presence of:
 - The Mayor and the Chief Executive Officer (preferred), or
 - At least one Councillor (other than the Mayor) and the Chief Executive Officer, or
 - The Mayor and at least one other Councillor, or
 - At least two Councillors other than the Mayor.

PROCEDURE FOR USE OF THE SEAL

If a document is to be sealed, the Council resolution that authorises the sealing must refer to the specific document.

However, this does not always mean that each document needs a separate resolution. If Council is authorising an activity or transaction eg the transfer of land, a single resolution could specify all of the documents that need to be executed under seal to carry out that activity or transaction.

Resolutions to use Council's seal must be in the following form:

“That any necessary documentation be executed under the Common Seal of the Council.”

If required, the words ‘Mayor’ and or ‘Chief Executive Officer’ may be replaced as required by the Mayor or Chief Executive Officer, in compliance with sections 400(2) and (3) of the Regulation.

In the case of the contract of employment for the Chief Executive Officer, the word ‘Mayor’ may be replaced, and the words ‘Chief Executive Officer’ must be replaced, as required by the Mayor, in compliance with sections 400 (2) and (3) of the Regulation.

RESPONSIBILITIES

The chief Executive Officer is responsible for ensuring the Council Seal is used in accordance with this Policy, except in the case of the contract of employment of the Chief Executive Officer, when the Director Organisational Performance is responsible.