

Western Plains Regional Council Policy

Document Type *Council Policy*

Title	<i>Use of Council Common Seal</i>
Responsible Officer	<i>Manager Governance and Risk Services</i>
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1. Introduction

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.

2. Legislation

LOCAL GOVERNMENT ACT 1993 ("THE ACT")

Section 220 of the Act states that Council is a body corporate. Section 377 of the Act allows Council to delegate any of its functions (except those enumerated in the section) to the General Manager 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 body corporate. 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 2005 (“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.

3. 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 General Manager. Following a decision by Council that a document will be issued under seal, the General Manager will ensure that the requirements of clause 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 General Manager, 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 General Manager will not witness the affixing of Council’s seal to the contract of employment for the General Manager.
- Except in the case of emergency (as determined by the Mayor or General Manager) or the contract of employment for the General Manager, the seal shall be affixed only in the presence of the Mayor and the General Manager.

4. 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.”

In the case of emergency (as determined by the Mayor or General Manager), the words ‘Mayor’ and or ‘General Manager’ may be replaced as required by the Mayor or General Manager, in compliance with sub-clauses 400 (2) and (3) of the Regulation. In that event, the minutes are to record a description of the emergency, the reasons for the replacement, and who authorised the replacement.

In the case of the contract of employment for the General Manager, the word ‘Mayor’ may be replaced, and the words ‘General Manager’ must be replaced, as required by the Mayor, in compliance with sub-clauses 400 (2) and (3) of the Regulation.