

## Common Seal Policy & Guidelines

### Objective

To provide guidelines on the affixing of the Common Seal of the City of Albany to certain documentation.

### Policy Statement

The attachment of the Common Seal requires the accompanying signatures of both the Mayor, or in their absence the Deputy Mayor, and the Chief Executive Officer or the person acting in that position.

In the absence of the requirement to affix a Common Seal, the Chief Executive Officer is empowered under the *Local Government Act 1995* (the Act) to authenticate a document. The requirement for the Common Seal to be affixed is therefore a question of balancing good governance with operational efficiencies.

A list of documents that have had the Common Seal affixed should be presented to the next available Council meeting.

### Scope

Applies to employee's delegated authority to apply the Common Seal.

### Legislative and Strategic Context

Relevant Strategic context legislation that provide the broad framework within which the policy operates and/or with which it needs to comply.

- **Common Law:** Under Common law principles originally, the Common Seal of a body corporate was the only legally recognised expression of an act of that body corporate and the affixing of the Seal was sufficient to be legally binding. However, these days, generally, this requirement is no longer in operation.
- **Agency Law:** A body corporate has the legal capacity of a natural person and may act or express its intentions and enter into legal relations through authorised human agents. As such, a body corporate may enter into a contract regardless of whether or not the Common Seal is used to execute a document.
- **Corporations Law:** Sections 126 and 127 of the Corporations Act 2001 address the use of a Common Seal. These provisions do not apply to local governments which whilst a body corporate, falls within the definition of "exempt public authority" in section 9 of that Act.

- **Local Government Act 1995:** Section 2.5(2) of the Local Government Act 1995 stipulates that a local government is "a body corporate with perpetual succession and a Common Seal". Whilst a local government, as a body corporate, has a Common Seal, there is no stipulated requirement for the use of the Common Seal in particular circumstances.

Section 9.49 stipulates that a document, is, unless this Act requires otherwise, sufficiently authenticated by a local government without its Common Seal if signed by the Chief Executive Officer or an employee of the local government who purports to be authorised by the Chief Executive Officer to so sign.

Specific sections, pertaining to the application of the Common Seal follow:

- Section 2.5 (Local governments created as bodies corporate)
- Section 5.42 (Delegation of some powers and duties to CEO)
- Section 5.43 (Limits on delegations to CEO)
- Section 9.49 (Documents, how authenticated)
- Section 9.49A (Execution of documents)
- Section 9.49B (Contract formalities)

### Strategic Context:

- **Pillar:** Leadership. A well governed city that uses resources wisely to meet local needs.

### Definitions

Definitions are taken as those detailed in the *Local Government Act 1995* and associated legislation.

### Responsibility, Review Position and Date

This policy and guideline must be reviewed every three years.

Responsibility for the implementation of this policy rests with the Chief Executive Officer and the Executive Management Team.

### Associated Documents

The following document compliments this policy and guideline:

- Authorisation Form.

## GUIDELINES:

The following documents will require the Common Seal of the Town of Cambridge to be affixed:

- (a) Local Laws.
- (b) Land transactions, including but not limited to sale, leases, assignments, subleases,
- (c) consent to mortgage, surrenders, transfers, lodgement and withdrawals of caveats and amalgamations as decided by Council.
- (d) Local Planning Schemes and Scheme Amendments.
- (e) Documents of a ceremonial nature (where the affixing of the Common Seal is for posterity rather than as a legal requirement).
- (f) Any document stating that the Common Seal of the City of Albany is to be affixed, not limited to the following:
  - All legal documents.
  - An Agreement for the procurement of goods or services for a lump sum in excess of \$250 000.

Additionally, the following procedures for the secure use of the Common Seal should be adopted:

- (a) The Chief Executive Officer is to have charge of the Common Seal and is responsible for the safe custody and proper use of it.
- (b) The Common Seal may only be used on the authority of the Council given either generally or specifically and every document to which the Seal is affixed must be signed by the Mayor or in their absence the Deputy Mayor, and the Chief Executive Officer or a designated senior employee.
- (c) The Administration is to record in a register each date on which the Common Seal was affixed to a document, the purpose of the document, and the number of copies Sealed.
- (d) A report listing the documents to which the Common Seal has been affixed is to be presented to the next Ordinary Meeting of Council.
- (e) The wording to accompany the application of the Common Seal should be as follows:

THE COMMON SEAL of ) CITY OF ALBANY )  was hereunto affixed by ) authority of resolution of the ) Council in the presence of )  ..... (insert the name of the Mayor)   <b>Mayor</b>	  ..... (insert the name of the CEO), <b>CEO</b>
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<b>Document Approval</b>			
<b>Document Development Officer:</b>		<b>Document Owner:</b>	
Manager Governance & Risk (MGR)		Executive Director Corporate & Commercial Services (EDCCS)	
<b>Document Control</b>			
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