

4.6 URGENT ITEM – EXECUTION OF DOCUMENT & USE OF COMMON SEAL DELEGATIONS

Proponent : City of Albany
Responsible Officer(s) : Chief Executive Officer (F James)

IN BRIEF

- To ensure Council is compliant with legislation through appropriate delegation to the Chief Executive Officer (CEO) in respect of execution of documents and use of the Common Seal.

**ITEM 4.6: RESPONSIBLE OFFICER RECOMMENDATION 1
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

- That the **COMMON SEAL** delegation authorised at the Ordinary Council Meeting held on 14 December 2010 (Report Item 4.3.8) be **REVOKED**; and

EXECUTION OF DOCUMENTS AND USE OF COMMON SEAL DELEGATION POLICY

- Under sections 2.5 and 5.45 of the *Local Government Act 1995* (the Act), the Chief Executive Officer be delegated the power to:
 - Execute a document on behalf of the City where there is a requirement for the document to be executed as a deed, pursuant to Section 9.49A(5) of the Act;
 - Affix the Council's Common Seal to documents, pursuant to Section 9.49A(2) of the Act; and
 - Sign documents on behalf of the local government for all matters arising under delegated authority given by the Council under sections 5.42 and 9.49A(4) of the Act and generally as is necessary or appropriate in reasonably carrying out his or her function under the Act or under any written law.

Conditions and Reporting Requirements:

- Power to sub-delegate: In accordance with section 5.43(ha) of the Act the Chief Executive Officer or Acting Chief Executive Officer, appointed in writing, is NOT authorised to delegate this function;
- Details of the application of the Common Seal and Execution of Documents are to be recorded in accordance with Section 5.41(h) of the Act; and
- A Record of application of the Common Seal and a Record of Executed Documents signed under delegation are to be reported to the Council on a monthly basis

CEO:

RESPONSIBLE OFFICER:

ITEM 4.6 – RESPONSIBLE OFFICER RECOMMENDATION 2
VOTING REQUIREMENT: SIMPLE MAJORITY

That Council ADOPT “Use of the Common Seal Policy”, being:

Policy – Use of the Common Seal

Objective: To provide a policy for the use of the Common Seal

Policy Statement: In compliance with Section 9.49A of the *Local Government Act 1995* and Part IV of the *Local Government (Functions and General) Regulations 1996* the following applies to the use of the Common Seal:

- (1) All legal documents shall be executed under the City of Albany’s Common Seal with the signatures of the Mayor and the Chief Executive Officer.
- (2) An Agreement for the procurement of goods or services for a lump sum consideration in excess of \$250 000, is to be executed under the City of Albany’s Common Seal affixing the signatures of the Mayor and the Chief Executive Officer.
- (3) The Chief Executive Officer is to have charge of the Common Seal of the Local Government, and is responsible for the safe custody and proper use of it.
- (4) The Common Seal of the City of Albany may only be used on the authority of the Council given either generally (including through delegated authority) or specifically and every document to which the Seal is affixed must be signed by the Mayor (where applicable) and the Chief Executive Officer.
- (5) The Common Seal of the City of Albany is to be affixed to any local law, which is made by the City of Albany.
- (6) The Chief Executive Officer is to record in a Register and report to the Council each date on which the Common Seal of the City of Albany was affixed to a document, the nature of the document, and the parties to any agreement to which the Common Seal was affixed.

BACKGROUND

1. Council reviewed the Common Seal delegation on 14 December 2010, prior to the appointment of the new CEO.

DISCUSSION

2. Council has previously approved to delegate the application of the Common Seal to the CEO, being:

That, under sections 2.5 and 9.49 of the Local Government Act 1995 the CEO be delegated the authority to attach the Common Seal to documents.

Condition: Subject to the restrictions imposed by section 5.43 of the Local Government Act 1995.

Applicable legislation/policy:

- *Local Government Act 1995, section 2.5 (Local governments created as bodies corporate)*
- *Local Government Act 1995, section 9.49A (Execution of documents)*

Note: The City of Albany is a body corporate with perpetual succession and a common seal. The Local government has the legal capacity of a natural person. The common seal is the official stamp or “signature” of the City of Albany.

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

Report to Elected Member Information Bulletin.

3. On review of the Common Seal delegation, given the appointment of a new CEO, it was considered prudent that it is brought to Council’s attention to reconsider that delegation.
4. To ensure that the Common Seal is applied appropriately, a policy should be adopted to govern the use of the Common Seal and to give authority to the CEO to Execute Documents on behalf of Council.

GOVERNMENT CONSULTATION

5. Advice was sought from the Department of Local Government, Compliance Section to confirm that the proposed delegation was compliant with legislation.

STATUTORY REQUIREMENTS

5.42. Delegation of some powers and duties to CEO

6. In accordance with Section 4.52 of the Act, a local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under this Act other than those referred to in section 5.43. * Absolute Majority Required.
7. A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

5.43. Limits on delegations to CEO

8. In accordance with Section 5.43(ha) of the Act, a local government cannot delegate to a CEO the power under section 9.49A(4) to authorise a person to sign documents on behalf of the local government

9.49A. Executive of documents

- (1) *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) and (3); or*
 - (b) *it is signed on behalf of the local government by a person or persons authorised under subsection (4) to do so.*
- (2) *The common seal of a local government is not to be affixed to any document except as authorised by the local government.*

- (3) *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.
- (4) *A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.*
- (5) *A document executed by a person under an authority under subsection (4) is not to be regarded as a deed unless the person executes it as a deed and is permitted to do so by the authorisation.*
- (6) *A document purporting to be executed in accordance with this section is to be presumed to be duly executed unless the contrary is shown.*
- (7) *When a document is produced bearing a seal purporting to be the common seal of the local government, it is to be presumed that the seal is the common seal of the local government unless the contrary is shown.*

9.49B. Contract formalities

- (1) *Insofar as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a local government may make, vary or discharge a contract in the name of or on behalf of the local government in the same manner as if that contract was made, varied or discharged by a natural person.*
- (2) *The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the local government concerned and other parties to the contract.*
- (3) *Subsection (1) does not prevent a local government from making, varying or discharging a contract under its common seal.*

9.49. Documents, how authenticated

9. A document, is, unless this Act requires otherwise, sufficiently authenticated by a local government without its common seal if signed by the CEO or an employee of the local government who purports to be authorised by the CEO to so sign.

2.5. Local governments created as bodies corporate

- (1) *When an area of the State becomes a district, a local government is established for the district.*

(2) *The local government is a body corporate with perpetual succession and a common seal.*

(3) *The local government has the legal capacity of a natural person.*

(4) *The corporate name of the local government is the combination of the district's designation and name.*

(5) *If the district's name incorporates its designation, the designation is not repeated in the corporate name of the local government.*

(6) *Proceedings may be taken by or against the local government in its corporate name.*

FINANCIAL IMPLICATIONS:

10. Staff resources to prepare this report and implement changes will be resourced from within allocated budget.

STRATEGIC IMPLICATIONS

11. This item directly relates to the following elements from the Albany Insight ~ Beyond 2020 Corporate Plan...

Priority Goals and Objectives... Goal 4: Governance ... The City of Albany will be an industry leader in good governance and service delivery.

The City of Albany will... 4.1 Be a cohesive Council delivering ethical and responsible government committed to excellence in board governance.

POLICY IMPLICATIONS:

12. This will create a new policy titled: Use of Common Seal Policy.
13. A report on executed documents and use of the Common Seal will be reported to the Council on a monthly basis.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

14. Council has the option to refuse the delegation, however the CEO will be unable to execute documents on behalf of Council which will make conducting the "business" of the City of Albany extremely difficult.

SUMMARY CONCLUSION

The delegation and proposed policy be approved.

File Number (Name of Ward)	PE.AUT.1 (All Wards)
Previous Reference	OCM 14/12/10 Item 4.3