

15.4 Execution of Documents Policy

Location	Town-wide
Reporting officer	Coordinator Governance and Strategy
Responsible officer	Manager Governance and Strategy
Voting requirement	Simple majority
Attachments	1. Execution of Documents Policy [15.4.1 - 5 pages]

Recommendation from the Policy Committee:

That Council:

1. Adopts Policy 009 Execution of Documents as attached at attachment 1; and
2. Amends Council's condition on delegation numbers 1.3.1 and 1.3.2 to read: *"Council's authorisation for the execution of documents is given on the basis that the Execution of Documents Policy is to be followed in relation to any exercise of the authorisation."*.

Purpose

To consider adopting the Execution of Documents Policy.

In brief

- Following the notice of motion carried at the Ordinary Council Meeting on 16 August 2022, Town Officers have drafted an Execution of Documents Policy.
- The draft policy was workshopped with Elected Members at a Concept Forum.
- The draft policy is now presented for the consideration of Policy Committee and Council.

Background

1. Under Policy 001 - Policy management and development, a policy response was identified as required as a result of a Council resolution.
2. Following a notice of motion, at the Ordinary Council Meeting on 16 August 2022, Council resolved:
That Council
 1. *Directs the Chief Executive Officer to present a draft Execution of Documents Policy to the Policy Committee by no later than November 2022.*
 2. *Requests the Chief Executive Officer to hold a workshop with or present at a Concept Forum to Elected Members about the development of the draft policy before presentation to the Policy Committee.*
3. Following the Council resolution, the Governance and Strategy team drafted an Execution of Documents policy and circulated the draft to relevant service areas. Feedback received as part of that process guided the further development of the draft policy.
4. The draft policy was placed on the Councillor portal for feedback by Elected Members. A Concept Forum was also held on 25 October 2022 where feedback was provided by Elected Members.

Strategic alignment

Civic Leadership	
Community priority	Intended public value outcome or impact
CL1 – Effectively managing resources and performance.	Guidance is available to assist in the execution of documents, and the allocation of sufficient resources to ensure documents are executed when required.
CL3 - Accountability and good governance.	The Town and Council will ensure that it meets its statutory obligations with regards to the execution of documents.

Engagement

Internal engagement	
C-Suite	Relevant service areas across the Town provided input and commentary on the draft policy prior to the Concept Forum on 25 October 2022.
All Service Area Managers	
Elected Members	Elected Members were given the opportunity to provide feedback on the draft policy and were also briefed during a Concept Forum on 25 October 2022 and provided input and feedback on the draft policy.

Legal compliance

[Section 2.7 of the Local Government Act 1995](#)

[Section 9.49A of the Local Government Act 1995](#)

Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Not applicable.				Low	
Environmental	Not applicable.				Medium	
Health and safety	Not applicable.				Low	
Infrastructure/ ICT systems/ utilities	Not applicable.				Medium	
Legislative compliance	Documents are not executed in	Insignificant	Possible	Low	Low	TREAT the risk by adopting the

	accordance with section 9.49A of the Act.					Execution of Documents Policy and establishing an internal guideline to support the operation of the policy.
Reputation	Not applicable.				Low	
Service delivery	Confusion around which execution method is to be used for a document that is not listed in the policy, potentially causing delays to the delivery of service.	Minor	Possible	Medium	Medium	ACCEPT the risk. A report may need to be presented to Council if a document not included in the Policy is required to be executed, which may cause delays to the delivery of service.

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address this recommendation.
Future budget impact	Not applicable.

Analysis

5. Section 9.49A of the *Local Government Act 1995* provides two different methods for local governments to execute documents. Those methods are:
 - (a) applying the common seal in the presence of the Mayor and Chief Executive Officer; or
 - (b) the Chief Executive Officer, or another officer as authorised by Council, signing the document (without the Common Seal).
6. There isn't any difference between the two execution methods in terms of legality – documents are legally executed if either of those methods are used. There are some documents that are required to be executed by common seal however, which include documents like local laws and local planning schemes.
7. The Execution of Documents Policy is designed to provide clarity around which documents are to be executed using either of the methods listed above.
8. Ultimately, it is up to the Council to determine how documents are to be executed.
9. Historically, to execute documents, the Town has either utilised two authorisations contained in the Delegations and Sub-delegations Register (reference number 1.3.1 and 1.3.2) which is renewed every year when Council resolves to adopt the register, or through a Council resolution for a specific document. The authorisations in the Delegations and Sub-delegations register allow the execution of a

document by common seal, subject to a set of conditions and allow the CEO and other officers to execute some documents by signing them, which also has a set of conditions. These authorisations are treated as Councils' authority under section 9.49A(2) (common seal) and 9.49A(4) (signature) of the *Local Government Act 1995* to execute documents.

10. For the Execution of Documents policy to function without hinderance, the authorisations contained in the Delegations and Sub-delegations register will need to be amended. The conditions on execution are proposed to be amended to "*Council's authorisation for the execution of documents is given on the basis that the Execution of Documents Policy is to be followed in relation to any exercise of the authorisation.*". This will ensure the correct authorisation is in place and ties the use of that authorisation to the Execution of Documents Policy.
11. An absolute majority decision is not required to enable this change as Council is not amending a "delegation" as provided for in the *Local Government Act 1995*; it is amending an "authorisation". Section 9.49A does not provide an absolute majority requirement for this authorisation.
12. The Execution of Documents Policy provides the Council the ability to have a document executed in a way that isn't consistent with the policy if it so desires by, as an example, requesting a document be executed via common seal that is captured in the policy as a CEO authorisation.
13. The process to be followed internally by Town Officers in getting a document executed will be provided for in a Management Practice, which will be approved via the appropriate channels internally and be consistent with the legislative provisions and the Execution of Documents Policy.

Relevant documents

Not applicable.