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COUNCIL SEAL AND EXECUTION OF LEGAL DOCUMENTS

Strategic Outcome:	Good government	
Policy type	Statutory	
Date of Adoption:	18 October 2023	Minute Number: 285/23
Date for Review:	20 October 2027	
Responsible Officer:	Deputy Chief Executive Officer	
Document Control:	New policy	
Delivery Program Link:	<i>2.1.2 Meet legislative requirements for Council elections, local government and integrated planning and reporting.</i>	

1. POLICY STATEMENT

It is important that legal documents entered into by Council are validly executed and that the Council seal is used in line with Council's legal obligations.

2. PURPOSE

The purpose of this Policy is to provide guidance to Council Officers on the execution of legal documents. This Policy aims to provide the conditions under which the Council Seal (Seal) must be affixed to documents and the steps associated with affixing the Seal.

3. SCOPE

This procedure applies to all Council Officers (see definitions below).

4. OBJECTIVE

This policy is developed to assist the Council with Delivery Program Objective 2.1.2:

Meet legislative requirements for Council elections, local government and integrated planning and reporting.

5. DEFINITIONS

Conveyancing document: A document executed as part of a Conveyancing Transaction;



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Conveyancing transaction: The transfer of legal title from one person to another or the granting of an encumbrance such as a mortgage or easement.

Councillor: An elected official of Berrigan Shire Council

Council officer: (Also known as Public Official) includes Councillors; full-time, part-time and casual staff members whether they are permanent or temporary employees; volunteers; contractors; and external members of Council committees.

An **Authorised Council Officer** is a Council Officer delegated by the CEO to act on behalf of Council.

A **Responsible Council Officer** is responsible for the management of a specific legal document(s).

Council seal: The official stamp of Berrigan Shire Council, indicating Council's formal acceptance of the contractual document(s) and/or obligations.;

Legal documents: Written documents that create legal relations between parties and can be used to uphold an agreement in a court of law. Legal documents consist of all written transactions entered into with an external entity on behalf of Council, including but not limited to:

- agreements – including funding agreements, development agreements and Memorandums of Understanding,
- contracts and
- property leases and licence agreements.

6. POLICY IMPLEMENTATION

6.1 Documents requiring the Council seal

6.1.1 Holder of the seal

The Seal must be kept by the Chief Executive Officer.

6.1.2 Documents that must have the seal attached.

The Seal must be affixed in relation to the following:

- a) the execution of documents for the disposal of land,
- b) the execution of documents for the acquisition of land,



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- c) if a funding agreement or contract between Council and the NSW Government or Commonwealth Government expressly requires the affixing of the Seal, and
- d) as otherwise required by law.

The Seal must not be affixed to a document unless the document relates to the business of Council and Council has resolved (by resolution specifically referring to the document) that the Seal be affixed.

6.1.3 Obtaining endorsement of the fixing of the seal

The Seal shall not be affixed to any document unless:

- a) the document has been listed under the 'Documents for Signing and Sealing' section of the Ordinary Council Meeting Agenda and Council has resolved to affix the Seal, **or**
- b) Council has resolved with a specific resolution to affix the Seal to a specific document.

6.1.4 Documents listed under the "Documents for Sealing" section of the Ordinary Council meeting agenda.

Council Officers are responsible for notifying the Governance unit of any document(s) requiring sealing for listing on the Ordinary Council Meeting Agenda. In addition to forwarding a copy of the document(s) for sealing to the Governance unit, Council Officers must notify the Governance Unit of the following:

- a) the purpose of the legal document,
- b) the contact details of the Council Officer responsible for the document(s),
- c) the date of the Council Meeting when sealing of the document is to be considered and
- d) the Magiq document number where the document is stored.

The Governance unit responsible for listing the relevant documents under the 'Documents for Sealing' section of the Ordinary Council Meeting Agenda.

6.1.5 Documents resolved to have the Seal affixed by specific resolution.

Where it is necessary for Council to affix the Seal to specific document(s) by a specific resolution, the resolution of Council is to appear as follows:

"Council authorises its Seal to be affixed to [identify the document(s), and the value including GST if it is a contract] in the presence of two signatories authorised to affix the Seal pursuant to Regulation 400 of the Local Government (General) Regulation 2021."

Council Officers are responsible for ensuring the wording of the resolution to affix the Seal complies with this procedure.

Once a Council resolution has been made to affix the Seal, the Governance unit is responsible for coordinating the execution of the documents.



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6.1.6 Affixing the Seal to documents following Council resolution.

Council Officers are responsible for ensuring the wording of the resolution to affix the Seal complies with this procedure.

The Seal must not be affixed to any document without a resolution of Council.

Documents requiring the Seal to be affixed must be witnessed and done only in the presence of:

- a) the Mayor and the CEO, or
- b) at least one Councillor (other than the Mayor) and the CEO or
- c) the Mayor and at least one other Councillor, or
- d) at least two Councillors other than the Mayor.

The Mayor and CEO (or such other Councillor(s) as detailed above) are responsible for ensuring the Seal is not affixed to any document for which a resolution has not been adopted relating to the affixing of the Seal.

The persons who witnessed the sealing (for example, the Mayor and CEO) must attest that the Seal was affixed in their presence and was done so in accordance with a resolution of Council. The attestation should read as follows (unless otherwise required in a prescribed form by legislation or other obligation):

THE SEAL of BERRIGAN SHIRE COUNCIL ABN 53 900 833 102 was affixed in accordance with Reg 400 Local Government (General) Regulation 2021 pursuant to a resolution made on <i>[insert date]</i> and attested to by:	
..... [print name and position of signatory one] [print name and position of signatory one]

Details of the witnesses to the sealing, the date the document was signed and sealed, and the date Council resolved to affix the Seal are entered into the Documents for Sealing Register.

The Governance unit are responsible for entering the details into the Documents for Sealing Register.

The Governance unit is responsible for scanning all executed documents and ensuring they are correctly recorded in Magiq. The Records unit is responsible for retaining the documents in accordance with the *NSW State Records Act 1998*.



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6.2 Documents not requiring the Council seal

Some legal documents executed by Council do not require the Council Seal to be affixed, such as funding agreements from third parties, licence agreements and delegated contracts.

This section applies to all legal documents that do not require the Council Seal to be affixed. These documents are to be signed by the third party and then signed by the Authorised Council Officer as provided under the Delegations of Authority from CEO to Staff.

<p>EXECUTED for and on behalf of BERRIGAN SHIRE COUNCIL ABN 53 900 833 102 under delegated authority and in the presence of:</p>	
<p>..... Signature of Witness</p>	<p>..... Signature of delegated Council Officer</p>
<p>..... Name of Witness</p>	<p>..... Name of delegated Council Officer</p>

The Governance unit is responsible for scanning all executed documents and ensuring they are correctly recorded in Magiq.

Retention of documents may include forwarding the original executed document(s) (excluding employment agreements) to Council’s contracted legal services provider.

The responsible Council Officer is responsible for including the details of the legal documents on the relevant internal register.

6.3 Conveyancing documents

Conveyancing documents may or may not require the Council seal to be affixed. Council’s legal service provider can provide further guidance, if required.

Verification of identity is required for all Council Officers who execute documents in a conveyancing transaction. 100 points of identification is to be provided to Council’s legal services provider on commencement of Council term or as required.

6.4 Obtaining legal advice

To ensure the efficient management of Council’s resources, appropriate approval must be sought before Council Officers seek to obtain legal advice from Council’s legal services provider.



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Council Officers are responsible for seeking approval from the CEO or Deputy CEO (or other Council Officer) nominated in the Delegations of Authority from CEO to Staff, as provided from time to time). Requests must detail why the legal advice is required and the proposed scope of the legal advice.

7. RELATED LEGISLATION, POLICIES AND STRATEGIES

7.1 Legislation

- *Local Government Act 2000*
- *State Records Act 1998*
- *Local Government (General) Regulation 2021*

7.2 Council policies and guidelines

- Governance Policy
- Code of Conduct
- Code of Meeting Practice
- Records Management Policy

8. RECORDS MANAGEMENT

All Records must be kept in accordance with Council's Records Management Policy (currently under development) and destroyed as per the General Retention and Disposal Authority: Local Government Records (GA39).

9. REVIEW AND EVALUATION

This policy (procedure) will be evaluated and reviewed at least once every four (4) years as per Council's Governance Policy (currently under development) or as required.

10. DOCUMENT AVAILABILITY

A number of legislative instruments require Councils to have the policy available for inspection at Council's principal office (i.e. Policies made under Part 3, of the Local Government Act 1993). Each document should therefore state the ways in which the policy is available including any relevant fees and charges for access to such policy. An example of the required statement is provided below:

This policy will be available for inspection at Council's principal office during ordinary business hours as per the requirements of section 18 (c) of the *Government Information (Public Access) Act 2009* and section 167 of the *Local Government Act 1993*.

Access to the policy in digital format is free and is available on Council's website <https://www.berriganshire.nsw.gov.au/>



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Printed copies of the document are available at Council's principal office (address noted below) and are subject to Council's Fees and Charges.

Berrigan Shire Council
56 Chanter Street
BERRIGAN NSW 2712

Ph: 03 5888 5100

Email: mail@berriganshire.nsw.gov.au

11. VERSION CONTROL

Version Number	Date	Summary	Responsible Officer
1.0	18/10/2023	New Policy document	Deputy Chief Executive Officer