

Bonds Policy

LEADERSHIP

1.1 Our Council has the trust of the community and well informed decisions are made to ensure long term sustainability of our Shire

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Policy Owner:	Group Manager Planning Development and Regulatory Services
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Related Policies/Legislation:	<i>Environmental Planning and Assessment Act 1979 (as amended) and Environmental Planning and Assessment Regulation 2000.</i>
Related Documents:	Nil
Superseded Policy/GM Practice Note:	Nil



Objectives

This Policy has been prepared to outline Council's requirements for the lodgement of bonds and guarantees associated with the development process where public infrastructure works are undertaken by parties other than Council.

Council will require a cash bond or bank guarantee to ensure that future facilities and infrastructure including landscaping are delivered in a specified timeframe, to protect existing Council assets, or to ensure that constructed works perform or are delivered to relevant standards. They are also accepted to facilitate the release of a subdivision or occupation certificate prior to completion of all public infrastructure works.

This policy outlines the different types of security bonds which may be required in accordance with Section 4.17(6) and 6.15 of the *Environmental Planning & Assessment Act 1979* including the required bond amounts and the duration and return of bonds and bank guarantees.

Any bond taken under this policy must not be applied or used for the purposes of deferring any development contributions arising under Section 94 (now Section 7.11) or any obligation under a Voluntary Planning Agreement (VPA) or Works-In-Kind Agreement (WIK). Conversely, any bond, bank guarantee, or the like, taken as security to defer Section 94 (now Section 7.11) development contribution, VPA or WIK obligations, cannot be applied to any purposes described under this bonds policy.

Policy Statement

The intent of the Bonds Policy is to establish clear guidelines for the acceptance of varying types of financial bonds as security from parties, other than Council, for certain works on public land or works on private land where such works will become donated assets to Council.

These works are typically, but not necessarily limited to, roads and other public works such as community infrastructure including footpaths, drainage facilities, recreational facilities, water and sewer infrastructure, water quality facilities, buildings or landscaping that are required to be constructed in association with a Development Consent, or other Council approval.

The various security bonds are detailed as follows:

1. Incomplete Works Bonds


1.1 General Works

Purpose of the Bond

To ensure the cost of incomplete civil works are covered, at the discretion of Council. The bond may also apply if the proposed works do not comply with Council's standard or the developer seeks to obtain registration of the subdivision prior to the works being completed due to:

- (i) timing to comply with Council's standards; or
- (ii) time required to complete non-essential infrastructure works.

The deferral of such works shall not expose Council to any public liability risks or safety issues. Council will not accept a bond for the completion of essential outstanding Council infrastructure works.



Circumstances where bonds are required

A bond is payable prior to release of the Subdivision, Occupation Certificate.

The Applicant shall provide a written guarantee (letter of undertaking) of the timeframe to undertake the required works.

The timeframe and schedule for the carrying out of the bonded works yet to be completed shall be not more than 6 months from the date of the Subdivision, Occupation Certificate being issued.

Bond amounts (excluding GST)

The bond amount is either 150% of the total engineering public works costs where latent conditions are prevalent prior to finalisation of works; or 130% of the total engineering public works costs where there is certainty in estimating and validating outstanding works.

The bond amount shall be determined by written evidence (including two quotes or QS Report prepared by qualified professional taking into account local market conditions) identifying the cost of the works, provided by the applicant to Council to ascertain the amount.

Council will undertake its own assessment of the quotes submitted/QS Report prior to accepting the bond amount. The works are required to be scoped by the applicant / developer and agreed to by Council prior to the assessment of costs being undertaken.

Duration and return of the bond

The bond will be held by Council until the works are completed to Council's satisfaction.

If the works are not completed within the nominated time, then Council may either call in the bond or request additional security to cover the future value of the work including administrative costs to Council and increases in construction costs due to the timing of works and contingency costs.

The bond shall be returned following a written request for the return of the bond and completion of Council's adopted bond return application form.

1.2 Footpath Infrastructure


Council requires footpath infrastructure to be delivered as part of the approved subdivision works. If a developer elects to defer the footpath construction and Council agrees to that deferral, a payment of a bond shall be required.

The deferred footpath works must be completed once 80% of housing has been constructed within the approved subdivision, or within 2 years from the date of the deferral, whichever occurs first.

Where a Footpath Bond is accepted by Council, the following provisions will apply.

Purpose of the bond

To ensure the construction of concrete footpaths and/or pedestrian/cycle shared ways located in existing and/or proposed public land are constructed as detailed in the development consent and approved construction certificate plans. The bond applies only where such facilities are in existing and/or proposed public land.



Circumstances where the bond is required

The bond is payable prior to release of the Subdivision or Occupation Certificate. The bond period is to commence on the date of issue of a subdivision and is required to be held until works are complete to the satisfaction of Council.

Bond amounts (excluding GST)

The total amount of the incomplete works will be confirmed by Council following the provision of written evidence provided by the Applicant to Council to ascertain the amount. Evidence can be provided in the form of two written quotes or QS Report prepared by qualified professional taking into account local market conditions.

Council will undertake its own assessment of the quotes prior to accepting the bond amount.

The bond amount is 130% of the value of the incomplete works.

Duration and return of bonds

The bond is held by Council until the works are completed to Council's satisfaction.

If the works are not completed within the nominated time, then Council may call in the bond or request additional security for indexation of the value of the works.

The bond shall be returned following a written request for the return of the bond and completion of the bond return request form.

1.3 Water Quality Facility Works

Purpose of the bond

To ensure the water quality facility/facilities located in existing and/or proposed public land are constructed as detailed in the approved drawings. The bond applies only where such facilities are in existing and/or proposed public land.

Circumstances where the bond is required

The bond is payable prior to the issue of a Subdivision Certificate.


The Applicant shall provide a written guarantee of the timeframe to undertake the works.

The timeframe and schedule for the carrying out of the bonded works yet to be completed shall be not more than 6 months from the date of the Subdivision Certificate being issued.

Bond amounts (excluding GST)

The bond amount is 130% of the total value of the water quality facility works including:

- (i) the cost of removing the sediment, turf and geotextile layer on the water quality facility;
- (ii) the cost of preparing detailed design documentation if the design is yet to be finalised, and
- (iii) planting the water quality facility to its final form.



The bond amount shall be determined by written evidence (including two quotes or QS Report prepared by qualified professional taking into account local market conditions) identifying the cost of the works provided by the Applicant to Council to ascertain the amount.

Council will undertake its own assessment of the quotes submitted/QS Report prior to accepting the bond amount.

Duration and return of bonds

The bond is held by Council until the works are completed to Council's satisfaction.

If the works are not completed within the nominated time, then Council may either call in the bond or request additional security for indexation of the value of the works.

The bond shall be returned following a written request for the return of the bond and completion of the bond release request form.

2. Defects and Liability Bond

Purpose of the bond

To ensure costs to cover any defects and liabilities of any new public infrastructure provided by an applicant/developer, such as roads, drainage, footpaths, water, sewer, buildings, riparian corridors, water sensitive urban development and public reserves.

Circumstances where bonds are required

The bond is payable prior to issue of Subdivision, Occupation Certificate for the designated works. The bond needs to clearly nominate the value of the actual works that the developer is liable for.

Bond amount (excluding GST)

The defects and liability bond is 10% of the value of the works covered by the defects liability period, with a minimum value of \$10,000.


The value of the works shall be determined by written evidence (including two quotes or QS Report prepared by qualified professional taking into account local market conditions) identifying the cost of the works provided by the Applicant to Council to ascertain the amount.

Council will undertake its own assessment of the quotes submitted/QS Report prior to accepting the bond amount.

Duration and return of bonds

The bond is held for a minimum of 24 months from the date of the release of the Subdivision Certificate. Following the rectification of any defects Council at its discretion may request a new defects and liability period to apply from the date of acceptance of rectification works.

If the rectification works are not completed to Council's satisfaction, Council may either call in the bond or request additional security to cover the future value of the work including administrative costs to Council and increases in construction costs due to the timing of works and contingency costs.



Bonds are considered for release on receipt of a written request for the return of the bond and completion of the bond release request form.

3. Damages Bond

Purpose of the bond

To ensure any damage to existing public infrastructure resulting from development or associated works is rectified to Council's satisfaction.

The bond is required for the protection of existing Council assets during construction, such as footpaths, road furniture, landscaping/trees, drainage, water, sewer, kerb and gutter and road pavement.

Circumstances where bonds are required

The bond is payable prior to issue of a Construction Certificate for commencement of the development.

Bond amount (excluding GST)

A dilapidation report of the identified infrastructure is to be submitted to Council prior to the commencement of construction to determine current state of repair.

The report should identify relevant infrastructure in the vicinity of the works and a written assessment of the condition of the infrastructure, including photos and any test results.

The bond amount is calculated at 10% of the value of the development works.

Duration and return of bonds

The bond is held by Council until all identified rectification works (if required) are completed to Council's satisfaction. Bonds are considered for release on receipt of a written request for the return of the bond and completion of the bond release request form.

4. Rolling Developer Bond

Purpose of the bond


Council may allow a rolling bond where there is a large development entity with a project in which there are multiple stages in a development. This enables a developer to submit a consolidated security to cover each of the bonds required by this policy.

This allows for bonds to be transferred from one stage to another provided the required works have been satisfactorily completed, rather than needing to submit lodgement and/or refund applications for each bond, at the end of each stage.

This option provides a streamlined approach to managing various bonds.

How to apply for a rolling bond

Any application to enter into a rolling bond arrangement will be dealt with on a case by case basis.



The Applicant will be required to enter into a formal agreement with Council that outlines how the rolling bond is managed.

The Applicant will be required to maintain a complete register of all bonds within the rolling bond agreement and provide quarterly reports to Council on the status of existing included bonds, and upcoming proposed changes.

Circumstances where bonds are required

The criteria for lodgement of bonds are outlined in Sections 1- 4 of this policy. The type of bonds incorporated into a Rolling Bond will determine when the initial security must be submitted to Council. For example, if the rolling bond for a staged development is to include damage bonds, then the Rolling Bond must be in place prior to the issue of a Construction Certificate for stage 1.

Bond amount (excluding GST)

The value of a Rolling Bond is calculated by accumulated value of all bonds required by the policy and applicable Development Consents, as appropriate to the staging of works.

Accordingly, the amount of security held under a rolling bond at any time, must be equivalent to the accumulated value of all outstanding bonds required for that development.

The value of the rolling bond may vary over the course of the development, depending on the timing and completion of stages.

Duration and return of bonds

Bonds will be returned or credited against the rolling bond in accordance with the criteria outlined in Sections 1- 4 of this policy.


Scope

Development Consents that require works on public infrastructure and process to fulfil the condition could require lengthy disruption to normal operation and presents a risk to the community if not able to be completed as intended or scheduled.

A security bond will take the form of an irrevocable and unconditional bank guarantee (without expiry or termination date) in favour of Council, bank cheque or cash.

Council may consider a request to bond incomplete works, where the following criteria are met:

- The works do not adversely affect the efficiency and/or operation of the development or a vital element of the development (including health and sanitary conditions);
- The incomplete works do not present a safety issue that cannot be satisfactorily managed at the discretion of council;
- The completion of the incomplete works can be carried out without significant impact on the operation of the development site and/or will not inhibit the commencement of building development on the development site;
- The nature and value of the incomplete works can be accurately estimated and validated. A request to bond where there exist latent conditions on site may be considered; and
- The developer can retain sufficient control of the site to satisfactorily carry out the incomplete works.



Council reserves its rights to refuse a Bond, based on its own risk assessment.

Definitions

Nil

Responsibilities

Responsibilities for implementing this policy are shared between Councillors, Executive and staff as follows:

Councillors: N/A

Executive: N/A

Staff: Group Manager Planning, Development & Regulatory Services

- To implement and review this Policy and related procedures.
- To lead staff in their understanding of, and compliance with, this Policy.

Performance Measures

Zero departures from the Policy

Breaches of the Policy

Breaches of this policy should be reported to Group Manager Planning, Development & Regulatory Services. The Group Manager Planning, Development & Regulatory Services will investigate alleged breaches and determine the appropriate course of action to resolve the matter.

Approved by:

WINGECARRIBEE SHIRE COUNCIL

22 July 2020



Attachments

Nil

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WINGECARRIBEE SHIRE COUNCIL

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