



**DEVELOPMENT
INFRASTRUCTURE
BONDS POLICY
P1.0019.2**

DEVELOPMENT INFRASTRUCTURE BONDS POLICY

DIVISION: Community Assets

BRANCH: Assets and Design Services

CATEGORY: 2

PART 1 - INTRODUCTION

BACKGROUND

This Policy has been updated to outline Council's requirements for the lodgement of bonds and guarantees associated with the development process.

Council will require a cash bond or formal security as indicated in Part 6 of this policy, to ensure that future facilities and infrastructure 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, in limited circumstances, accepted to facilitate the release of a subdivision or occupational certificate prior to completion of all public infrastructure works.

This policy outlines the different types of development bonds which may be required in accordance with Section 4.17 and 6.15 of the Environmental Planning & Assessment Act (EP&A Act) 1979, and Roads Act 1993, including the required bond amounts and the duration and return of bonds and bank guarantees.

It is acknowledged that the deferral works under a Voluntary Planning Agreement (VPA) or Works-In-Kind Agreement (WIKa) may also require the lodgement of a bond with Council.

In circumstances where there is a potential duplication of bonds required for the same item, Council may deem that the lodgement of a single bond is appropriate.

TRANSITION ARRANGEMENTS

It is acknowledged that Development Consents that were approved prior to the adoption of this Policy, may prescribe different timing for the delivery of infrastructure such as footpaths and street trees to the requirements of this policy.

In such circumstances, where a development commenced prior to the adoption of this policy, the applicant may elect to comply with either the Development Consent or this Policy, although Council encourages developers to seek to meet the requirements of this policy as soon as possible.

For staged development, this policy shall take precedence for any stage commenced after the adoption of this policy. This will be established by the date of issue of the relevant Subdivision Works Certificate or Construction Certificate for that part or stage.

PART 2 - POLICY STATEMENT

1. INCOMPLETE WORKS BOND

1.1 General Works Purpose of the Bond

To cover the cost of incomplete works, in accordance with the Consent and at the discretion of Council. The bond could also apply to works with minor defects requiring rectification to comply with Council's standards, and the developer wishes to obtain registration of the subdivision prior to the works being completed.

Generally, all subdivision works, and associated infrastructure should be constructed to the appropriate standard and fit for purpose prior to the release of the Subdivision Certificate.

The deferral of any works should be by exception and is always at Council's discretion. Such deferral shall not expose Council to any public liability risks or safety issues.

Note: Incomplete Works Bond does NOT provide for the deferral of street trees, footpaths or road pavement work (final asphalt layer). All street tree installations, footpath works, and asphalt works are to be completed prior to release of the Subdivision Certificate.

Council may consider the deferral of limited footpath works and street trees, up to a maximum of 3 months from the date of issue of the Subdivision Certificate, but only under extenuating circumstances or where there is an agreed risk of substantial damage to the completed footpath works or street tree planting.

When is the bond required?

The bond is payable prior to release of the Subdivision Works Certificate, Construction Certificate or Public Road Activity approval. The bond period is to commence on the date of issue of the certificate and is required to be held until works are completed to the satisfaction of Council.

Required Supporting Information

The Applicant shall provide a written undertaking which indicates the timeframe for completion of the works. Where required the applicant shall also include any supporting information including plans (WAE), quotes, quantity surveyor cost estimates etc, to clearly identify the works or infrastructure, and the cost of such works covered by the bond.

What is the bond amount?

The bond amount is 150% of the value of the incomplete works for the first \$300,000 (excluding GST) and then 125% for the remaining amount valued above this.

The minimum bond amount to be provided is \$10,000 (excluding GST).

The bond amount shall be determined by written evidence identifying the cost of the incomplete works, provided by the Applicant to Council to ascertain the amount.

Duration and release 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 released in accordance with the procedures outlined in Part 6 of this policy.

A Defects & Liability Bond in accordance with Part 2 of this policy, shall also be provided for the subject works prior to the release of the Incomplete Works Bond.

1.2 Water Quality Basins/Facilities

Purpose of the bond

To ensure the water quality facility/facilities are constructed in accordance with the Consent and relevant standards, including the timing of the construction/conversion and delivery. The bond applies to facilities that are located on existing and/or proposed public land, or on private land but providing a public benefit. For example, a basin which drains road water and Council is a benefitted party with the imposition of easements and covenants.

Required Supporting Information

The Applicant shall provide a written undertaking which indicates the timeframe for completion of the works. Where required the applicant shall also include any supporting information including plans, (WAE), quotes, quantity surveyor cost estimates etc, to clearly identify the works or infrastructure, and the cost of such works covered by the bond.

When is the bond required?

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

What is the bond amount?

The bond amount is 150% of the total value of the water quality facility works including;

- (i) the cost of removing the sediment, turf and geotextile layers, and any other preparation works;
- (ii) final planting works;
- (iii) establishment period for planting and any testing required once the facility is its final form.

The bond amount shall be determined by written evidence provided by the Applicant to Council to ascertain the amount.

Duration and release of bonds

The bond is held by Council until the works are completed and maintained 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 released in accordance with the procedures outlined in Part 6 of this policy.

A Defects & Liability Bond in accordance with Part 2 of this policy, shall also be provided for the subject works prior to the release of the Water Quality Facility Bond.

2. DEFECTS AND LIABILITY BOND

Purpose of the bond

To provide a bond to cover for any defects and liabilities of any new public infrastructure provided by an Applicant (developer), such as roads, drainage, footpaths, riparian corridors, WSUD, street trees and public reserves.

When is the bond required?

The bond is payable prior to issue of subdivision or occupation or compliance certificate for the designated works. For deferred works, the bond is payable upon the satisfactory completion of those works and prior to the release of the applicable Incomplete Works bond.

The bond needs to clearly nominate the value of the actual works that the developer is liable for.

The bond also may apply to works subject to a Public Road Activity approval such as footpath and roadworks, excluding vehicle crossings and road openings, unless they have been undertaken without the prior approval and/or inspection by Council.

What is the bond amount?

The defects and liability bond is 5% of the value of the works covered by the defects liability period, with a minimum value of \$10,000 (excluding GST).

The bond amount shall be determined by written evidence provided by the Applicant to Council to ascertain the amount.

Duration and release of bonds

The bond is held for a minimum of 6 months from the date of the release of the subdivision or occupation certificate, under a Public Road Activity Approval, 6 months after the completion of works (including rectification of identified defects at Practical Completion), and until rectification of the defects are completed to Council's satisfaction.

The bond shall be released in accordance with the procedures outlined in Part 6 of this policy.

3. DAMAGES BOND

Purpose of the bond

To ensure any damage to existing public infrastructure resulting from adjacent development on private land and associated works (such as driveways and service connections) is rectified to Council's satisfaction.

Adjacent to the development can also include the traffic route used to transport significant materials to the development from the nearest State Road.

The bond is required for the protection of adjacent existing Council assets during construction, such as footpaths, hard and soft landscaping (including street trees, tree pits, retaining walls and other engineered landscape features) drainage, kerb and gutter and road pavement.

When is the bond required?

The bond is payable prior to issue of a Construction or Subdivision Works Certificate for the development.

A dilapidation report of the identified existing public infrastructure is to be submitted to Council prior to the commencement of construction to determine the current condition of the assets and existing defects. 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.

What is the bond amount?

The bond amount is calculated in accordance with Table 3.1 below.

Where the development involves multiple development types (ie subdivision and building works), the total bond required is the sum of each bond required in accordance with the table. NB This may require the Estimated Cost of works to be itemized or broken down.

Table 3.1 – Damages Bond Calculations

Type	Approved Development	Bond Amount	Notes
A	Subdivision Works	5% of the estimated construction (civil works), or 150% of the estimated cost to fully replace the likely affected adjacent public infrastructure, whichever is the lesser.	Not required for two lot Torrens Title or strata subdivisions or where there are no physical works
B	Building Works with frontage to existing public road(s)	Road frontage less than or equal to 25 metres = \$10,000	Not required for DAs for single dwelling houses, secondary dwellings, dual occupancies, minor fit outs and internal works and ancillary development
		Road frontage more than 25m = \$10,000 + \$500 per lineal metre >25m	
C	Integrated Subdivision and Building works	5% of the estimated civil construction cost (minimum bond amount =	1) The bond shall be retained until the completion of all Subdivision and Building works.

		\$10,000)	(see 2 below) 2) Where a Subdivision Works Certificate is issued prior to the completion of building works, the bond may be released subject to the lodgement of a replacement Damages Bond calculated in accordance with Type B.
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Duration and release of bonds

An application for release of the bond shall occur at the completion of all works and after the issue of the occupation or Subdivision Works Certificate.

The bond is held by Council until all identified rectification works (if required) are completed to Council’s satisfaction.

For developments involving subdivision and building works, the bond shall not be released until the completion of all works.

In the event that Subdivision works, and new public infrastructure works are completed and dedicated to Council, prior to the completion of building works, the Damages Bond may be released upon receipt of a further suitable replacement Damages Bond provided in accordance with Type B of Table 3.1.

The bond shall otherwise be released in accordance with the procedures outlined in Part 6 of this policy.

4. PERFORMANCE BOND

Purpose of the bond

To provide security for new public infrastructure works (such as intersection works, major drainage upgrades, interface works, etc) undertaken within the existing public domain and ensure that works are constructed to an appropriate standard, and in a timely manner. In the event that a developer fails to satisfactorily complete the works, this will enable Council to utilize the Performance Bond to address public safety, fully complete the agreed scope of works covered by the bond and restore affected public infrastructure.

When is the bond required?

The bond is payable prior to the issue of the Construction Certificate or Public Road Activity approval.

What is the bond amount?

The bond is based on 150% of the specific cost of the proposed works.

The cost is based on estimates made by Council’s officer, or written quote from a suitably qualified, licensed and insured contractor independent of the Applicant.

Duration and release of bonds

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

The bond shall be released in accordance with the procedures outlined in Part 6 of this policy.

A Defects & Liability Bond in accordance with Part 2 of this policy, shall also be provided for the subject works prior to the release of the Performance Bond.

5. 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 lodgment and/or refund applications for each bond, at the end of each stage.

This option provides a streamlined approach to managing various bonds and may reduce administrative costs and associated bond application fees.

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, works covered by the bond and their value, and upcoming proposed changes.

When is the bond required?

The criteria for lodgment of bonds are outlined in Sections 1-4 of this policy. The types 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 required performance bonds, then the Rolling Bond must be in place prior to the issue of a Construction Certificate for stage 1.

What is the bond amount?

The value of a Rolling Bond is calculated by the accumulated value of all bonds required by this 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 release 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.

Bonds shall be released in accordance with the procedures outlined in Part 6 of this policy.

6. GENERAL

6.1 Acceptable types of security for bonds

A bond submitted under this policy must be in the form of either;

- Cash
- Cheque
- Approved Guarantee.

6.2 Goods and Services Tax (GST)

Bonds are not subject to GST.

GST is applicable to any amount of the bond retained by Council.

6.3 Form of Guarantees

A guarantee security provided through a bond means an irrevocable and unconditional undertaking without any expiry or end date, in favour of the Council to pay an amount or amounts of money to the Council on demand, issued by an eligible financial institution consistent with credit rating requirements detailed in Treasury Circular NSW TC 14/01 or equivalent revised version.

Guarantees should:

- Be a binding contractual relationship between Council and the guaranteeing institution;
- Be irrevocable guarantees from a recognised financial institution that complies with Treasury Circular NSW TC 14/01, or equivalent future revisions, and is approved by Council;
- Contain specific requirements for renunciation of the guarantee;
- Require adequate notice of renunciation;
- Include the full and correct real property description to identify the property in which the works are being bonded (*e.g., Lots 11 to 22 DP 123456, 70 Central Ave Oran Park*);
- Include the Development Consent number, Stage or Tranche applicable, and a complete description of the works or item that the security relates to (*e.g. Incomplete Works - Stage 4a – Basin xxxxx*);
- Where a rolling bond is being utilized the guarantee should reference the Rolling Developer Bond Agreement.

Council will not accept any other form of security, such as mortgages, holding Titles to land or shares.

6.4 Fees

Fees are applicable for accepting and processing bond applications, as per Council's current adopted Fees and Charges.

6.5 Calculating the value of works and bonds

Where the calculation of the bond amount is dependent on the estimated cost of works, the applicant shall provide suitable evidence as is deemed necessary by Council. Such evidence may include quantity surveyor's reports, plans, tender documents and quotes from contractors.

6.5 Lodgment and release of bonds

The lodgment and release of bonds shall occur in accordance with this policy, the relevant Development Consent and Council's Engineering Specifications.

6.5.1 Lodgement

- Bonds must be lodged in a form of security deemed acceptable by Council and as specified by this policy.
- Bond lodgment must be accompanied by the applicable application form, and fees as described in Council's Adopted Fees and Charges.
- The lodgment should also include any other information required to describe the bond purpose and application, including plans which identify the subject works.

6.5.2 Release

- Bond lodgment must be accompanied by the applicable application form, and fees as described in Council's Adopted Fees and Charges.
- Council will generally not release partial security (i.e., return bonds incrementally as works are completed). If development or works are to be completed in stages, separate bonds should be lodged or alternatively the entire bond will be held until all works covered by the bond have been completed to Council's satisfaction. (this includes where the works are part of a rolling bond).

For example, if the bond applies to a whole stage, then all the works required under that stage and bond must be completed prior to the release of the bond. This also applies to Defects and Liability bonds.

It is further noted that the release of a bond for completed works will require the payment of a Defects and Liability Bond as required under this Policy.

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RELEVANT LEGISLATIVE INSTRUMENTS: *Environmental Planning and Assessment Act 1979*
Environmental Planning and Assessment Regulation 2000

RELATED POLICIES, PLANS AND PROCEDURES: Asset Handover Processes

RESPONSIBLE DIRECTOR: Director Community Assets

APPROVAL: Council

HISTORY:

Version	Approved by	Changes made	Date	EDMS Number
1	Council	New	09/05/2017	17/136762
2	Council	Various	13/07/2021	17/136762