



DEVELOPMENT INFRASTRUCTURE BONDS POLICY

P1.0019.1

INFRASTRUCTURE BONDS POLICY

DIVISION: Community Infrastructure

BRANCH: Infrastructure Planning

PART 1 - INTRODUCTION

BACKGROUND

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

Council will require a cash bond or bank guarantee to ensure that future facilities and infrastructure is 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 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 80A(6) and 109J 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 or any obligation under a Voluntary Planning Agreement (VPA) or Works-In-Kind Agreement (WIKA). Conversely, any bond, bank guarantee, or the like, taken as security to defer Section 94 development contribution, VPA or WIKA obligations, cannot be applied to any purposes described under this bonds policy.

PART 2 - POLICY STATEMENT

1. INCOMPLETE WORKS BOND

1.1 General Works

Purpose of the Bond

To cover the cost of incomplete works, at the discretion of Council. The bond could also apply if the proposed works do not comply with Council's standard or the developer wishes to obtain registration of the subdivision prior to the works being completed.

The deferral of such works however shall not expose Council to any public liability risks or safety issues.

Note: Incomplete Works Bond does not include road pavement asphaltic concrete work (final asphalt layer). All asphalt works are to be completed prior to release of the Subdivision Certificate.

When is the bond required?

The bond is payable prior to release of the subdivision certificate or occupation certificate.

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

What is the bond amount?

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

The minimum bond amount to be provided is \$10,000 (ex 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 return of the bond

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 following payment of all necessary fees.

1.2 Footpath Works

Council's preference is that footpaths are delivered as part of the approved subdivision works.

If a developer elects to defer the footpath construction a payment of a bond is required.

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

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 deferral, whichever occurs first.

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.

When is the bond required?

The bond is payable prior to release of the subdivision certificate 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.

What is the bond amount?

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.

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

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

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.

The bond shall be returned following a written request for the return of the bond and following payment of all necessary fees.

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.

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 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 provided by the Applicant to Council to ascertain the 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 following payment of all necessary fees.

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 and public reserves.

When is the bond required?

The bond is payable prior to issue of subdivision, occupation or compliance certificate for the designated works.

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

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 (ex gst).

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

Duration and return of bonds

The bond is held for a minimum of 12 months from the date of the release of the subdivision certificate, and until rectification of the defects are completed to Council's satisfaction.

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 adjacent existing Council assets during construction, such as footpaths, drainage, kerb and gutter and road pavement.

When is the bond required?

The bond is payable prior to issue of a construction certificate for commencement of the development.

What is the bond amount?

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 5% of the value of the developer 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.

4. PERFORMANCE BOND

Purpose of the bond

To provide security on works undertaken within the existing public domain, and ensure that works are constructed to an appropriate standard and in a timely fashion. In the event that a developer fails to satisfactorily complete the works, this will enable Council to utilise the performance bond to address public safety, complete the necessary works and restore 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 return of bonds

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

If the works are divided into clear stages, Council may release an appropriate percentage of the bonds, but not for the final stage.

The bond shall be returned following a written request for the return of the bond and following payment of all necessary fees.

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 lodgement 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, and upcoming proposed changes.

When is the bond 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 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 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.

6. GENERAL

6.1 Goods and Services Tax (GST)

Bonds are not subject to GST.

6.2 Bank Guarantees

A bank 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.

Council will not consider the use of mortgage securities as a form of bond.

6.3 Fees

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

* * *

RELEVANT LEGISLATIVE INSTRUMENTS: *Environmental Planning & Assessment Act (1979)*
Environmental Planning & Assessment Regulation (2000)

RELATED POLICIES, PLANS AND PROCEDURES: Asset Handover Processes

RESPONSIBLE DIRECTOR: Director Community Infrastructure

APPROVALS: This policy is subject to endorsement by Council.

ATTACHMENTS: Infrastructure Bond Lodgement Application Form

Infrastructure Bond Refund Application Form

NEXT REVIEW DATE: May 2020

RECORD KEEPING NOTES:

HISTORY:

Issue	Approved by	Changes made	Date
1	Approved by Council	New	9 May 2017