



DEVELOPMENT ENGINEERING BONDS POLICY

Adopted: 14 March 2016

TRIM: 316692.2015



DEVELOPMENT ENGINEERING BONDS POLICY

1. LEGISLATIVE REQUIREMENTS

Environmental Planning and Assessment Act 1979

2. PURPOSE/ OBJECTIVES

The objective of the Development Engineering Bonds Policy is to address development related issues that may arise during development projects. The policy will also define what bonds will be payable by the developer and for what period they will be held by Council. The policy aims to establish clear and streamlined administration processes of engineering bonds.

3. DEFINITIONS

Performance Bond – To provide security on works undertaken within the public domain. The performance bond will ensure that works are constructed to an appropriate standard and in a timely fashion. In the event the contractor 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.

Maintenance Bond – To provide security for repairs or emergency actions arising during the maintenance period (defects liability period – minimum 12 months) of a completed development.

Asphaltic Concrete (AC) / Final Seal Bond - To provide security on the final layer of AC that will be installed, following the maintenance period (minimum 12 months) and rectification of any defects. The bond may also be used where the final seal can be incorporated in an adjoining sealing programme undertaken by either Council or the developer.

Outstanding Works Bond – To allow the early release of a subdivision or occupation certificate prior to completion of all public and/or private infrastructure works. The bond is to ensure that the works are completed as required by the development consent in a timeframe determined by Council (maximum 12 – 24 months).

Damages Bond – To ensure any damage to public infrastructure resulting from a development or associated works is rectified to Council's satisfaction prior to the issue of a subdivision certificate. The bond is used to ensure protection of Council's infrastructure during the construction process such as footpath, kerb and gutter, or road pavement.

DEVELOPMENT ENGINEERING BONDS POLICY

Summary

Bond Type	Amount of Bond	Minimum Amount incl. GST	Minimum Duration Held	Maximum Duration Held
Performance	110-150% of the cost	\$10,000	Completion of works	Completion of works
Maintenance	5% of construction cost	\$10,000	12 Months	48 Months
AC/Final Seal	150% of cost	\$10,000	12 Months	24 Months
Outstanding Works	200% of cost	\$20,000	Completion of works	12 –24 Months
Damages	200% of cost	\$20,000	Completion of works	12 Months

Note:

- 1) Maximum Duration Held may vary subject to Land Development Engineer’s (LDE) assessment
- 2) More than one bond type from the above table may be applicable.

4. POLICY STATEMENT

- 4.1 The Development Engineering Bonds Policy has been created to mitigate risk, ensure compliance and provide security to Council and stakeholders. The policy will also provide a clear understanding of processes and procedures involved in the administration of engineering bonds.
- 4.2 Council’s Land Development Engineers are responsible for the implementation of the Development Engineering Bonds Policy and must adhere to the policy procedures and ensure that they use administration resources available to them.
- 4.3 Standard internal forms pertaining to the policy have been updated and created to deliver effective communication with internal and external stakeholders. The Manager Development Engineering is responsible for monitoring the policy to ensure that it is reviewed and updated accordingly and that staff are adhering to the policy. Should a disagreement arise in regard to the policy, it is the responsibility of the staff member to advise the Manager Development Engineering.
- 4.4 In addition an assessment table has been devised as a reference point for Council staff to easily calculate the bond amount relative to the value of works.
- 4.5 Development Engineering Bonds Procedures, as Annexure A of this policy, will outline the processes and procedures relating to the various types of bonds available.
- 4.6 The Chief Executive Officer is delegated by Council to approve changes in the procedures attached to this policy.

DEVELOPMENT ENGINEERING BONDS POLICY

AUTHORISED BY

Council Resolution

EFFECTIVE FROM

14 March 2016

DEPARTMENT RESPONSIBLE

Planning and Growth (Development Engineering)

REVIEW DATE

14 March 2018

VERSIONS

Version	Amended by	Changes made	Date	TRIM Number
1	Not applicable	Adopted by Council	14 March 2016	316692.2015

THIS POLICY HAS BEEN DEVELOPED IN CONSULTATION WITH

Corporate Services (Governance and Legal Services)

ATTACHMENT

Development Engineering Bonds Procedures

DEVELOPMENT ENGINEERING BONDS POLICY

ATTACHMENT - DEVELOPMENT ENGINEERING BONDS PROCEDURES

The implementation of Development Engineering Bonds Procedures will mitigate risk factors, provide security for Council along with a streamlined internal administration procedure when processing engineering bonds.

1. PERFORMANCE BOND

The purpose of the Performance Bond is to ensure public infrastructure works undertaken within the public domain are constructed to an appropriate standard and in a timely fashion, depending on the circumstances. In the event the contractor fails to satisfactorily complete the works, the bond enables Council to complete the necessary works, make the job safe and restore the public infrastructure.

1.1 Payable

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

1.2 Bond assessment amount

The bond is based on the cost of civil infrastructure construction works. The minimum bond amount is \$10,000. The table below outlines the bond assessment loading factor relative to the value of works.

Value of Works (incl. GST)	Bond Amount
Up to \$100,000	150%
\$101,000 to \$200,000	125%
More than \$200,000	110%

1.3 Form of the Bond

The bond shall be in the form of cash, bank cheque or bank guarantee. If the bond is a bank guarantee it must be unconditional and include the Development Application number and relevant conditions of consent, along with a brief description of the works to be bonded and have no expiry date.

Personal cheques are not accepted as a form of payment.

1.4 Assessment

The construction cost shall be determined by an estimate made by Council's Land Development Engineer (LDE) based on IPART schedule of rates or submission of written quote(s) from a qualified, licensed and insured contractor independent from the applicant as set out below. Council may also accept a written estimate from a registered quantity surveyor and/ or contractor.

DEVELOPMENT ENGINEERING BONDS POLICY

Value of Works (incl. GST)	No. Quotes/ Tenders
Up to \$50,000	1 written quote
\$50,001 to \$150,000	3 written quotes
More than \$150,001	3 written tenders

1.5 Documentation

A "Bond Assessment" form shall be completed by the assessing officer and attached to the Development Application file. The applicant shall be advised in writing of the assessed bond amount and when it is payable. This will be communicated formally to the applicant in writing (letter/ email).

1.6 Duration

The bond shall be held until the works are satisfactorily completed and Council's LDE has undertaken a final inspection.

1.7 Fees

A lodgement and refund fee shall be applicable in accordance with Council's adopted Fees and Charges.

1.8 Call up

The bond may be 'called up' in the event that the contractor/ developer fails to complete the works satisfactorily or by agreement with Council.

1.9 Release of Bonds

The bond shall be released to the developer following the payment of any necessary fees and satisfactory completion of the works.

2. MAINTENANCE BONDS

2.1 Purpose

To ensure defects are rectified and necessary maintenance is undertaken. The defects may be rectified at the end of the defects liability period of usually 12 months.

Where a defect results in a safety issue or affects the proper functioning or operation of a facility the defect shall be rectified immediately.

2.2 Payable

The bond is payable prior to issue of a Subdivision, Occupation or Compliance Certificate for the designated works.

DEVELOPMENT ENGINEERING BONDS POLICY

2.3 Amount

The maintenance bond is based on 5% of the civil infrastructure construction cost.

The minimum bond amount is \$10,000 and a guide has been created to assist Council staff in quoting the bond amount.

2.4 Form of the Bond

The bond shall be in the form of cash, bank cheque or bank guarantee. If the bond is a bank guarantee it must be unconditional and include the Development Application number and relevant conditions of consent along with a brief description of the works to be bonded and have no expiry date.

Personal cheques are not accepted as a form of payment.

2.5 Assessment

The construction cost shall be determined by an estimate made by Council's LDE based on Council's schedule of rates or submission of copies of invoices from the contractor who undertook the works.

2.6 Duration

The bond is usually held for a minimum of 12 months. Council may require the period to be extended in some circumstances. For example, where a public road or other infrastructure is constructed, but not dedicated or not open to normal traffic during the 12 month period following completion.

The extended period will normally be pro-rata for the period of "non-use". Where significant rectification works have been required, the maintenance period may also be extended.

Some water quality/ quantity structures or landscaping works may also require extended maintenance periods. This will be determined on a case by case basis in conjunction with Council's Director Infrastructure and Environment.

2.7 Documentation

A "Bond Assessment" form shall be completed by the assessing officer and attached to the Development Application file. The applicant shall be advised in writing of the assessed bond amount and when it is payable. This will be communicated formally to the applicant in writing (letter/ email).

2.8 Fees

A lodgement and refund fee shall be applicable in accordance with Council's adopted Fees and Charges.

2.9 Call up

The bond may be 'called up' in the event that the contractor/developer fails to complete the works satisfactorily or by agreement with Council.

DEVELOPMENT ENGINEERING BONDS POLICY

2.10 Release of Bonds

The bond shall be released following payment of any necessary fees and inspection of the works indicates that they are satisfactorily completed.

3. ASPHALTIC CONCRETE (AC) BOND/ FINAL SEAL

3.1 Purpose

To ensure that the final layer of AC is installed following the maintenance period (usually 12 months) and rectification of any defects. The bond may also be used where the final seal can be incorporated in an adjoining sealing program undertaken by either Council or the developer.

3.2 Payable

The bond is payable prior to issue of a Subdivision, Occupation or Compliance Certificate for the designated works.

3.3 Amount

The AC bond is based on 150% of the AC cost. The minimum bond amount is \$10,000.

3.4 Form of the Bond

The bond shall be in the form of cash, bank cheque or bank guarantee. If the bond is a bank guarantee it must be unconditional and include the Development Application number and relevant conditions of consent along with a brief description of the works to be bonded and have no expiry date.

Personal cheques are not accepted as a form of payment.

3.5 Assessment

The construction cost shall be determined by an estimate made by Council's LDE based on Council's schedule of rates or submission of copies of invoices from the contractor who undertook the works.

3.6 Duration

The bond is usually held for a minimum of 12 months or until rectification works are completed whichever is the greater.

In the case of urban development the bond will be held until the majority (more than 70%) of dwellings are completed.

Council may require the period to be extended longer than 12 months in some circumstances, for example, where a public road or other infrastructure is constructed but not dedicated or not open to normal traffic or usage during the 12 month period following completion.

The extended period will normally be pro-rata for the period of "non-use". Where significant rectification works have been required the maintenance period may also be extended.

DEVELOPMENT ENGINEERING BONDS POLICY

The bond period may be extended where the final seal can be incorporated in an adjoining sealing program undertaken by either Council or the developer. This will be determined by Council's Director Infrastructure and Environment.

3.7 Documentation

A "Bond Assessment" form shall be completed by the assessing officer and attached to the Development Application file. The applicant shall be advised in writing of the assessed bond amount and when it is payable. This will be communicated formally to the applicant in writing (letter/ email).

3.8 Fees

A lodgement and refund fee shall be applicable in accordance with Council's adopted Fees and Charges.

3.9 Call up

The bond may be called up in the event that the contractor/ developer fails to undertake the sealing works or by agreement with Council.

3.10 Release of Bonds

The bond shall be released following a written request for the release of the bond and following payment of any necessary fees and satisfactory inspection of the works.

4. OUTSTANDING WORKS BOND

4.1 Purpose

To allow the early release of a subdivision or occupation certificate prior to completion of all public and/or private infrastructure works. The bond is to ensure that the works are completed as required by the Development Consent within a four month time frame.

The works would normally be of a minor nature and not involve significant infrastructure. This may include landscaping works, private access roads to rural lots, footpaths and so on.

The deferral of the construction shall not expose Council to a public liability risk, adversely affect the built or natural environment or the safe operation of the development.

The acceptance of an "Outstanding Works Bond" is solely at the discretion of Council's Manager Development Engineering (MDE).

4.2 Payable

The bond is payable prior to issue of a Subdivision, Occupation or Compliance Certificate for the designated works.

4.3 Amount

The bond is based on 200% of the construction cost of the works. Minimum bond amount is \$20,000.

DEVELOPMENT ENGINEERING BONDS POLICY

4.4 Form of the Bond

The bond shall be in the form of cash, bank cheque or bank guarantee. If the bond is a bank guarantee it must be unconditional and include the Development Application number and relevant conditions of consent along with a brief description of the works to be bonded and have no expiry date.

Personal cheques are not accepted as a form of payment.

4.5 Assessment

The construction cost shall be determined by an estimate made by Council's LDE based on IPART schedule of rates or submission of written quote(s) from a suitably qualified, licensed and insured contractor independent from the applicant. Council may also accept a written estimate from a registered quantity surveyor.

Value of Works (incl. GST)	No. Quotes/ Tenders
Up to \$50,000	1 written quote
\$50,001 to \$150,000	3 written quotes
More than \$150,001	3 written tenders

4.6 Documentation

A "Bond Assessment" form shall be completed by the assessing officer and attached to the Development Application file. The applicant shall be advised in writing of the assessed bond amount and when it is payable. This will be communicated formally to the applicant in writing (letter/ email).

4.7 Duration

The bond shall be held until the works are satisfactorily completed and Council's LDE has undertaken a final inspection.

4.8 Fees

A lodgement and refund fee shall be applicable in accordance with Council's adopted Fees and Charges.

4.9 Call up

The bond may be called up in the event that the contractor/ developer fails to complete the works satisfactorily or by agreement with Council.

4.10 Release of Bonds

The bond shall be released following a written request for the release of the bond and following payment of any necessary fees and satisfactory inspection of the works.

DEVELOPMENT ENGINEERING BONDS POLICY

5. DAMAGES BOND

5.1 Purpose

To ensure any damage to public infrastructure resulting from a development or associated works is rectified to Council's satisfaction prior to issue of a subdivision or occupation certificate. The bond is used to ensure protection of Council's infrastructure during the construction process such as footpath, kerb and gutter, or road pavement.

5.2 Payable

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

5.3 Amount

The bond is based on 200% of the estimated cost of potential rectification works. A dilapidation report of the identified infrastructure is to be submitted prior to determination of the bond amount. The report should identify all infrastructure in the vicinity of the works and a written assessment of the condition of the infrastructure and include photos and any testing results undertaken to determine the condition of the infrastructure, for example, "benkleman beam" tests for road pavement.

Minimum bond amount is \$20,000.

5.4 Form of the Bond

The bond shall be in the form of cash, bank cheque or bank guarantee. If the bond is a bank guarantee it must be unconditional and include the Development Application number, and relevant conditions of consent along with a brief description of the works to be bonded and have no expiry date.

Personal cheques are not accepted as a form of payment.

5.5 Assessment

The construction cost shall be determined by an estimate made by Council's LDE based on Council's schedule of rates.

5.6 Documentation

A "Bond Assessment" form shall be completed by the assessing officer and attached to the DA file. The applicant shall be advised in writing of the assessed bond amount and when it is payable. This will be communicated formally to the applicant in writing (letter/ email).

5.7 Duration

The bond shall be held until the associated development construction works are completed and any necessary rectification works satisfactorily completed and Council's LDE has undertaken a final inspection.

5.8 Fees

A lodgement and refund fee shall be applicable in accordance with Council's adopted Fees and Charges.

DEVELOPMENT ENGINEERING BONDS POLICY

5.9 Call up

The bond may be called up in the event that the contractor/ developer fails to complete the rectification works satisfactorily or by agreement with Council.

5.10 Release of Bonds

The bond shall be released following a written request for the release of the bond and following payment of any necessary fees and satisfactory inspection of the works.

6. MANAGEMENT OF BONDS

6.1 Cash Bonds

Cash bonds are to be receipted at Council's Customer Service Centre to the "RC Bond" Account and should include the Development Application Number and brief description of the bond purpose. A copy of the receipt is to be attached to the file and noted on the Bond Assessment form.

6.2 Bank Guarantees

Bank guarantees are legal documents; the original Bank Guarantee(s) are to be registered and held by the Records Team. A copy of the bond is placed on the file and noted on the Bond Assessment Form.

6.3 Release of Bonds

A request for the release of a bond must be received in writing from the applicant. The works must be inspected by Council and be deemed satisfactory and meet the bond requirements prior to the release.

An internal Bond Release Form is to be completed and attached to the file. Bond releases are to be recommended by the LDE and authorised by the MDE.

Cash bonds are refunded by cheque. A cheque requisition form is completed and forwarded to Council's Financial Services unit.

Bank guarantees are released to the bank or institution that issued the document with a covering letter from Council. A memo is to be sent to Records advising that the bond is no longer required and is to be released.

Copies of all documentation pertaining to the bond release are to be saved in TRIM.

6.4 Call up of Bonds

Prior to calling up the bond, advice should be sought from Council's Legal Services team.

6.5 Non-compliance

In the event that the developer/ contractor fails to comply with the requirements of the bond, the bond shall be used to undertake the necessary works.

DEVELOPMENT ENGINEERING BONDS POLICY

The developer/ contractor shall be advised in the first instance verbally, followed by written confirmation with a direction for works to be completed within a specified time frame, normally 28 days.

If the developer/ contractor fails to comply, Council will commence action to call up the bond to complete the works. A notice will be issued to the developer/ contractor advising that Council intends to use the bond to complete the works.

6.6 By agreement

In some cases, Council and the developer/ contractor may agree to the use of the bond by Council for the purposes of completing the works. For example the AC Bond may be used in conjunction with Council's sealing programme when the works are adjacent to other programmed works.

6.7 Post call up

All costs associated with the calling up of the bond and the undertaking of the works are to be deducted from the bond including any administration, supervision and legal costs.

The balance of any unused portion of the bond is to be released to the developer/ contractor. If outstanding costs remain, the developer/ contractor may be pursued as a sundry debtor. Refer S238 and S247 of the *Roads Act 1993*.