

POLICY



Date adopted: 30/05/2017
File no: 618725-1
Minute number: 148/2017

Policy title: **BANK GUARANTEES AND SURETIES**

Directorate: ORGANISATIONAL SERVICES

Branch: FINANCE

Policy objective: The policy sets out the constraints and risk management guidelines for the management of all bank guarantees and sureties issued to Council.

Policy scope:

1. This policy applies to all parties ("the other party" e.g. developers) who are required to provide surety to Council for work performed or for other reasons specified in Council agreements.
2. The policy provides a framework for minimising operational risks; inter-alia credit, accessibility and legal risks; by stipulating the requirements related to the acceptance of sureties.

Definitions:

TERM	DEFINITION
Accessibility risk	Accessibility risk is the risk that the call-up procedures may delay or prevent access to the funds covered by a surety.
Credit risk	Credit risk is the risk that a counter party (i.e. a bank or other financial institution from whom Council accepts a surety) is unable to pay when the surety is called-up. This would include either late or non-payment of some or all of the surety concerned.
Call-up	Call-up of a surety is when Council requests cash payment from a counter party (i.e. a bank or other financial institution from whom Council accepts a surety) when the other party cannot perform part or their entire obligation to Council.
Legal risk	Legal risk is the risk that the other party may seek to hold back or avoid call-up of the security by seeking to involve the Court by way of injunction proceedings.
Sureties	Sureties are restricted to bank guarantees and insurance bonds.

Policy statement:

The other party to an agreement with Council (e.g. through a development application) may be required to provide Council with a cash deposit, or surety in situations where Council must be protected from the failure of the other party to perform obligations (for example, an obligation to construct a road).

Council can retain the cash deposit or call-up the surety if the other party fails to perform a particular obligation.

Where stated in an agreement, the other party must request its banking or financial institution to provide a surety against the performance of certain defined obligations. In doing so, the bank or financial institution may charge the other party a bank fee and require them to provide security to the bank or financial Institution.

The effect of obtaining a cash deposit or surety is that Council can immediately access the amount deposited or guaranteed when the other party fails to perform the obligation.

Consequently, Council officers must ensure that Council only deals with banks or other financial institutions that meet the criteria specified in this policy when considering the acceptance of sureties. Council officers must also ensure that these banks or financial institutions have what Council considers an acceptable level of risk as defined under "Acceptable Banking Institutions" in this document.

Also, identified in this policy are certain documentary requirements that will ensure that the surety is enforceable.

1. **Acceptable banking institutions:**

To minimise credit risk, Council will only accept sureties from banks or other financial institutions with a minimum long term credit rating of BBB with Standard and Poor's, a minimum long term credit rating of Baa2 with Moody Investor Services or a minimum long term credit rating of BBB with Fitch Ratings. This requirement is in-line with Council's 'Credit Risk' policy. These ratings are regularly reviewed and sureties from banking or financial institutions with a lower rating will not be accepted.

To minimise accessibility risk, Council will only accept sureties from banks or other financial institutions that have a physical presence in Brisbane, Queensland and suitable access to funds during normal banking hours.

To minimise legal risk, Council will only accept sureties that provide on demand access to funds and at Council's discretion.

In the event that a financial institution relating to an existing surety is downgraded below BBB, the Financial Accounting Program Leader will refer the matter to the Director of Organisational Services for a decision to either continue the surety or to ask that a new surety be provided with a higher rated financial institution.

2. **Documentation requirements:**

To ensure that sureties provided to Council are enforceable: the following documentation must be completed when the arrangement commences:

- (a) Sureties relating to property require reference to lot and survey plan numbers and an explanation detailing the purpose of the surety.

Note: In the event of a legal dispute sureties not containing accurate descriptions of property details, including lot and survey plan numbers risk refusal of payment from banks or other financial institutions, especially if there are several lots relating to one property.

- (b) Contract sureties require quotation of the contract number and a brief description of the contract to facilitate matching of the surety to a particular project and to protect the surety from becoming void, as improvements to contracts may alter the description of the contract.

- (c) All sureties are to exclude termination dates. Sureties are invalid and unenforceable after their termination dates even if the obligation has not been performed or the work is yet to be completed, therefore Council will not accept sureties with a termination date.
 - (d) Separate sureties are required for separate obligations. Over the course of a project, the level of work being undertaken sometimes increases. In these cases, the possibility could exist that the original amount of the surety is no longer sufficient to fulfil the intended obligation.
 - (e) Stakeholders within Council will confirm with the Finance branch - Financial Accounting at the start of each financial year that the amount of the surety is still appropriate for the level of the outstanding obligation. If this value is insufficient, Council will notify the other party and request an additional surety for the relative shortfall.
 - (f) Finance branch - Financial Accounting will maintain a centralised register of sureties and the physical documents will be stored in a secure location or electronically on Council's document management system.
 - (g) Financial branch - Financial Accounting should be contacted if there is any doubt as to whether a surety satisfies the requirements of this policy.
3. **Reporting requirements:**

The surety exposures are reported in the daily treasury credit exposure reports, so that credit exposures arising from both the Treasury Investment Portfolio and sureties are provided in the one report. The Revenue Accounting Program Leader is responsible for monitoring the total credit exposure.

Notes:

As an obligation is progressively satisfied sureties will be reduced as deemed appropriate.

Related policies/legislation/other documents:

DOC ID	DOCUMENT TYPE	DOCUMENT NAME