

POLICY



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Policy title: BONDING OF WORKS
Directorate: GROWTH, ECONOMY AND SUSTAINABILITY
Branch: DEVELOPMENT ASSESSMENT
Policy objective: The policy sets out the ground rules for the management of all bonds and bonding applications made to Logan City Council (the local government), and applies to all persons or entities who may wish to enter into a contract or bonding agreement with Logan City Council.

Policy scope:

To provide the regulations to be used for the bonding of development works.

Definitions:

TERM	DEFINITION
Proponent	Any party who puts forward a legal instrument for consideration or acceptance related to a development approval.
Bond	Security provided to ensure compliance with conditions of a development approval, or to allow for an agreed action by the applicant or the local government.
Developer	Any party or individual, undertaking development works related to a development approval.
Development works	Any work/s related to a development approval, which are intended to become a local government asset, or which works could be expected to create an impact of any sort on properties adjoining or in close proximity to the proposed works.
Entity	Combination of a unique Proponent and consulting engineer for the purposes of carrying out a development or series of developments.
Bonding agreement	A formal document of agreement between the local government and any other party (for example the Proponent) for the purpose of defining the obligations and required actions of both parties, and the amount and type of security to be provided.
Call-up	Terminology to describe action to be taken by the local government in the event of default by the Proponent.

TERM	DEFINITION
Essential services	Any infrastructure required, to ensure availability of water, and wastewater to service a new development prior to plan sealing, or any other infrastructure as may be determined by the local government.
Prescribed period	The period defined within the bonding agreement for the actions of each party to be completed.
Planning scheme policy	The planning scheme policy relating to infrastructure, development works and donated assets, which forms part of the Logan Planning Scheme applicable at any particular time.
Security	The acceptable type or form of security as defined and altered from time to time in section 2.5.

Policy statement:

Bonding is the submission by the applicant and acceptance by the local government of a financial security to ensure compliance with conditions of a development approval, and is intended to provide security for works in progress or about to be commenced. Bonds may be subject to formalisation through implementation of a bonding agreement. A fee is charged to implement the bonding agreement as per the current Register of Cost-Recovery Fees.

Part 1 - bonding of development (preamble)

Bonding may or may not be permitted at the discretion of the local government.

1. Types of bonds

Logan City Council currently permits bonding for the following purposes:

- (a) maintenance security deposit - to provide security for repairs or emergency actions arising during the maintenance period of a completed development; and/or
- (b) as-constructed drawings bond - to provide security to ensure prompt submission of as-constructed drawings excluding essential services (Water and Sewer) while allowing process towards endorsement of survey plans; and/or
- (c) uncompleted works bond - to ensure completion of uncompleted development works or obligations in order to obtain the early endorsement of survey plans; and/or
- (d) performance bond - to provide security for all works not classed as uncompleted works, e.g. temporary vehicle access. To secure the performance and fulfilment of a Development Obligation; and/or
- (e) removal house bond - the requirements and obligations in relation to a removal house construction; and/or
- (f) water sensitive urban design structure bond - To provide security for an extended period as defined in part 2 of this document, to allow for full reconstruction, repair or reinstatement if required, of stormwater quality infrastructure to be owned and maintained by Council, including, but not limited to: bioretention basins, vegetated swales and constructed wetlands; and/or

- (g) other - to provide security for any other requirement the local government may from time to time deem necessary and as will then be defined in part 2 of this document.

2. Security

The security shall be in the form prescribed in part 2 section 5 or as altered from time to time by resolution of the local government.

3. Development works

Development works may be permitted to be bonded for the purpose of early endorsement of survey plans or other purpose as specified in part 2 at the discretion of the local government.

4. Reduction of bonds

Certain types of bonds as specified in part 2, may be reduced at the discretion of the local government upon performance of a proportion of the outstanding works and upon submission of evidence of proportional progress.

Upon request, the local government may agree to reduce the Uncompleted Works Bond against the Maintenance Security Bond, when the On Maintenance is accepted and upon receipt of fees as prescribed in the current Register of Cost Recovery Fees.

5. Call up

The local government reserves the right to call up any security which has been provided in the event that the developer, owner or entity fails to meet their obligations, or has been served with a compliance notice or show cause notice, or in the interests of public safety.

Part 2 - Bonding of development**1. Application of part 2****1.1. What bonding does not apply to**

Part 2 (bonding of development) does not apply to a plan of subdivision for reconfiguring a lot pursuant to schedule 18 (Approving plans of subdivision) of the *Planning Regulation 2017*.

2. Security**2.1. Requirements for security**

The local government shall when considered necessary, as a condition of a development approval, require the Proponent to provide a satisfactory security for:

- (a) the completion of the development
- (b) the performance of work.

3. Bonding of development**3.1. Maintenance security deposit**

- (a) paid to the local government by the applicant
- (b) in the form specified in section 5.1 (form and amount of security)
- (c) for an amount:

- (i) in the case of reconfiguring a lot, \$2,000 per lot, or 5% of the total value of the local government infrastructure work, or the amount prescribed in the local governments register of fees and charges, whichever is higher; or
 - (ii) in the case of development other than reconfiguring a lot, \$2,000 or 5% of the total value of the local government infrastructure work, whichever is higher, or the amount prescribed in the local governments register of fees and charges, whichever is higher (verified by a fully priced Bill of Quantities for the required infrastructure); or
 - (iii) in the case of a bond for landscaping as separated from other civil works, \$5,000 or 5% of the total value of the works whichever is the higher
- (d) for a period as determined by the local government (usually 12 months after acceptance of completed works) and known as the maintenance period.

3.2. As Constructed Drawings

- (a) \$2,000 per drawing page for each as constructed engineering plan (excluding essential service drawings), or as prescribed in the local government's register of fees and charges.

3.3. Agreement to bond development for uncompleted works

- (a) The Proponent may apply to the local government to enter into a bonding agreement for uncompleted works, pursuant to which the Proponent is to provide a security for the completion of development which is not complete where (unless otherwise required by the local government) subject to Clause 5.2(a)(iii):
 - (i) the works, based on detailed engineering estimates, are valued at greater than \$10,000 for civil works
 - (ii) all filling and excavation affecting the premises, are completed and stabilised to the satisfaction of the local government
 - (iii) 100% of the water supply and sewerage infrastructure is constructed and functional
 - (iv) any part of the development which is not complete can be completed within:
 - a. 6 months of the date of entering into a bonding agreement with the local government; or
 - b. such other time as specified by the local government
 - (v) satisfactory security for the completion of the part of the development which is not complete has been provided
 - (vi) the Proponent has provided the local government with:
 - a. a fully priced schedule of the parts of the development which are not complete
 - b. where a maintenance security deposit is required, confirmation of the total cost of the development

- c. a summary sheet of all works which are not complete and the maintenance works which are to be bonded
 - d. a certificate from the consultant that:
 - (i) the information provided to the local government is correct
 - (ii) any part of the development which is not complete can be completed within the time specified in subsection 3.2 (a)(iv).
- (b) The local government will undertake a risk assessment of the bonding application prior making any offer to the Proponent to enter into a bonding agreement, and reserves the right to refuse applications based on its risk assessment.
- (c) The local government will not enter into a bonding agreement for the completion of essential services.
- (d) Where a development is not complete, the local government will not release a plan of subdivision for sealing until:
- (i) a bonding agreement for the uncompleted works has been entered into between the local government and the Proponent
 - (ii) a bond for the uncompleted works has been paid by the Proponent in accordance with subsection 3.2 (a)
 - (iii) the local government is satisfied that any part of the development which is not complete can be completed within the time period specified in subsection 3.2 (a)(iv)
 - (iv) the local government has received any outstanding:
 - a. rates
 - b. monetary contributions and charges.

3.4. Agreement to bond development for performance

- (a) The local government may, as a condition of development approval, require the Proponent to enter into a bonding agreement pursuant to which the Proponent is to provide a security to ensure the satisfactory performance of work pursuant to the development approval (performance bond).
- (b) The local government may require a bonding agreement for the payment of a performance bond in the following situations:
- (i) where the development approval includes a condition relating to the management of vegetation - in particular where the nature of the development requires staging of works, and where significant land clearing or major earthworks are required prior to commencement of other civil works; or
 - (ii) where any development could require restitution works in order to:
 - a. protect the safety of persons or property; or
 - b. mitigate any potential environmental harm or downstream impacts.
- (c) The local government will determine the need for a performance bond pursuant to subsection 3.4 (a) by having regard to:

- (i) past experience with performance by either the Proponent or any associated consulting engineer, on other or previous developments
 - (ii) the risk the development poses having regard to the matters in subsection 3.4 (b).
- (d) The value of a performance bond required by subsection 3.4 (a) is to be:
- (i) for works which are not subject to staging - between 30% and 50% of the full estimated cost of all works for the subject site, set at the discretion of the local government; or
 - (ii) for works which are subject to staging - 100% of the value of an agreed number of stages, provided that, at the discretion of the local government, the performance bond may be transferred from stage to stage, or parcel of stages, to parcel of stages as work progresses
 - (iii) the value of the bond may be reduced upon written request by the Proponent, provided that at no time will the value of security be allowed to fall below one point five (1.5) times the value of the uncompleted works.
- (e) The bonding agreement is to be executed and payment of the performance bond is to be made by the Proponent prior to the commencement of the work the subject of the performance bond.
- (f) Where a development is not complete, the local government will not release a plan of subdivision for sealing until:
- (i) satisfactory security for the completion of the part of the development which is not complete has been provided
 - (ii) the Proponent has provided the local government with:
 - a. a fully priced schedule of the parts of the development which are not complete
 - b. where a maintenance security deposit is required, confirmation of the total cost of the development
 - c. a summary sheet of all works which are not complete and the maintenance works which are to be bonded
 - d. a certificate from the consultant that the information provided to the local government is correct
 - (iii) the local government is satisfied that any part of the development which is not complete can be completed within:
 - a. 6 months from the date of entering into a bonding agreement with the local government; or
 - b. such other time as specified by the local government
 - (iv) the local government has received any outstanding:
 - a. rates
 - b. monetary contributions and charges.

3.5. Agreement to bond removal houses

The local government may require as a condition of development approval, submission of security for the completion of administrative and other requirements relating to relocation and establishment of removal houses.

The requirement for and value of removal house bonds will be at the discretion of the local government, and site-specific conditions will be incorporated into the building approval or other local government permit generated to permit the action.

3.6. Agreement to bond water sensitive urban design structures (WSUD) - Council Infrastructure only

- (a) The local government may require the Proponent to enter into a bonding agreement pursuant to which the Proponent is to provide a security to ensure the satisfactory construction and performance of water sensitive urban design structures (WSUD) installed as part of a development. This agreement will specify the duration of the security.
- (b) The local government may require a bonding agreement for the payment of a WSUD bond in the following situations:
 - (i) where the development approval includes a condition relating to the management of stormwater quality; or
 - (ii) where any non-compliant development could require restitution works in order to:
 - a. protect the safety of persons or property; or
 - b. mitigate any potential environmental harm or downstream impacts.
- (c) The payment of the WSUD bond is to be made by the Proponent prior to the endorsement of the plan of survey or prior to acceptance of the civil works On Maintenance, whichever is sooner.
- (d) The WSUD device is to be constructed to the sacrificial layer in accordance with industry best practise guidelines prior to the endorsement of the plan of survey or prior to acceptance of the civil works On Maintenance, whichever is sooner.

Note: WSUD devices within multi-staged developments where the WSUD device catchment includes additional stages may be retained as a sediment basin until the final stage within the catchment is completed, unless otherwise conditioned by a development approval.

- (e) The value of a WSUD bond required by subsection (1) is to be calculated at 150 percent of the fully scheduled and certified value of the cost to supply and install the following infrastructural elements (where applicable) in their final form:
 - (i) Underdrainage system
 - (ii) Drainage, transition and filter media layers
 - (iii) Inlet structures; including, but not limited to: inlet headwalls, rock armouring, scour protection, inlet forebays, spreaders etc
 - (iv) Outlet structures; including, but not limited to: outlet field inlet structures, headwalls, low flow and high flow pipes etc

- (v) WSUD device planting
 - (vi) Removal and disposal of any sacrificial layers
 - (vii) Any other infrastructural component critical to the function of the WSUD asset at the discretion of Council
- (f) The WSUD device will not be accepted On Maintenance until ninety percent (90%) of dwellings within the catchment area served by the WSUD device have been completed or three years after endorsement of the plan of survey, whichever is the sooner. The WSUD device will also not be accepted On Maintenance until the transformation works required to convert the device to full functionality are completed to the satisfaction of Council.
- (g) The WSUD bond will not be subject to reduction until the WSUD device is accepted On Maintenance. At the time of On Maintenance acceptance, the WSUD bond can, at the request of the developer, be reduced to five percent (5%) of the fully scheduled and certified value of the infrastructural elements noted in (d) or \$20,000.00, whichever is the greater.
- (h) The maintenance duration of the WSUD device will be a minimum of twelve (12) months, after which the device can be accepted Off Maintenance. The WSUD bonds will be released in accordance with the relevant bonding agreement following acceptance of the WSUD device Off Maintenance.

4. Proponent's obligations

4.1. Proponent's obligations pursuant to an agreement to bond development for uncompleted works

The Proponent must within the time specified in section 3.2:

- (a) complete the development
- (b) ensure that any works are accepted on-maintenance by the local government
- (c) provide a maintenance security deposit to the local government
- (d) prepare and submit to the local government the as-constructed drawings and documentation.

4.2. Proponent's obligations pursuant to an agreement to bond development for performance

The Proponent must within the time specified in section 3.3:

- (a) complete the development
- (b) provide security for infrastructure charges
- (c) ensure that any works are accepted on-maintenance by the local government
- (d) provide a maintenance security deposit to the local government
- (e) prepare and submit to the local government the as-constructed drawings and documentation.

4.3. Proponent's obligations pursuant to an agreement to bond removal house

The Proponent must complete the works required to the standard and timetable specified in the schedule forming part of the Removal House Bond agreement.

4.4. Proponent's obligations pursuant to an agreement to bond WSUD for Uncompleted Works

The Proponent must complete the works required to the standard and timetable specified in the schedule forming part of the WSUD bonding agreement.

4.5. Proponent's obligations pursuant to an agreement to bond other

The Proponent must complete the works required and to the standard specified in the schedule forming part of the bonding agreement.

4.6. Proponent's obligations where plan is approved pursuant to the *Planning Act 2016*

Where a plan is approved by the local government pursuant to schedule 18 (Approving plans of subdivision) of the *Planning Regulation 2017*, the Proponent must, in accordance with the conditions of approval granted:

- (a) complete the development
- (b) ensure that works are accepted on-maintenance by the local government
- (c) provide a maintenance security deposit to the local government
- (d) prepare and submit to the local government the as constructed drawings
- (e) provide to the local government a certificate from a licensed surveyor that all property survey marks have been reinstated.

4.7. Compliance notice

Where the Proponent does not comply with the agreements detailed in section 3 of this policy, or (Proponent's obligations where plan is approved pursuant to the *Planning Act 2016*), the local government may issue a written notice to the Proponent requiring that the Proponent comply with the Proponent's obligations or show cause why the local government should not call up the security pursuant to section 5.3 of this policy.

5. Security

5.1. Form and amount of security

A security to be given to the local government under the *Planning Act 2016* or the planning scheme policy must be:

- (a) paid to the local government
- (b) in the form of:
 - (i) EFTPOS; or
 - (ii) cheque (subject to clearance prior to acceptance); or
 - (iii) electronic funds transfer (by prior arrangement only); or
 - (iv) a banker's undertaking which satisfies the following:
 - a. is in the local government's favour
 - b. is given by a financial institution consented to by the local government
 - c. is irrevocable
 - d. is unlimited in time
 - e. is otherwise unconditional

- f. includes a full property description of the subject premise
- g. includes a full description of the purpose of the security
- h. is established by the Proponent of the subject premise; or
- (v) surety (in the form of an insurance bond) from an institution which satisfies the following:
 - a. holds 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
 - b. maintains a physical presence in Australia and suitable access to funds during normal banking hours
 - c. that the surety provided meets all the other requirements of section 5.1 (b)(iv)
- (vi) such other security as the local government may approve
- (c) for an amount which is:
 - (i) specified in paragraph 3.1 when referring to a maintenance security deposit; or
 - (ii) specified in the bonding agreement, in the case of a performance bond, rolling bond or WSUD bond; or
 - (iii) one point five (1.5) times the fully priced scheduled value of the part of the development which is not complete at the time of lodging the security with the local government, in the case of an uncompleted works bond.

5.2. Reducing, releasing or transferring security

- (a) The local government shall, upon the request of the Proponent and upon payment of the relevant administration fee concurrent with the register of cost recovery fees:
 - (i) reduce the security for the uncompleted works bond as the development is carried out, provided the amount of the security retained is not less than:
 - a. one point five (1.5) times the value of the part of the development not yet complete
 - b. the value of the maintenance security deposit
 - (ii) release the security for the uncompleted works bond (other than the maintenance security deposit) where the applicant has complied with the applicant's obligations
 - (iii) transfer the security for the uncompleted works bond to the maintenance security deposit where the local government has accepted the works on-maintenance
 - (iv) release the security for the performance bond where the local government has accepted the works on-maintenance

- (v) release the maintenance security deposit where the local government has accepted the works off-maintenance.
- (b) The request made by the Proponent pursuant to subsection 5.2 (a) must:
 - (i) be in writing
 - (ii) include the development application file reference
 - (iii) include a real property description of the premises
 - (iv) include the local government's bond reference number and bond amount
 - (v) include the applicable stage or stages in a staged development
 - (vi) include evidence to substantiate the value of the completed works
 - (vii) where the security is a banker's undertaking, provide details of the registered bank or finance company which provided the security
 - (viii) where the security is in cash, provide details of the local government's receipt number and the date the security was provided to the local government.

5.3. Calling up security

- (a) The local government may call up a security where:
 - (i) the Proponent has not complied with a compliance notice issued pursuant to section (Compliance notice); or
 - (ii) certain works are required to be carried out by the local government in the interests of public safety or environmental restitution; or
 - (iii) the works have not been completed within the timeframes specified within the bonding agreement; or
 - (iv) remedial works are required to be carried out by the local government due to conditions of the approval not being satisfactorily met by the Proponent.
- (b) The local government will call up security in accordance with a separate procedure – calling up bonds, which will be administered by the local government.

Related policies/legislation/other documents:

DOC ID	DOCUMENT TYPE	DOCUMENT NAME
8267828	Policy	Street Naming
8429258	Delegation Authority	of Street Naming
9651905	Delegation Authority	of Signing Council Documents