



**Council Policy**

# **Subdivision Security Payments**

Version 3 - 23 May 2022

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## Policy - external Subdivision Security Payments

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### Introduction

The *Environmental Planning and Assessment Act 1979* (NSW) section 4.17(6) enables Council to grant development consent subject to a condition, or to enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:

- a. making good any damage caused to any property of the consent authority (or any property of the Planning Ministerial Corporation) as a consequence of the doing of anything to which the consent relates
- b. completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent
- c. remedying any defects in any such public work that arise within six months after the work is completed
- d. in relation to coastal protection works, either or both of the following:
  - i. the maintenance of the works
  - ii. the restoration of a beach, or land adjacent to the beach, if any increased erosion of the beach or adjacent land is caused by the presence of the works.

### Purpose

To provide the principles that govern Council's management of subdivision security payments.

By promoting clarity and consistency in operations and expectations associated with subdivision security payments, the policy aims to support good governance, and enhance service delivery, economic and efficient use of public money, and public confidence in Council.

### Scope

The *Environmental Planning and Assessment Act 1979* (NSW) section 6.15 states that a subdivision certificate must not be issued for a subdivision that involves subdivision work unless the work has been completed, or an agreement has been reached between the applicant and the Council with respect to the work to be completed.

This policy sets out the information that an applicant must submit with any request to provide security, and issues that Council will consider in assessing any request.

### Policy statement

Council will accept a security payment in accordance with a condition of the development consent.

Council will consider entering into an agreement for security payment in circumstances where there is a benefit to Council and the community.

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### Objectives

#### Acceptance criteria

Council will not accept security for incomplete works on private property.

Council will consider entering into an agreement for security for incomplete public works subject to the following criteria:

- All drainage, including kerb and channel, must be installed.
- Roads must have a minimum of one coat seal which is to be maintained fit for purpose until the asphaltting of the road.
- All appropriate erosion and sediment controls must be installed, operational and adequately maintained.
- All incomplete works do not present a safety risk.

#### Request requirements

A request to Council to provide security for incomplete works must include:

- justification for the request advising of the circumstances and the benefit to Council and the community by providing security instead of completing the works
- demonstration that the acceptance criteria above are met
- a copy of the costs submitted when the work was tendered, or a quotation from the site contractor, or a minimum of two itemised quotations prepared by an appropriately qualified and experienced contractor, licensed tradesperson, or quantity surveyor for the completion of outstanding works
- temporary measures as may be required to ensure public safety in respect of the state of the incomplete works and for the completion of those works, such as the provision of signposting, temporary fencing and traffic control
- a statement and engineering plan detailing the scope of works subject to the security
- a program for the completion of all such works.

#### Security amount

The security amount will be based on consideration by Council of the submitted costs for adequacy.

If the submitted costs are not adequate, Council retains the right to determine an appropriate amount by seeking additional quotations or based on Council's Fees and Charges.

The security amount will be 125 per cent of the full value of the incomplete works or \$5000, whichever is the greater amount.

Where the works required to be bonded relate to different types (for example, outstanding civil works and vegetation maintenance) separate security bonds are required for each type.

A non-refundable administration fee is to be paid for each security, or for the alteration to an existing security. This fee will be the amount shown in Council's Fees and Charges.

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### Security terms

The terms for the security are:

- security may take the form of a bond or bank guarantee
- security must be unconditional, not have an expiry date, and be in favour of Council
- security must be from a reputable financial institution and Council reserves the right to refuse any financial institution.

All works on the subject of the security must be completed within the timeframe as identified in the security acceptance letter or in accordance with the conditions of the development consent.

All works must be completed to the satisfaction of Council.

### Completion of works

The works must be completed in accordance with the following:

- The onus is on the applicant to advise Council when the works are completed in accordance with approved documentation. Once Council is satisfied with the works, the applicant can seek the return of the security.
- Council will inspect the works during construction and, where necessary, Council will advise the applicant of what work is required to ensure works are completed in accordance with approved documentation, prior to the release of any of the security.

Council has the right to appoint its own contractor to complete the works using the security if the work that is the subject of security is not completed within the required timeframe. Any surplus funds following completion of the work will be returned to the applicant.

### Review and Evaluation

This policy will be reviewed every four years.

## Controlled Document Information

### Authorisation Details

<b>Folder No:</b>	F2005/02235	<b>TRIM Record No:</b>	D10548801
<b>Audience:</b>	External - Development Assessment and Certification, City Projects, Asset Management		
<b>Department:</b>	Asset Management	<b>Officer:</b>	Infrastructure Asset Management Coordinator
<b>Key focus area(s):</b>	Unique Landscape		
<b>Review Timeframe:</b> Max < 4 years	4 years	<b>Next Scheduled Review Date:</b>	23 May 2026
<b>Authorisation:</b>	Adopted by Council - 23 May 2022		
<b>Authorisation - Council Adoption Date:</b>	23 May 2022		

### Related Document Information, Standards & References

<b>Related Legislation:</b>	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>	Provides the legal framework for the system of environmental planning and assessment for New South Wales, including the imposition of conditions and other arrangements concerning security.
<b>Related Policies (Council &amp; Internal):</b>		
<b>Related Procedures, Guidelines, Forms, WHS Modules/PCD's, Risk Assessments, Work Method Statements:</b>		
<b>Standards COP's &amp; Other References</b>	Fees and Charges	Provides Council's fees and charges for goods and services.

### Definitions

Term / Abbreviation	Definition
Nil	

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### Consultation (update for each version created)

<b>Key Departments, Teams, Positions, Meetings:</b>	Development Assessment and Certification, City Projects, Asset Management
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### Version History

Version No	Date Changed	Modified By	Details and Comments
1	10/12/90	Tony Pogonoski	Policy Created
2	10/10/11	Brent Wellham	Amendments to policy following internal review and increase of % charges from 125% to 150%
3	April 2022	Dean Chapman	Amendments to update references to current legislation, provide greater clarity on the application of the policy and reduce bond amounts, remove requirement to withhold a small portion of the bond on completion of works, remove typographical and grammatical errors and align with Council's current style guide