

# NOOSA PLANNING SCHEME POLICY 7— PERFORMANCE BONDS

## Introduction

Council often imposes conditions of approval on planning applications which seek to have the developer carry out works, make payments to Council or conduct construction and development in accordance with the approved plans. As a means of achieving compliance with these conditions, it is Council's practice to require security in the form of a cash bond or trading bank guarantee (hereafter referred to as "bonds"). This policy addresses the calculation and use of such bonds.

There are three types of bonds; remedial or works bonds; performance bonds or a combination of the two, with the latter being the most common.

The purpose of this policy is to —

- a) detail circumstances when Council may require the payment of bonds; and
- b) the type of bond required.

## 1. Council may require lodgement of bonds

- 1.1 Without limiting its powers under sections 3.5.31(1) or 3.7.2 of the *Integrated Planning Act 1997 (IPA)*, Council may impose conditions on a development approval requiring the lodgement of bonds.
- 1.2 Bonds may be required for—
  - a) the undertaking of certain works; or
  - b) ensuring compliance with conditions; or
  - c) a combination of the above.

## 2. Remedial/works bonds

- 2.1 This type of bond secures work that must be carried out or payments required to be made by the developer. Typical circumstances may be the requirement to construct roadworks/infrastructure works or make a payment such as headworks contributions. Where the developer defaults on such works or payments, Council will call upon the bond or part thereof to carry out such work itself or to effect the payment. Any balance will be returned to the developer on full compliance with conditions.
- 2.2 The required level of bond is based upon 150% of the estimated cost of construction or the required payment. The additional 50% is attributable to any approval not being acted upon until some considerable time after it is granted and price rises or cost overruns which may occur.

### 3. Performance bonds

- 3.1 This type of bond is used as an incentive to a developer to construct properly or develop in accordance with the conditions of approval. Some common examples may include compliance with a load limit on certain roads, retention of trees or vegetation or construction of the development in accordance with the approved plans. Very often, in the view of the community, these circumstances are critical to satisfactory development being achieved.
- 3.2 Because of the nature of these conditions, the calculation of the appropriate level of bonding is not easily reduced to an exercise in mathematics, eg. the removal of a significant tree is a situation which usually cannot be remedied for 100-200 years. Accordingly, the performance bond must act as an incentive to complying with conditions and must therefore be of a sufficient scale to ensure that the developer is unlikely to contemplate non-compliance. The bond must also be of sufficient scale to ensure that the developer undertakes adequate monitoring to be certain any contractors, employees, etc., do not unknowingly cause a breach.
- 3.3 In determining the level of such a bond, Council and its officers will have regard to the following—
- a) Critical site attributes;
  - b) The importance in planning, environmental and engineering terms of the Council's requirements;
  - c) Scale of the specific matters against which security is required;
  - d) The likely degree of community concern should a breach occur; and
  - e) Remedial action, if any can be taken, which may be required should a breach occur.
- 3.4 As with remedial/works bonds, performance bonds will be returned following completion of development and fulfilment of all the conditions.
- 3.5 In particularly critical circumstances, Council may also require bonds from the specific contractors or builders, as well as those from the developer, as a means of ensuring compliance with conditions of approval.

### 4. Combination bonds

- 4.1 Under most circumstances, components of both remedial/works and performance bonding will be required. Calculation of such combination bonds will be based upon consideration of both Section 2 and 3 above, with the bond being returned following fulfilment of all conditions.

#### **POLICY HISTORY**

*PSP7 adopted by Council 3 November 2005 and effective 3 February 2006  
It is based on a superseded planning scheme policy dating back to 1991.*