



CUMBERLAND
CITY COUNCIL

Construction Bonds Management Policy

AUTHORISATION & VERSION CONTROL

Policy Number	POL-045
Policy Owner	Director Corporate Performance
Date Adopted	6 February 2019
Version No	1
Document ID	3224977
Review Date	6 February 2023

PURPOSE

The purpose of this policy is to provide guidance for the handling of bonds that are associated with the development process but remain unclaimed after seven years.

The policy outlines the process Council will undertake to manage unclaimed engineering bonds, including On-Site Stormwater Detention Bonds and Security Bonds such as Damage Deposit, Kerb and Gutter, Footpath, Gully Pits, Redundant Layback, and Restoration bonds.

SCOPE

This policy applies to bonds that are collected as part of construction activity, such as the development process and driveway construction, and are subject to a final inspection from Council or the lawfully appointed certifying authority before releasing.

All bonds remain a current liability of Council until forfeited or refunded.

In most cases, bonds are an effective way to guarantee the carrying out of works and protection of public infrastructure. This policy outlines a procedure for bonds which remain unclaimed.

POLICY STATEMENT

Council should insert a duration clause within the development application and driveway approval consents which stipulate that 7 years after the following;

- Completion of works or issue of a Final Occupation Certificate (for security bonds);
- Submission of proof of registration of Restriction on Use and Positive Covenant (for stormwater management works bonds),

Council will commence a process to call up bonds. In the event that this process results in Council deeming the bond is forfeited, the bond will be transferred to the Infrastructure Reserve.

Bonds are legislated under s4.17 of the *Environmental Planning and Assessment Act 1979* (formerly s80A).

PRINCIPLES

1. Reasons for the collection and call up of bonds covered by this Policy:

1.1 Security Bonds (e.g. Damage deposit, Kerb and Gutter, Footpath, Gully Pits, Redundant Layback, Restoration bonds)

Purpose of the bond

The purpose of Security Bonds is to ensure the completion of any public work or additional infrastructure in the public domain; the protection of existing Council assets adjacent to and fronting, and immediately adjoining the site; and that any damages to existing public infrastructure resulting from development or associated works is done or rectified to Council's satisfaction.

The bond is generally held by Council for the nominated time following the issue of the Final Occupation Certificate or the completion of works, whichever occurs last.

When is the bond required?

The bond is generally payable prior to the issue of a Construction Certificate or prior to works commencing as advised by Council.

What is the bond amount?

The Damage Deposit bond amount is listed in the Schedule of Fees and Charges. The amount of the bond is dependent upon the type of development and the value of the construction.

Other Security bonds are determined on merit as part of the Development Application approval process.

Why call up unclaimed bonds?

Following a seven year period where the bond refund has not occurred Council should proactively commence a call up process for the following reasons:

- 1) To ensure the safety of public infrastructure impacted by development construction from any damage that has occurred.
- 2) To ensure the satisfactory completion of public works associated with development.
- 3) The cost for incomplete/unsatisfactory works will transfer as a burden to the community. Therefore, Council has obligations to protect the interests of the community in this regard by undertaking and costing the works from the bonds forfeited.

1.2 Stormwater Management Work (SMW) (e.g. On-Site Stormwater Detention, Water Quality, Overland Flow Path)

Purpose of the bond

Where development is undertaken and mandates stormwater management works to prevent the negative impact of stormwater discharge on life, property and receiving water, Council may also require a bond to ensure the registration of a Restriction and/or Positive Covenant on title for the stormwater management works. This will ensure that future owners are aware of their ongoing protection and maintenance responsibilities for stormwater management works on their site, thereby ensuring the ongoing performance of the stormwater management works within the development site/property and mitigating impacts to Council's infrastructure.

Note: Council may hold this bond in relation to any outstanding matters relating to the stormwater management works within the property.

When is the bond required?

The bond is generally payable prior to the issue of a Construction Certificate.

What is the bond amount?

The bond amount is listed in the Schedule of Council Fees and Charges, which is updated annually.

Why call up unclaimed bonds?

Following a seven year period where a bond refund has not occurred, Council should proactively commence a call up process. The reason for this action is that future owners may not be aware of their obligations with regard to stormwater management works and therefore the detrimental impact on public infrastructure will increase. This will exacerbate the negative impacts of development on Council's stormwater infrastructure.

2. *Process to call up 7 year old unclaimed bonds*

In most cases, an applicant will make a request for Council to refund the bond after the completion of works or after the issue of the Final Occupation Certificate for security bonds, and proof of registration of the Restriction on Use and Positive Covenant for stormwater management works bonds.

Council is committed to returning unclaimed bonds where it can be demonstrated that the works have been completed to a satisfactory standard.

Prior to Council commencing a process to call up unclaimed bonds older than 7 years, the following steps should be undertaken:

- Council will make reasonable attempts to contact the party lodging the bond in accordance with s4.17 (10) of the Environmental Planning and Assessment Act 1979 (as amended) including mail out and/or email, and/or advertising in local and/or national newspapers.
- Allow for 90 days following the mail out and/or email, or the first advertisement to assess any response or registration of an interest in the bond.
- Following a written application or registration of interest in a bond Council will assess the interest and undertake a process to approve a full or partial refund of the bond.
- Where the interest cannot be verified, the bonds will be deemed unclaimed.

3. Infrastructure Reserve

Council deems all Bonds referred to under this policy as funds not regulated by the Unclaimed Money Act 1995 (as amended). In accordance with this policy Council will transfer unclaimed bonds to the Infrastructure Reserve, allowing these funds to be accessed when an approved investment in infrastructure occurs during the annual budgeting process.

4. Accounting Policy

When a bond is forfeited due to this policy, Council will recognise the money as income effective from the day the transfer occurs. Council will maintain a register of all bonds and keep detailed record of all forfeitures.

Council will assess the future liability and will accrue any amounts it deems necessary to comply with the Accounting Standards.

REVIEW DATE

The policy will be reviewed every three years.

BREACHES AND SANCTIONS

Breaches of this policy will be dealt with in accordance with normal disciplinary procedures and will be advised to the General Manager and/or Director. Council is aware and will monitor the claims for any fraudulence. Fraudulent claims will be reported, as per the requirements of ICAC.

RELATED DOCUMENTS AND COUNCIL POLICY

- Development Control Plan
- On-Site Stormwater Detention Policy
- Fees and Charges (approved annually)

RELEVANT LEGISLATION

- *Environment Planning and Assessment Act 1979*
- *Local Government Act 1993*