CUMBERLAND
CITY COUNCIL

Construction Bonds Management Policy

AUTHORISATION & VERSION CONTROL

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Policy Owner	Finance - Corporate Performance
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PURPOSE

The purpose of this policy is to provide a procedure for the management of bonds that remain unclaimed from the associated development process from the date of the final Occupation Certificate.

The bond is an effective way to guarantee the carrying out of works and protection of public infrastructure. They are also legislated under s4.17 of the *Environmental Planning and Assessment Act 1979* (formerly s80A).

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

The Damage Deposit bond amount is outlined in the current year's Schedule of Fees and Charges. In addition, the value of the bond is determined by the nature of the development and the estimated construction costs.

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

This policy outlines the process Council will undertake to manage unclaimed Engineering Bonds, including:-

- Construction Bonds,
- Landscape Bonds/Tree Bonds
- Hoarding Bonds,
- Ground Anchor Bonds,
- On-Site Stormwater Detention Bonds
- Stormwater Management Work
- Security Bonds such as:-
    - Damage Deposit,
    - Kerb and Gutter,
    - Footpath,
    - Gully Pits,
    - Drainage,
    - Redundant Layback,
    - Restoration bonds,
    - Lot Consolidation Bond,
    - Subdivision Bond,
    - All bonds relating to construction activity

SCOPE

This policy applies to bonds that are collected as part of the construction activity, as part of a development process and/or driveway construction. They are subjected to either a final inspection from Council or a lawfully appointed certifying authority to provide a final occupation certificate before releasing the bond and refunded to the payee.

The bond remains a current liability of Council until forfeited or refunded.

POLICY STATEMENT

Once the works have been completed, the customer requests a refund by way of:

- Completion of works or issue of a Final Occupation Certificate, as an example: security bonds;
- Submission of proof of registration of Restriction on Use and Positive Covenant, in instances such as stormwater management works bonds,

The Finance team will undertake a refund of the bond once they receive a request from the relevant Planning/Engineering team to advise that the customer has met the required standards and information that a Final Occupation Certificate has been issued.

If there has been no request to refund the bond after three years, Council will review and contact the applicant by telephone, email or send letter from information held in Council's database to confirm completion of works to finalise the process.

If there has not been a refund after seven (7) years since payment, Council will deem the bond is forfeited, the funds from the bond will be prioritised to fund road infrastructure improvements.

PRINCIPLES

Security Bonds – A bond is held by Council until completion of works for Damage deposits, Kerb and Gutter, Footpaths, Gully Pits, Redundant Laybacks, Restoration bonds, Landscaping/Trees

Construction Bond Purpose

The purpose of Security Bonds is to ensure the completion of any public works 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 a nominated time following the issue of the Final Occupation Certificate or the completion of works, whichever occurs last. A thorough review of each bond to be investigated prior to refund, to ensure:-

1) Protection of Public Infrastructure: To assess and address damage to assets resulting from development-related construction activities

2) Completion of Public Works: To ensure that all public works associated with the development have been completed to an accepted standard.

3) Community Cost Mitigation: The cost for incomplete/unsatisfactory works may result in financial liabilities being transferred to the community. Council has obligations to protect the public interests of the community in this regard by undertaking necessary remedial works, funded through forfeited bonds.

4) Infrastructure Reinvestment: To prioritise the use of forfeited bond funds for reinvestment into essential road and infrastructure improvements.

5) To fulfill the requirement of returning unclaimed money to Revenue NSW as determined by the Unclaimed Money Act 1995.

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

Where development is undertaken and mandates stormwater management works to prevent the negative impact of stormwater discharge on life, property and receiving water, Council requires 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.

The reason for this action is that future owners may not be aware of their obligations regarding 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.

Unclaimed money after 7 years

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.

In addition, 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 contact the payee of 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, and/or a notification on Council's website.
- 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.

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 prioritise use of these unclaimed bonds to road infrastructure improvements, allowing these funds to be accessed when an approved investment in infrastructure occurs during the annual budgeting process.

Accounting Policy

When a bond is forfeited, Council will recognise the forfeited amount as effective from the date the transfer is processed. Council will maintain a comprehensive register of all bonds, ensuring detailed records are kept for each forfeiture to support transparency and accountability.

Further, Council will assess any potential future liabilities arising from forfeited bonds and will accrue provisions as deemed necessary to ensure compliance with applicable 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*
- *Unclaimed Money Act 1995*