

Policy 11: Land Development Guidelines

Section 11

11.0 Bonding Requirements

Table of Contents

11.0	Bonding Requirements.....	1
11.1	Introduction	2
11.2	Types of Bonds	2
11.2.1	Performance Bond	2
11.2.2	Completion Bond	2
11.2.3	Uncompleted Conditions Bond	2
11.2.4	Landscape Establishment Bond	3
11.2.5	Maintenance Bond	3
11.3	Bond Process Requirements	4
11.4	Application for Bond Assessment	5
11.4.1	Bond Agreement	5
11.5	Payment	5
11.5.1	Form of Bond	5
11.5.2	Cheques.....	5
11.5.3	Bank Guarantees	6
11.6	Return or Reduction of Bond Amount.....	6
11.6.1	Maintenance Bond Refund	6
11.6.2	Uncompleted Conditions Bond Refund.....	6
11.6.3	Establishment Bond Reduction / Refund	6
11.7	Compliance	7

11.1 Introduction

These Guidelines provide Council's minimum requirements for Land Development and Compliance Bonds. They shall be read in conjunction with Council's other codes and policies, conditions of development approvals and other relevant legislation.

A bond is the payment of security by the owner to Council as a surety. An "owner" is the owner of the land or their authorised legal representative.

Bonds may be used in the following circumstances:

- a) To secure compliance with a condition of a development approval in accordance with the **Sustainable Planning Act 2009**.
- b) To secure completion of uncompleted conditions of a development approval for operational works and/or reconfiguring a lot in accordance with the **Sustainable Planning Act 2009**.
- c) To ensure public works infrastructure dedicated to Council has been correctly constructed and installed, has been properly maintained, is free of defects and is fit for its intended purpose.
- d) To mitigate the risk of damage to Council infrastructure or the degradation of environmental quality.

11.2 Types of Bonds

11.2.1 Performance Bond

Council may require a Performance Bond to mitigate risk of damage to Council infrastructure or the environment. The Bond may be required as a condition of an approval or at the discretion of Council Officers. Typically, the Bond must be paid and a Bond Agreement executed prior to commencement of works or the activity.

The following table identifies types of Performance Bonds but is not limited to:

Performance Bond	Purpose
Building Near Underground Services and installation of temporary ground anchors	Secure protection of Council infrastructure during construction Secure protection of Council's infrastructure when new connections are made
Earthworks	Ensure stabilisation of exposed areas
Environmental Protection (For example; Sediment and Erosion Control, Fauna/Flora Protection)	To mitigate the risk of environmental harm

11.2.2 Completion Bond

Council may require a bond to secure the completion of critical projects by a nominated date or duration. The Bond amount shall be decided by Council and must be submitted prior to the commencement of works.

11.2.3 Uncompleted Conditions Bond

At the request of the Applicant, Council may at its sole discretion agree to approve plans of survey prior to completion of development obligations subject to the following items being completed to Council's satisfaction:

Civil Engineering Component

- a) 100% bulk earthworks completed and stabilised.
- b) Pavement must have primer or primer seal coat applied and safety barrier system installed and approved.
- c) All approved electrical pillar boxes must be energised and operational.
- d) Sewerage works, including pump stations and any downstream works associated with the development, must have passed a practical completion, have all fees paid and be ready for a live connection.
- e) The water reticulation system, including reservoirs and associated pump stations, must have passed practical completion, have all fees paid and be ready for a live connection.
- f) Lodgement and approval of a Services Location Plan.
- g) All bridges within the subject development approval and stage must have a Practical Completion Certificate issued.
- h) Sediment and erosion control must be in place and functioning to the satisfaction of Council.

Public Open Space and Embellishments

- a) Bulk earthworks must be complete, vegetation protection and sediment and erosion control must be in place and functioning to the satisfaction of Council.
- b) The applicant must have either passed a Council pre-start meeting or have requested an uncompleted works inspection by a Council Officer.
- c) Rates are based on current landscape industry standards (e.g. Queensland Landscape Industry Costing Guide/ Cordells or equivalent) and must be inclusive of GST.
- d) Uncompleted conditions for Public Open Space and embellishments will be based on the current approved Operational Works application. No bond approvals will be granted if the development application is in the appeal period or the decision notice is being negotiated.

An uncompleted conditions bond must meet the following criteria:

- Council must be satisfied that all works will be completed and all services operational, within three months of approval of an Uncompleted Conditions Bond. Uncompleted Conditions Bonds are released after formal acceptance.
- Project management costs include but are not limited to, preliminary setout, site supervision including regular inspections throughout the life of the project and contract administration (for example, sub contracting, certification and additional approvals, amended drawings).
- Includes the cost of data collection and preparation of an As Constructed Plan that complies with Council's As Constructed Data Standard.
- The security must be provided by the owner of the land or their authorised agent with legal powers to enter into contracts on behalf of the land owner.
- The application must be accompanied by a Bill of Quantities identifying all completed and outstanding works.
- Certification of all works constructed to date (for example, completion of Appendix C).
- The minimum bond accepted by Council is \$5000.00.

11.2.4 Landscape Establishment Bond

It is the developer's responsibility to establish all living components (e.g. flora, grassed areas, revegetated areas) within the dedicated land to a level that will provide effective management of the landscape for future ongoing maintenance regimes. This period shall commence from the formal acceptance of the development 'On Establishment' for a duration to be determined by Council. During this period, the Developer is responsible for establishment and maintenance of the assets to ensure all future dedicated assets do not deteriorate, remain functional and to rectify or replace defective landscape assets.

The Establishment Bond includes:

- Capital Cost of living assets and best practice installation costs.
- The cost to maintain all landscape assets (hardscape and softscape) for the duration of the Establishment Period.
- All ancillary costs, including but not limited to water truck hire, re-staking, fertilising, mulching, plant replacement and rectification of any defects.

The Bond amount is calculated as 125% of the total costs described above unless otherwise determined by Council.

The Establishment Bond must be approved and the security lodged as a condition of acceptance of landscape works 'On Establishment'. If the applicant requests early approval of survey plans, the Establishment Bond must be approved and security accepted in conjunction with the uncompleted conditions bond as a requirement of uncompleted conditions approval.

11.2.5 Maintenance Bond

It is the developer's responsibility to maintain all development works which are to be handed over to Council, for a minimum period of twelve (12) months unless otherwise advised by Council. All maintenance works must be undertaken in accordance with the approved Maintenance Management Plan (if applicable) or to a standard commensurate with normal Council maintenance activity. This period shall commence from the formal acceptance of the development 'On Maintenance'.

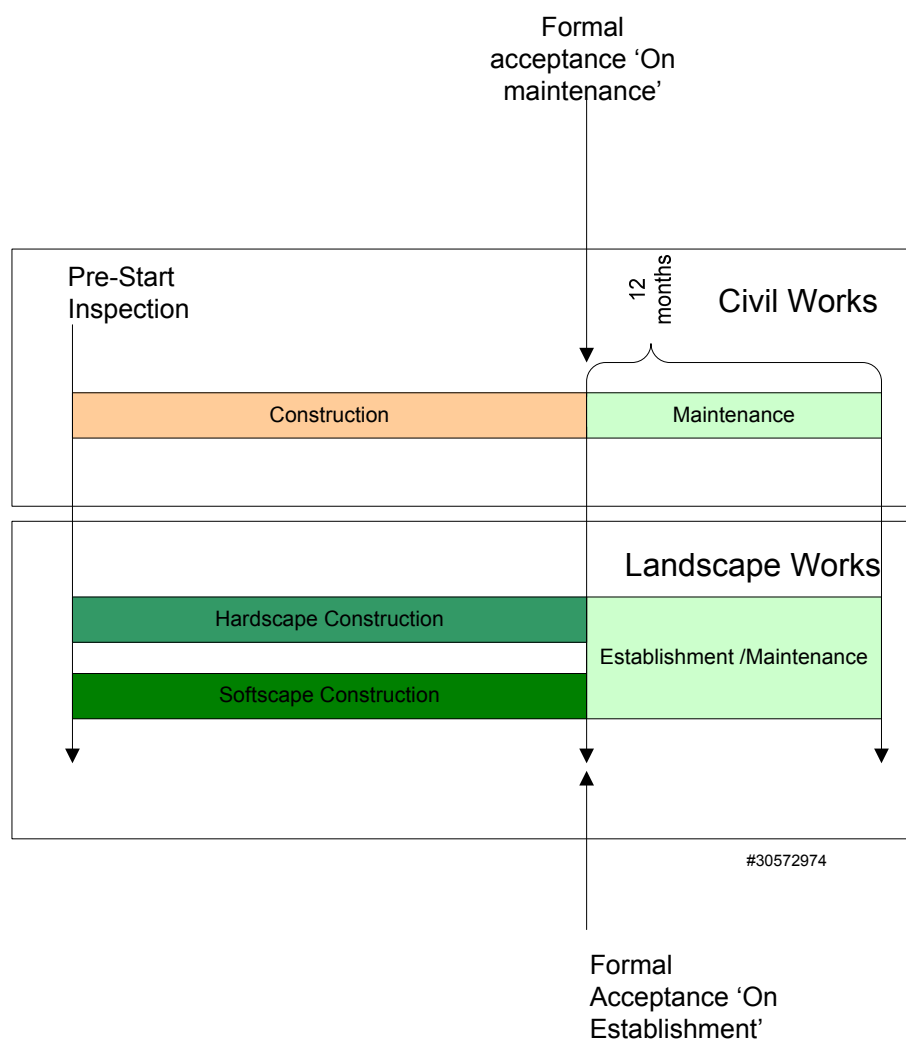
Council requires the developer to submit a Maintenance Bond to Council to ensure the works are maintained during this period.

The Maintenance Bond must reflect actual maintenance costs for the specific site as indicated in the approved Maintenance Management Plan. Where a Maintenance Management Plan is not required, the maintenance figure shall be determined by Gold Coast City Council Officers using current industry rates.

During the Maintenance period, the Applicant is responsible for the maintenance of the assets to ensure all future dedicated assets do not deteriorate and remain fit for purpose and to rectify or replace defective assets.

The Maintenance Bond must be approved and paid as a condition of acceptance of civil works 'On Maintenance'. If the applicant requests early endorsement of survey plans, the Maintenance Bond must be approved and paid in conjunction with the Uncompleted Conditions Bond as a requirement of uncompleted conditions approval.

The following diagram depicts the typical duration and timing for Development Bonds.



11.3 Bond Process Requirements

Bonds are divided into 2 categories:

- Bonds required as a condition of an approval;
- Bonds that require an application and approval.

Bonds that are a condition of a Development Permit have predetermined conditions and value and must be lodged at a specific milestone or within a timeframe. There is no application/ approval required for Bonds that are required as a condition of approval. The Applicant must sign the Bond Deed of Agreement and lodge the security amount in the timeframe stipulated in the Development Permit.

Bonds other than these require an application for approval of the bond amount. Bonds in this category may be discretionary (e.g. uncompleted conditions bond) or mandatory (e.g. maintenance bond).

In all cases, a Bond agreement must be executed between Council and the applicant. **Figure 11.3** describes the basic bond management process.

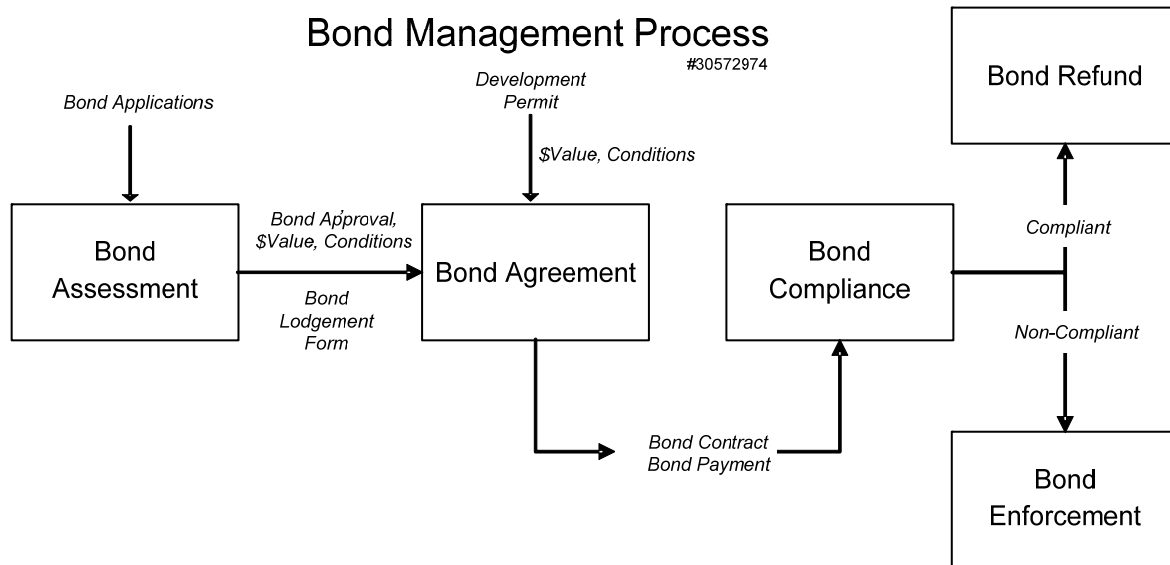


Figure 11.3 Process Steps for Bond Management

11.4 Application for Bond Assessment

Bonds not specified as a condition of an approval require lodgement of a Bond Application. The Application must include the applicable supporting documentation detailed on the Bond Application Form. If the Application is approved, the Applicant will be sent a Bond Lodgement Form and a Deed of Agreement for endorsement. To establish the Bond, the land owner must lodge the security amount for approval and sign the Deed of Agreement.

11.4.1 Bond Agreement

As a condition of Council approving a Bond, the Applicant shall enter into a formal agreement with Council as a condition of the Bond approval. The agreement describes the rights and obligations of the parties and the actions Council can take if these obligations are not fulfilled. The Bond Agreement describes the following:

- The purpose of the Bond i.e. what is being bonded;
- The subject land and/or Development Permit;
- The value of the Bond;
- The obligations and conditions of agreement.

11.5 Payment

11.5.1 Form of Bond

Bonds may be in the form of either:

- cash;
- cheque;
- bank guarantee.

Council will not accept any other form of security, such as mortgages, holding Titles to land, shares or insurance bonds, etc.

11.5.2 Cheques

Personal cheques for any amount are **NOT** recommended as it may incur delays. Processing of applications will not occur until personal cheques are cleared.

11.5.3 Bank Guarantees

Bank Guarantees must:

- be irrevocable guarantees from a recognised trading bank, approved by Council. Guarantees from Finance/Insurance companies and merchant Banks are not acceptable;
- be open ended with no expiry date;
- include the full and correct real property description to identify the property in which the works are being bonded (e.g. Lots 11 to 22 on Survey Plan No 123456, cancelling part of Lot 999 on SP 100482. Indicating 'Stage 8 of Paradise Estate' on its own is not acceptable);
- must be accompanied by and consistent with the Bond Lodgement Form;
- bank guarantees are to be in the land owner's name or the land owner's authorised agent;
- Bonds of \$5,000.00 or less must be cash or bank cheque.

11.6 Return or Reduction of Bond Amount

The applicant shall lodge a formal request with Council for the return or reduction of a bond. The Bond can only be refunded to the depositor of the funds held in trust by Council. The request must be a written submission outlining the reasons for the bond return or reduction and be in accordance with conditions specified for the return or reduction of the Bond. The minimum details to be included in the request are as follows:

- Real Property description of development;
- Council file reference for development;
- Bond amount originally lodged with Council;
- Name of Trading Bank (Bank Guarantee Bond only);
- Council receipt number (Cash/Cheque Bonds only);
- Date Bond lodged with Council.

The inclusion of the above information will help in the prompt return of Bonds to the Developer.

11.6.1 Maintenance Bond Refund

Maintenance Bonds will be refunded after formal acceptance by Council of the Works 'Off Maintenance'. Maintenance Bonds cannot be reduced or refunded progressively.

11.6.2 Uncompleted Conditions Bond Refund

Uncompleted Conditions Bonds will be refunded at the time of formal 'On Maintenance' acceptance for Civil works and 'On Establishment' for Landscape Works excluding those items which are subject to extensions of time i.e. Water Sensitive Urban Design. Uncompleted Conditions Bonds cannot be reduced or refunded progressively unless otherwise approved by Council.

11.6.3 Establishment Bond Reduction / Refund

Any decision to reduce an Establishment Bond is based upon a number of variables including:

- Seasonal conditions;
- Quality and size of stock;
- Planting methods;
- Soil and site conditions;
- Quality and frequency of maintenance.

The Establishment Bond is refundable according to the following schedule. The milestones are the minimum allowed and the reduction amount typical of full compliance with the criteria specified. Note this schedule should not be interpreted as being guaranteed but is a guide based on best possible outcomes. The decision to reduce the Bond and by what amount is at the complete discretion of Council taking into consideration the variables described above and the performance of the assets under the maintenance regime applied.

Milestone	Criteria	% Reduction
3 months	Plants exhibit new and existing healthy foliage, have increased in size in line with normal growth habit with no signs of plant stress. Plants have stable root systems. Soil/mulch interface includes a humus layer with evidence of established activity of soil microorganisms.	25
6 months		25
9 months		25
12 months		25

Note: *100% of the bond may be returned at any stage in the Establishment period subject to Council approval.*

11.7 Compliance

The Bond Agreement describes the rights and obligations of the parties and the actions Council can take if these obligations are not fulfilled. Where Council believes the applicant to be in breach of the agreement, Council may exercise its rights under the agreement to call up the Bond to satisfy the bond conditions. Prior to exercising this right, Council will issue written advice detailing the alleged breach of the agreement specifying the actions required by the applicant for compliance.

In the event the applicant does not comply with orders specified in the timeframe stipulated, Council may exercise its legal rights under the agreement and call up the value of the works/conditions from the monies held in trust.

Should the fair estimated cost of the outstanding works/conditions (including Council's charges for supervision, interest, administration costs, legal costs, overheads and contingency sum) be greater than the bond, Council will apply the bond as far as it extends and look to recover any shortfall as a liquidated debt.