

- Objectives:** Place
- Outcome:** 2.1 - A diverse, well planned built environment.
- Strategy:** 2.1.1 - Actively engage in the development and promotion of an effective planning framework.

Purpose

To objectives of this policy are to:

1. Require bank guarantees to secure compliance with planning approvals and/or extractive industry approvals; and
2. Arrange for robust procedures associated with lodging and returning bank guarantees.

Definitions

Bank Guarantee - A bank guarantee is an undertaking by a bank to be answerable for payment of a sum of money in the event of non-performance by the party on whose behalf the bank guarantee is issued. The bank guarantee amount is set by the cost of works, plus GST and will include a percentage contingency amount.

Policy

1. Bank guarantees will be required for the total value of any uncompleted works including but not limited to:
 - i) construction works;
 - ii) revegetation works;
 - iii) civil works ;
 - iv) landscaping works;
 - v) water quality monitoring;
 - vi) street trees;
 - vii) extractive industry; and
 - viii) maintenance works.
2. A landscape maintenance bank guarantee shall apply post completion of the works to the value equal to five percent of the contract value for the landscape works (excluding GST). This will be held until an acceptable handover has been achieved. Where works have not been completed, or lack of maintenance has resulted in some uncompleted works requiring the standard to be brought up to the agreed practical completion standard, bank guarantees will be cashed in and spent to complete the works.
3. Any bank guarantees lodged with the Shire are to be irrevocable and unrestricted (without an expiry date) and need to be clearly titled with the name liable to perform requirements of the Shire, the location (including stage release) it refers to and the link to the approval documents that describe its purpose.



4. When works have been completed to the satisfaction of the Shire, bank guarantees will be released.
5. Bank guarantees may be required where:
 - i) The applicant demonstrates that special circumstances exist that justify an early clearance of a development of subdivision conditions in exchange for a bank guarantee;
 - ii) The Shire believes it is in the interest of good governance of the district to accept a bank guarantee in the circumstances;
 - iii) There is a doubt as to whether the enforcement powers of the Shire are sufficient to enable it to ensure compliance with the condition;
 - iv) The failure to comply with a condition may detrimentally affect the public;
 - v) The condition requires work to be done on an item which involves an aspect of use by the public;
 - vi) The condition requires expenditure on conservation or rehabilitation works, where non-compliance will detrimentally affect the public (e.g. dust from slashing operations); or
 - vii) The condition requires expenditure on public land in proximity to the development site (e.g. tree planting) or on private land used by the public (e.g. landscaping), where non-compliance will, for amenity and well-being reasons, detrimentally affect the public.

Performance Bank Guarantees

1. The terms of a performance bank guarantee are to be identified in each instance and applied as a condition of approval, along with explanatory footnotes as may be necessary.
2. Approval may require a deed between the Developer and the Shire providing for the implementation and administration of the security. The deed identified is to detail the following:
 - i) The nature and extent of work being secured by the bank guarantee;
 - ii) The amount of the bank guarantee (to be closely related to the cost of the works being secured);
 - iii) Form of security to be a suitable bank guarantee;
 - iv) Whether the Shire will undertake works in the case of default leading to forfeiture of the bank guarantee, or whether the bank guarantee will be forfeited without the Shire undertaking the works and in that case how to apply the funds; and
 - v) Arrangements in respect to power of entry onto private land where the Shire intends to remedy non-compliance by completing the work.
3. The Shire may require an absolute caveat to be lodged pursuant to the deed.

Release of Bank Guarantees

1. Applications requesting a formal release of bank guarantees shall be in writing.
2. Once the request is made, the release of the bank guarantee is then determined by the Shire.
3. If the bank guarantee release has been approved, a signed release form will be processed stating that all conditions relating to the bank guarantee release have been met.



4. Once the bank guarantee has been agreed to be released, a Shire Officer will arrange with the proponent a time to release the bank guarantee.

Modification of Bank Guarantees

1. If a bank guarantee is being exchanged for a modified amount, or if a partial release of a bank guarantee is requested, the new bank guarantee must be received before the original will be released. Once the new amount has been authorized an exchange and/or partial release will be arranged.
2. If under any circumstances, the customer is unable to complete the works, and requests for the Shire to undertake the works, the Shire will determine the costs involved in carrying out the works and will draw down on the bank guarantee.
3. The Shire will request from the financial institution from where the bank guarantee is held, to draw down on the bank guarantee.
4. If the full amount is not required, the Shire will direct the bank guarantee be broken for staged draw downs, on the amount required, with the remaining balance in a new bank guarantee being required.

Alternative Arrangements

1. The shire may accept instead of a bank guarantee, an encumbrancer over land where the Shire is the only encumbent and the value of the land exceeds the value required to the guaranteed.

References

Name of Policy	Local Planning Policy 1.9: Bonds and Bank Guarantees
Previous Policy	N/A
Date of Adoption and Resolution Number	23 July 2018 - OCM063/07/18
Review dates and Resolution Numbers	
Next review date	
Related documents	<p>Acts/Regulations <i>Local Government Act 1995</i> <i>Planning and Development Act 2005</i> <i>Planning and Development (Local Planning Schemes) Regulations 2015</i></p> <p>Plans/Strategies Strategic Community Plan 2017 - 2027</p> <p>Policies</p>



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Local Planning Policy 1.9: Bonds and Bank Guarantees

	<p>References</p> <p>Delegations</p> <p>Work Procedures</p>
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Note: changes to references may be made without the need to take the Policy to Council for review.