

 Kingborough	BONDING OF DEVELOPMENT WORKS	Policy Number 6.6		
		<small>LAST REVIEW</small> <small>August 2016</small>	<small>NEXT REVIEW</small> <small>August 2020</small>	<small>MINUTE REF</small> <small>C388/18-16</small>
POLICY STATEMENT:	<p>1.1 This policy will:</p> <ul style="list-style-type: none"> • ensure procedural fairness and equity in Council's administrative processes in relation to development works, • safeguard the community's interest in such undertakings, • continue to facilitate and support economic development, and • protect the public interest in the funds and resources that are applied by the Council to ensure completion of development works. <p>1.2 Section 86 of the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i> and Part 5 of the <i>Land Use Planning and Approvals Act 1993</i> provide the framework to enable Council to accept security by way of deposits or guarantees from financial institutions for these works.</p> <p>1.3 This process enables owners of land to obtain early release of titles and enter into contracts for the sale of lots requiring further development works, subject to meeting the Council's requirements.</p> <p>1.4 The Council may permit the approval of final plans of subdivision prior to the completion of some approved development works in the circumstance set out in this policy.</p>			
OBJECTIVE:	<p>2.1 The purpose of this policy is to set the circumstance under which the General Manager will accept security for completion of infrastructure and other works.</p> <p>2.2 The policy is designed to:</p> <ul style="list-style-type: none"> (a) provide security to the Council for the satisfactory completion of infrastructure works associated with development which Council has authorised; (b) provide security to Council for the satisfactory completion of other works associated with the requirements of a permit or other approval which Council has authorised and may be subject to a bond including maintenance, driveway crossings, landscaping, outstanding works, house removal, environment protection, car parking, swimming pool fencing, and any other works; (c) enable security to be provided for infrastructure and other works so that sufficient funds are available for Council to complete any outstanding infrastructure or other works should the owner not carry out the works as required by Council; (d) enable the earlier sale of lots by an owner whilst protecting the interest of subsequent purchasers of these lots; and (e) protect the public interest. 			
SCOPE:	<p>3.1 This policy applies to all applications for development at properties within the Kingborough municipal area.</p>			
PROCEDURE: (POLICY DETAIL)	<p>4.1 PART A – BONDS FOR INFRASTRUCTURE WORKS</p> <p>4.1.1 Application of Part A</p> <p>4.1.1.1 The General Manager may, at his/her sole discretion, agree to a bond for infrastructure works to be provided by an owner prior to the issue of the certificate of practical completion if;</p> <ul style="list-style-type: none"> (a) requested by the owner; (b) the owner agrees that the works will be carried out as required by Council; (c) the owner provides adequate security to Council in an acceptable form; and 			

- (d) the owner agrees that in default of part (b) of this clause, the General Manager may call upon the security to complete the works.

4.1.2 Developments

4.1.2.1 The General Manager will not approve a bond for infrastructure works prior to the completion where:

- (a) the construction work is valued at less than \$50,000, or
- (b) the number of additional lots created is two or less, unless the works comprise only of driveway works and meet the requirements of Clause 4.1.8.

4.1.2.2 The General Manager may approve infrastructure works to be secured by a bond for the early release of title where the following criteria have been met:

- (a) a permit or other approval has been granted by the Council to the owner;
- (b) the proposed works are in conformity with the permit or other approval;
- (c) no less than 75% of infrastructure work has been completed. The extent of work completed (excluding the costs associated with telecommunications, electricity supply, the design and supervision of the works) is to be assessed and certified as complete by an engineer;
- (d) all issues pertinent to the interest of public safety and all essential services including reticulated water supply, sewerage and stormwater disposal have been finalised;
- (e) the owner has prepared and submitted to Council, engineering drawings and specifications in accordance with the Municipal Standard Drawings and other relevant requirements which are satisfactory to the General Manager, and in conformity with the permit or other approval conditions;
- (f) The owner has provided details of the full costs of the infrastructure works in a schedule ("Infrastructure Works Schedule") to the General Manager, including (if required):
 - (i) a list of all infrastructure assets that are to be constructed and which are proposed to be taken over by Council on completion;
 - (ii) the estimated cost of the proposed infrastructure works in accordance with the approved engineering drawings, including an appropriate contingency sum;
 - (iii) certification from a suitably qualified engineer that the schedule of estimated costs and list of proposed infrastructure assets referred to in this section and set out in the Infrastructure Works Schedule are accurate assessments of the works to be carried out; and
 - (iv) confirmation from the owner (in writing and detailing the schedule of works) that the proposed infrastructure works are scheduled for completion within three months of the date of the written approval by the General Manager, or other such time required by the General Manager;
- (g) the owner has provided payment of all fees required by the General Manager;
- (h) the General Manager is satisfied as to the accuracy of the Infrastructure Works Schedule;
- (i) the owner has agreed to meet all costs associated with the application, preparation of the Infrastructure Agreement and bond;

- (j) the owner has satisfied the General Manager that the proposed infrastructure works can be completed by the date required by General Manager;
- (k) the owner has entered into an Infrastructure Agreement with Council if required. The Infrastructure Agreement is an agreement between the owner and Council that:
 - (i) requires the owner to complete the infrastructure works in accordance with the requirements of Council;
 - (ii) enables Council or its agents to have access to the owner's land (if necessary) to complete the works.
 - (iii) the owner agrees that in default of part (i) of this subclause, the General Manager may call upon the security to effect completion of the works;
 - (iv) the owner agrees that the Infrastructure Agreement may, at the discretion of the General Manager, be registered on the owner's property title in accordance with the Land Use Planning and Approvals Act 1993 until the works are completed, in which case the amounts payable under the agreement become a charge against the owner's land;
 - (v) the owner agrees that if the title for the property is sold before the work is completed, Council may undertake the outstanding works and apply the costs against the bond. Additionally, Council will charge an administration fee of 20% of the total value of the works undertaken.
- (l) the owner has provided the required security for the completion of the proposed works in the form and manner required by the General Manager;
- (m) the owner satisfies any other requirements that the General Manager has in relation to the provision of the Infrastructure Agreement, including environmental and safety requirements, if required;
- (n) the owner acknowledges that the General Manager may insert a response within any Property Certificate requested in accordance with Section 337 of the Local Government Act 1993 to the effect that an agreement has been, or is being, entered into with the developer to obtain the early sealing of the plan of subdivision. This agreement acknowledges that the infrastructure works relative to this lot have not been completed at the date of Council signing and sealing the Plan of Subdivision and that the outstanding works have been bonded.

4.1.3 Refusal of Request

4.1.3.1 The General Manager may refuse to approve a request to enter into an agreement for an infrastructure works bond or an Infrastructure Agreement where the owner has previously been required to carry out infrastructure or other works in accordance with a permit or other approval and has:

- (a) failed to ensure the construction of the infrastructure or other works within the specified time or in accordance with Council's requirements; or
- (b) constructed infrastructure works to a standard not in accordance with Municipal Standard Drawings and other relevant Council requirements; or
- (c) constructed other works to a standard not in accordance with Council's requirements.

4.1.3.2 The General Manager may refuse to approve a request to enter into an arrangement to bond infrastructure works and/or enter into an Infrastructure Agreement:

- (a) where the General Manager is not satisfied that the owner will be able to complete the proposed works in accordance with requirements; or
- (b) if it has been previously necessary for Council to require forfeiture of a bond, or have access to security provided by the owner in relation to infrastructure or other works; or
- (c) It is otherwise not in compliance with this Policy.

4.1.4 Security

4.1.4.1 The security provided by the owner shall be acceptable to the General Manager, at his sole discretion.

4.1.4.2 The security for the bond may be provided in the form of:

- (a) a cash deposit provided for an amount required by the General Manager; or
- (b) an unconditional guarantee for an amount required by the General Manager from a bank, financial institution, insurance company or trading corporation approved by the General Manager, or
- (c) a deposit at an approved financial institution

4.1.4.3 A guarantee provided by the owner must:

- (a) be unconditional and irrevocable;
- (b) be in the name of the owner or other party approved by Council;
- (c) enable Council to have immediate access to the monies secured by the guarantee at any time where the General Manager is satisfied the owner is in breach of any requirements concerning the completion of the infrastructure works or any other requirement of the Infrastructure Agreement; and
- (d) not require the approval from the owner or any other party, for Council to access funds secured by the guarantee.

4.1.4.4 A deposit at an approved financial institution provided by the owner;

- (a) will only be considered where the required value of the security is \$100,000 or greater;
- (b) must be without a fixed term, or otherwise must be for a minimum initial period of 6-months and thereafter provide for the automatic refixing of the term at the sole discretion of the General Manager;
- (c) may be in the name of the owner, but Council's approved signatories must be the sole authority to vary, withdraw or terminate the deposit;
- (d) any interest that accrues must be refixed until the deposit is terminated.

4.1.4.5 Unless otherwise specified in writing by the General Manager, the owner will be entitled to any interest accrued on a cash deposit.

4.1.5 Assessment of amounts

4.1.5.1 In assessing the amount of the security Council requires for infrastructure works for the early release of title, the following table will form the basis of the calculation.

Value of works (\$)	Value of Security (\$)
0 - \$50,000	No bonds for infrastructure works accepted unless the works are driveway works and meet the requirements set out in Section 8 of this policy.

Works over \$50,000	1.5 x the total value of works for the amount to be secured by the bond
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4.1.5.2 The owner will be responsible for meeting all costs of the infrastructure works including any cost in excess of the value of the proposed works secured by the cash deposit or bank guarantee.

4.1.6 Completion of works

4.1.6.1 The General Manager will not release a bond until the owner demonstrates to the satisfaction of the General Manager that the infrastructure works have been completed as required.

4.1.6.2 The owner must, within the time required by the General Manager (and if no date is specified, then within three (3) months of the date of the written approval by the General Manager for a bond):

- (a) complete the infrastructure works;
- (b) arrange for a certificate of completion to be provided to Council so that these works can be taken 'On-Maintenance' by Council;
- (c) submit to Council final 'as-constructed' plans for the infrastructure works when required by the General Manager.

4.1.6.3 Following notification from the owner that the bonded works are completed, Council will inspect the works.

4.1.6.4 Council will provide a certificate in accordance with the Act and release the bond if, in the opinion of the General Manager:

- (a) the infrastructure works are completed and are suitable to be taken over by Council in accordance with the relevant legislation, and
- (b) no other related works are outstanding and need to be completed by the owner.

4.1.6.5 Where the owner has fulfilled all the requirements of the permit or other approval, including the transfer to Council of any required open space, easements, road widening and the like, and has carried out the infrastructure works as required, the General Manager may:

- (a) release the bond, less 10% to be held until the end of the maintenance period (unless otherwise stated, six months from the date of completion of the infrastructure works) and any amount due and owing to Council; and
- (b) if the Infrastructure Agreement has been registered on the owner's title, arrange for the cancellation of the Agreement.

4.1.7 Failure to Comply with Terms of an Infrastructure Agreement

4.1.7.1 The General Manager may, where the owner has failed to comply with the terms of the Infrastructure Agreement, serve written notice on the owner requiring the owner to either:

- (a) comply with the term of the Agreement, or
- (b) show cause why Council shall not have access to the bond to complete the works within twenty-one (21) days (or other such period required by the General Manager) of the receipt of the notice.

4.1.7.2 Council may have immediate access to the bond security pursuant to the Infrastructure Agreement, where:

- (a) the owner has not complied with the requirements of the notice served pursuant to clause 4.1.7.1 to the satisfaction of the General Manager;
- (b) the owner has, in the reasonable opinion of the General Manager, failed to comply with the terms of the Infrastructure Agreement, notwithstanding that a written notice has been served pursuant to clause 4.1.7.1;

- (c) in the interest of public safety, certain works are required to be undertaken by Council prior to the expiration of the term of the Infrastructure Agreement;
- (d) the owner:
 - (i) is declared insolvent or bankrupt, or has entered into a creditors scheme of arrangement;
 - (ii) in the case of a company or other corporate entity, is unable to pay its debts when required, or has a receiver, manager or administrator appointed to manage its business or assets in accordance with applicable legislation;
 - (iii) ceases trading or carrying on its business
 - (iv) is a company and there is a change in the shareholders of the company which in the reasonable opinion of the General Manager may affect the ability of the owner to complete the infrastructure or other works as required; or
- (e) in any other circumstance considered reasonable by the General Manager to ensure that the infrastructure works are carried out as required, following notification to the owner.

4.1.7.3 If, in the reasonable opinion of the General Manager, the works are only partially completed by the required completion date, or have not been completed in accordance with Council's requirements, the General Manager may;

- (a) not release any of the bond security provided by the owner;
- (b) release part of the bond security provided by the owner;
- (c) extend the date by which the works are to be completed to another date specified by the General Manager;
- (d) carry out the works to ensure completion and apply the cost against the value of the security.

4.1.8 Driveway Bonds for Small-Scale Subdivisions

4.1.8.1 The General Manager may, at his/her absolute discretion, consider bonding infrastructure works:

- (a) valued at less than \$50,000, or
- (b) where the number of additional lots created is two or less, and
- (c) the works comprise only of driveway works.

4.1.8.2 Such works may be bonded when the following conditions are met:

- (a) the owner is undertaking building work on one of the newly created lots.
- (b) the owner has submitted a building application for the works proposed under sub-part (a). In these circumstances, consideration of a building permit would be held over, pending release of title.
- (c) the bond amount must be twice the agreed value of the work.
- (d) the form of the bond must be in accordance with this Policy.
- (e) the bond period is not to exceed the building permit period.
- (f) the owner agrees that if the title for the property being built upon is sold before the building work is completed, Council may undertake the outstanding works and apply the costs against the bond. Additionally, Council will charge an administration fee of 20% of the total value of the works undertaken.

4.2 PART B – BONDS FOR OTHER WORKS

4.2.1 Application of Part B

4.2.1.1 The General Manager may, at his/her sole discretion, agree to a bond for other works to be provided by an owner prior to the issue of the certificate of practical completion if:

- (a) requested by the owner;
- (b) the owner agrees that the works will be carried out as required by Council;
- (c) the owner provides adequate security to Council in an acceptable form; and
- (d) the owner agrees that in default of part (b) of this clause, the General Manager may call upon the security to complete the works.

4.2.1.2 The following works may be bonded, subject to the General Manager's approval:

- (a) non-essential services (landscaping, fence, etc.)
- (b) works to be carried out under a license/permit issued by the Council.
- (c) Works associated with the construction and repair of footpaths, crossings, kerbs and gutters; or
- (d) Any other approved works.

4.2.2 Security

4.2.2.1 The security provided by the owner is to be approved by the General Manager and shall comply with the conditions specified in clause 4.1.4 of this Policy.

4.2.3 Assessment of amounts

4.2.3.1 In assessing the amount of security Council requires for other works, the following table will form the basis of the calculation.

Value of works(\$)	Value of security
All works	1.5 x the total value of works for the amount to be secured by the bond.

4.2.3.2 The owner will be responsible for meeting all costs of the works including and costs in excess of the value of the proposed works secured by the bond.

4.2.3.3 The owner has agreed to meet all costs associated with the application, preparation of the bond.

4.2.4 Completion of works

4.2.4.1 The General Manager is not required to release a bond until the owner demonstrates to the satisfaction of the General Manager that the works have been completed as required.

4.2.4.2 Following notification from the owner that the bonded works are completed, Council will inspect the works.

4.2.4.3 Where the owner has fulfilled all the requirements of the permit or other approval and has carried out the other works as required, then the General Manager may release the bond, less any amounts due and owing to the Council.

4.2.5 Failure to Comply with Terms of a Permit or Other Approval

4.2.5.1 The General Manager may, where the owner has failed to comply with the terms of a permit or other approval, serve written notice on the owner requiring the owner to:

- (a) either comply with the term of the permit or other approval; or
- (b) show cause why Council shall not have access to the bond

	<p>to complete the works within twenty-one (21) days (or such other time required by the General Manager) of receipt of the notice.</p> <p>4.2.5.2 Council may have immediate access to the security (cash deposit or bank guarantee) pursuant to the implementation of all requirements of a permit or approval where:</p> <ul style="list-style-type: none"> (a) the owner has not complied to the satisfaction of the General Manager with the requirements of the notice served pursuant to clause 4.2.5.1; (b) the owner has, in the reasonable opinion of the General Manager, failed to comply with the terms of the permit or other approval notwithstanding that a written notice has been served pursuant to clause 4.2.5.1; (c) in the interest of public safety, certain works are required to be undertaken by Council prior to the expiration of the term of the permit or other approval; (d) the owner; <ul style="list-style-type: none"> (i) is declared insolvent or bankrupt, or has entered into a scheme of arrangement with creditors; (ii) in the case of a company or other corporate entity, is unable to pay its debts when required, or has a receiver, manager or administrator appointed to manage its business or assets in accordance with applicable legislation; (iii) cease trading or carrying on its business; (iv) is a company and there is a change in the shareholders of the company which in the reasonable opinion of the General Manager may affect the ability of the owner to complete the other works as required; or (e) in any other circumstance considered reasonable by the General Manager to ensure that the other works are carried out as required, following notification to the owner. <p>4.2.5.3 If in the reasonable opinion of the General Manager the works are only partially completed by the required completion date, or have not been completed in accordance with Council's requirements, the General Manager may:</p> <ul style="list-style-type: none"> (a) not release any of the bond security provided by the owner; (b) release part of the bond security provided by the owner; (c) extend the date by which the works are to be completed to another date specified by the General Manager; (d) carry out the works to ensure completion
GUIDELINES:	5.1 Development will be in accordance with Council's Standard Details.
COMMUNICATION:	6.1 This policy will be made available to the general public on the Council website and at the Customer Services counter.
LEGISLATION:	<p>7.1 The following legislative requirements should be considered in conjunction with this policy:</p> <ul style="list-style-type: none"> ▪ <i>Local Government (Building and Miscellaneous Provisions) Act 1993.</i> ▪ <i>Land Use Planning and Approvals Act 1993</i> ▪ <i>Kingborough Planning Scheme 2000.</i> ▪ <i>Kingborough Interim Planning Scheme 2015</i>
DEFINITIONS:	<p>"Acts" means the Local Government (Building and Miscellaneous Provisions) Act 1993 and the Land Use Planning and Approvals Act 1993.</p> <p>"Council" means the Kingborough Council.</p> <p>"General Manager" means the General Manager appointed by Council; a person</p>

	<p>acting in that capacity; or an officer with the delegated authority of the General Manager with respect to the operation of this Policy, acting as an agent for Council.</p> <p>“Infrastructure works” means works to be carried out as part of the requirements of a Planning Permit. Those works may include but not be limited to road construction, public facilities and stormwater.</p> <p>“Other works” means works to be carried out as part of the requirements of a permit or other approval, including but not limited to:</p> <ul style="list-style-type: none"> (a) non-essential services (landscaping, fencing, etc.); (b) works to be carried out under a license/permit issued by the Council. (c) works associated with the construction and repair of footpaths, crossing, kerbs and gutters; or (d) any other approved works.
<p>RELATED DOCUMENTS:</p>	<p>Kingborough Planning Scheme 2000 Kingborough Interim planning Scheme 2015</p>
<p>AUDIENCE</p>	<p>The Bonding of development works Policy applies to all properties within the Kingborough Municipal Area.</p> <p>The policy is publicly accessible via Council's website.</p>