

Policy Section:	4. Infrastructure and Engineering Services
Policy Name:	Land Divisions – Indentures, Bonds & Bank Guarantees
Classification:	Public – Council Policy
Adopted:	14 June 2022
Frequency of Review:	Biennial
Last Review:	May 2022
Next Review Due:	May 2024
Responsible Officer(s):	Manager, Infrastructure and Engineering Services Manager Development Environment and Regulatory Services
Policy and Code of Practice Manual File Ref:	CC10/2601
Council File Reference:	CR22/17786
Legislation Authority:	Development Act 1993 Planning, Development and Infrastructure Act 2016 Local Government Act 1999
Related Policies and Codes:	N/A
Related Procedures:	N/A

1. POLICY

- 1.1 That it be a Policy of Council that where a developer elects, after obtaining Council's planning authorisation for a land division, to enter into binding arrangements with Council to facilitate land division certificates under section 138 of the *Planning, Development and Infrastructure Act 2016*.
- 1.2 The following shall be adopted:
 - 1.2.1 The Manager Development, Environment and Regulatory Services, shall issue Council's general land requirements in accordance with Council's delegations under the Development Act or Planning, Development and Infrastructure Act and associated Regulations.
 - 1.2.2 A financial consideration shall be calculated by the Manager Infrastructure and Engineering Services or Manager Development Environment and Regulatory Services, or his delegate, to adequately cover the cost of outstanding works plus a 20% contingency and in addition seek a financial contribution to adequately cover the defects

LAND DIVISIONS – INDENTURES, BONDS & BANK GUARANTEES POLICY

liability period, which is calculated as 10% of the total contracted works plus 20% contingency.

- 1.2.3 A Council provided bond agreement shall (excluding financial contributions due to Council, e.g. open space; payment in lieu) be submitted by the relevant entity proposing to undertake the works approved under a development application (the Developer)
- 1.2.4 Alternatively, the Developer may elect submit a bond agreement which meets with the satisfaction of the Manager Infrastructure and Engineering Services or Manager Development Environment and Regulatory Services . Such document may be referred by Council for vetting and endorsement at the discretion of those Managers.
- 1.2.5 The document shall be executed by the Developer together with a guarantee from a Bank or other recognised financial institution for the financial consideration calculated. Provided all other matters referred to on the Decision Notification Form for the relevant approved Land Division have been satisfactorily dealt with, the Manager Development, Environment and Regulatory Services may then issue a Land Division Certificate under the *Planning, Development and Infrastructure Act*.
- 1.2.6 To assist the Developer, Council accepts two (2) separate bank guarantees (as per Item 1.2.1) where one is applicable to the remaining performance works and one is applicable to the defects liability period.
- 1.2.7 After satisfactory completion of the performance works the Council staff shall agree to the issue of a Certificate of Practical Completion. At that time either:
 - If a single bank guarantee was provided by the Developer for the performance works plus 20% contingency, the amount of the bond may be reduced by up to 90% and the remaining bond will be held by the Council for the defects liability period.
 - If two (2) separate bank guarantees were provided by the Developer, then Council will return the bond covering the outstanding works and the remaining bond will be held by the Council for the defects liability period.
- 1.2.8 The remaining bond shall be held by the Council until expiration of the defects liability period upon the Council's determination of satisfactory completion or any defects or omissions. .
- 1.2.9 Pursuant to the provisions of the *Local Government Act, 1999* as amended, the Manager Infrastructure and Engineering Services and the Manager Development, Environment and Regulatory Services are authorised to agree to, or refuse, any written request from a Developer to progress reduction of the bond as works are undertaken.
- 1.2.10 In accordance with the bond agreement, if during the defect liability period in the opinion of the relevant Council Staff, any defects arise which are the responsibility of the Developer, the Developer shall be immediately notified of those defects in writing and the remaining percentage of the bond shall be retained until such time as the defects are corrected by the Developer.

LAND DIVISIONS – INDENTURES, BONDS & BANK GUARANTEES POLICY

1.2.11 For all assets intended to be vested in the Council, Council require all prescribed works (i.e. civil works) to have a minimum 12 month defects liability period following the date of Practical Completion and require all non-prescribed works (i.e. street trees and landscape works) to have a minimum defects liability period of twelve (12) months unless agreed otherwise with the Manager, Infrastructure and Engineering Services.

1.3 That Council appoint the Manager Infrastructure and Engineering Services and the Manager Development Environment and Regulatory Services (or their delegate) as an Authorised Officer under Section 245A of the *Local Government Act 1999* to enter into such an agreement.

2. REVIEW AND EVALUATION

The effectiveness of this Policy will be reviewed on a biennial basis.

The Chief Executive Officer will report to Council on the outcome of the evaluation and if relevant make recommendations for amendments, alteration or substitution of a new Policy.

The Policy will not be altered or substituted so as to affect a process already commenced.

3. FURTHER INFORMATION

Further information about this Policy can be obtained by:

Telephone: 8522 9211

Email: council@gawler.sa.gov.au

Appointment: Town of Gawler Administration Centre, 43 High Street, Gawler East.

Letter: PO Box 130, Gawler SA 5118

4. AVAILABILITY OF POLICY

The Policy is available to be downloaded, free of charge, from Council's website at www.gawler.sa.gov.au.

A printed copy may be purchased on request from the Council's Administration Centre.