



D6.52

**Deeds of Agreement and Bank
Guarantees Policy in Relation to
Conditions of Development
Consent, Development
Contributions, Draft Local
Environmental Plans etc**



D6.52 DEEDS OF AGREEMENT AND BANK GUARANTEES POLICY IN RELATION TO CONDITIONS OF DEVELOPMENT CONSENT, DEVELOPMENT CONTRIBUTIONS, DRAFT LOCAL ENVIRONMENTAL PLANS ETC

ENVIRONMENT AND PLANNING - DEVELOPMENT

POLICY OBJECTIVES

- 1 To protect Council's interest wherever development takes place within the City.
- 2 To ensure that funds or facilities required as a consequence of giving approval to a proposed development (whether in relation to a development application, draft local environmental plan etc.) are provided at the most appropriate time.
- 3 To provide an equitable system for applicants to meet these obligations.

POLICY STATEMENT

- A The Council may agree to -
- i entering into a Deed of Agreement with the owner of a property which is subject to a requirement of the Council to pay a contribution or provide works, services, facilities, or land, or
 - ii accept security by cash, bank insurance or finance company guarantee,
- in appropriate circumstances and in accordance with this Policy.
- B The basic principle to be followed is that the work, service, facility, or land will be available when the development becomes operational. However, where the Council requires a contribution toward the provision of a service or facility, that contribution may be required at an early stage to allow the funds to be expended appropriately.

PROCEDURE

The Procedure (attached), being an administrative process, may be altered as necessary by the General Manager.

- (Min No 335/93 - 23 March 1993)
(Min No 651/96 - 27 August 1996 - Review of Policies)
(Min No 239/2000 – 24 October 2000 – Review of Policies)
(Min No 214/2005 - 8 March 2005 - Review of Policies)
(Min No 311/2009 - 5 May 2009 - Review of Policies)

ATTACHMENT - PROCEDURE

D6.52 DEEDS OF AGREEMENT AND BANK GUARANTEES POLICY IN RELATION TO CONDITIONS OF DEVELOPMENT CONSENT, DEVELOPMENT CONTRIBUTIONS, DRAFT LOCAL ENVIRONMENTAL PLANS ETC

- 1 Where the Council enters into a deed of agreement requiring the carrying out of any works, or the provision of any service or facility, or the transfer of any land to the Council for public purposes, then -
 - i the agreement must be with the owner of the land,
 - ii the time frame for the provision specified shall be stated,
 - iii a caveat forbidding transfer of the land or a positive covenant shall be registered on the title to the land,
 - iv the applicant or owner shall be responsible for the cost of both the preparation of the deed and registration of the caveat or positive covenant,
 - v the deed is to be prepared by the Council and shall be checked by the Solicitor before execution.

- 2 The value of a Security shall be the sum of the contributions which are deferred plus the calculated interest that would be received on that amount of principal at interest bearing deposit investment for a period of twelve (12) months.

The maximum period for a deferral of payment shall be twelve (12) months. Any extension to this period will be subject to a submission from the applicant or owner to justify the request and general compliance with the provisions of this Policy.

- 3 Where a security is lodged against the provision of works to be carried out by the developer in the form of cash, bank or other finance guarantee, then the amount of the security shall be the Council's estimated cost of carrying out the work plus fifty percent (50%). If the developer fails to carry out the work by completion of the development, or at the time(s) specified in the agreement, the Council may use the security to have the works constructed and will refund or release the balance after taking into account the actual costs incurred including administration costs, etc.

- 4 Monetary contributions are to be paid as follows, unless arrangements as specified above have been entered into:-
 - i applications which require Construction Certificate for the development to proceed, contributions to be paid prior to the issue of such construction certificate.
 - ii applications for subdivision of buildings or land which require the release of a "line plan" bearing the Council Clerk's Certificate, contributions are to be paid prior to the release of that plan;

- iii notwithstanding i and ii above, where a contribution is required to fund a work or service to directly service the proposed development, the Council will require the relevant contribution or a proportion thereof to be paid with the lodgement of engineering or Construction plans for approval;
 - iv applications where no further approvals are necessary, the contributions are to be paid prior to the use of the land under the consent being commenced, provided however that the Council may require payment at an earlier date in order to construct or provide services necessary for the use to be carried on.
- 5 Where a consent to an applications requires the dedication of land for public purposes, that dedication shall be included on the linen plan submitted for affixing the Council Clerk's Certificate.
- 6 Where a provision of a cash contribution is required as a condition of development consent and the Council agrees to accept security for payment at a later date as specified in Part F 4 above, an application under Section 96(2) of the Environmental Planning and Assessment Act will be required to vary the terms of the relevant condition(s).
- 7 Where a deed of agreement is entered into in respect to the Council agreeing to prepare a Draft Local Environmental Plan, the deed shall be executed after the draft Plan has been publicly notified in accordance with Section 66 of the Environmental Planning and Assessment Act 1979 and the Council's consideration of public submissions, provided that the Council determines to continue with the Plan. The deed is to be executed by all parties prior to the draft Plan being referred to the Minister for Planning for the making of the Plan under Section 70 of the Environmental Planning and Assessment Act.