

<b>Corporate Plan Reference:</b>	<b>Theme No. 5. - Excellence</b>  <i>Objective 5.2 - Continue to deliver a financially sustainable Council that has the resources now and into the future to achieve its strategic objectives. This will be supported through the introduction of enhanced sustainability reporting and performance indicators, as well as ESG (environment social and governance) accounting practices as guided by statutory requirements.</i>
<b>Endorsed by Council:</b>	30 June 2025
<b>Policy Author:</b>	Director Corporate Services

## POLICY BACKGROUND

Dealing with the construction industry and developers can be a high-risk environment for Council and as a result, it is important that Council obtains a financial security instrument that has a 'cash-like' quality to secure contractual obligations.

This policy sets out the constraints and risk management considerations for the acceptance, management and release of financial securities provided to Council. The aim of this policy is to minimise Council's exposure to credit, legal, financial and documentation risk.

This policy relates to parties who have an obligation to Council under a specific transaction, contract, agreement or undertaking and are required to provide a performance security.

The policy refers to the following credit instruments as the only forms of financial security accepted by Council:

- Cash bonds
- Bank Guarantees

The effect of obtaining these types of securities is that the amount deposited or guaranteed can be immediately accessed when the party dealing with Council fails to perform the agreed obligation.

The implementation of this policy is supported by the 'Policy Guideline – Guidelines for the Acceptance, Management and Release of Financial Securities.' These policy guidelines provide the detailed processes that must be adhered to by all officers who are authorised to enter into contracts or transactions on behalf of Council.

## COUNCIL POLICY

In implementing a policy for the acceptance, management and release of financial securities, Council has been guided by the following principles and objectives:

- They have a dual purpose of allocating risk and providing financial security
- Their primary purpose is to increase confidence and manage risk between Council and the relevant party in order to ensure the obligations under a contract are met
- Their essential function is that they should be equivalent to cash. If this was not the case, the only form accepted would be cash bonds
- Only unconditional financial securities will be accepted as they are not a secondary obligation and are therefore not dependent upon Council proving breach of the obligation

- The security shall not have an expiry date. Bank guarantees are invalid and unenforceable after their termination dates even if the obligation has not been performed or the work is yet to be completed. Therefore, Council will not accept bank guarantees with a termination date
- Their real value is sometimes not known until a call is made for the cash to be paid out in the event of a breach of an obligation. A call up of a financial security involves Council requesting a cash payment from a financial institution that has issued the security
- It is critical that all risks associated with financial securities are managed within a well-documented framework in the form of policies and procedures
- An effective policy should address the risks related to credit exposure, legal, accessibility and documentation in order to mitigate against the risk of limitations being imposed on Council in the event of making a call on a financial security
- The fundamental considerations that a policy must address are the reputation and credit rating of the issuer and the wording of the security document
- An effective policy should act to ensure compliance with relevant legislation and streamline internal processes with related process documents
- The primary aim of the policy is to ensure that the accepted financial securities are irrevocable and payable on demand.

### **Risk management considerations**

Council must ensure that the risks associated with accepting, managing, and releasing securities are identified and managed through adherence to stipulated requirements and processes. This will mitigate against the risk of limitations being imposed on Council when a call is made for the cash to be paid out in the event of a breach of an obligation.

A call up of a security involves Council requesting a cash payment from the financial institution that has issued the financial security. *The 'Policy Guideline – Guidelines for the Acceptance, Management and Release of Financial Securities'* that supports the implementation of this policy, provides specific procedures that must be implemented to ensure that the following risks are minimised in the event of a call up:

- **Credit risk** is the risk that a financial institution is unable to pay when a financial security is called up, this may include either late or non-payment of some or all of the security.
- **Access risk** is the risk that in the event of a financial security being called up access to the funds may be delayed or prevented.
- **Legal risk** is the risk that the contractor/developer or financial institution may seek to hold back or avoid a call up of a financial security by seeking to involve the court.
- **Financial risk** is the risk that Council won't be able to meet its commitments in the event of a breach of an obligation by a party.
- **Documentation risk** is the risk that the security document is not valid, and binding and it does not reflect adequately the underlying transaction.

### **When a financial security will be required**

Council will require a security to guarantee performance in the following instances:

- Pursuant to the adopted fees and charges schedule which specifies when a bond is required for certain works or activities
- Contract works where the requirement for a financial security is stated in the requests for Quotation/Tender (RFQ/T) document
- Agreed works as a condition of subdivision or other approvals where the requirement for a financial security is stated in the development agreement

## **Types of financial securities accepted by Council**

The only forms of security accepted by Council are:

- Cash bonds: a performance bond that is held in Council's trust account
- Bank guarantees: an unconditional performance guarantee given by a bank

Council will not approve or accept the following forms of security:

- Letters of credit
- Mortgage over land
- Related party guarantee
- Insurance bonds: an unconditional performance bond given by an insurance company
- Cash retentions (where a percentage of the contract value is withheld from supplier invoice payments) except where these may be required by legislation such as the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act)

## **Determining the value of a security**

The appropriate value of a financial security required to secure an obligation, is determined in accordance with the specific guidelines and procedures adopted by the branch within Council that is responsible for managing the underlying transaction. The following methods are used to determine the value of a required security:

- Council's adopted Fees and Charges Schedule
- Onsite inspections and/or assessments of works undertaken as a condition of subdivision or other development approvals
- An agreed percentage of the sum of a contract based on risk or other legislative requirements

## **Requirements for financial institutions**

The reputation and credit rating of an issuer of a financial security is one of the fundamental considerations of this policy to ensure that Council's exposure to credit risk is minimised.

The Policy Guideline, "*Guidelines for the Acceptance, Management and Release of Financial Securities*" sets out the minimum requirements for all financial institutions issuing bank guarantees.

## **Documentation requirements**

The construction of the financial security document is another fundamental consideration of this policy to ensure that all bank guarantees are irrevocable and payable on demand.

The Policy Guideline, '*Guidelines for the Acceptance, Management and Release of Financial Securities*' stipulates specific documentation requirements that must be implemented when accepting bank guarantees.

## **ROLES AND RESPONSIBILITIES**

The key Council stakeholders in ensuring the effective implementation of this policy and adherence to the related policy guidelines are:

- The Financial Services Branch will have primary responsibility in ensuring that the specific requirements stipulated in the policy and related guidelines are adhered to as well as monitoring and reporting Council's exposure to risk in relation to financial securities.
- The Financial Services Manager will have responsibility for ensuring that any consideration of requests for exceptions to this policy and related guidelines are appropriately assessed and must ensure that the Financial Services Branch is appropriately monitoring and reporting Council's risk exposure in relation to financial securities.
- Project managers will work closely with the Procurement Branch to determine the appropriate

value of a financial security and be accountable for the accurate completion of the Acceptance checklist to minimise Council's risk exposure. The necessary due diligence checks should be conducted throughout the delivery of a project (particularly where sub-contractors are engaged) to monitor and manage any emergent financial and credit risks to Council.

- The Planning and Development Assessment Branch will determine the appropriate value of a financial security and be accountable for the accurate completion of the Acceptance checklist to minimise Council's risk exposure. The necessary due diligence checks should be conducted throughout the completion of the agreed works to monitor and manage any emergent financial and credit risks to Council.
- The Financial Services Branch will be responsible for the safe storage of the financial security documents.
- The Governance Branch will be responsible for providing general legal guidance to ensure all risks are minimised especially in relation to documentation risk.
- The CEO and Directors are responsible for ensuring compliance with this policy and ensuring accurate and reliable information is provided to Council for effective decision making.

## DEFINITIONS

Term	Definition
Financial Security	A bank guarantee or cash bond used to guarantee performance.
Financial Institution	An Authorised Deposit Taking Institution such as a bank or a non-authorised Deposit Taking Institution that Council considers an acceptable risk.
Authorised Deposit Taking Institution (ADI)	A corporation that is authorised under the <i>Banking Act 1995</i> and regulated by the Australian Prudential Regulation Authority (APRA). Includes banks, building societies and credit unions.
Bank Guarantee	Is a guarantee from an ADI promising to pay Council without reference to the developer/contractor, an agreed amount upon the developer/contractor failing to perform their obligations under the contract.
Insurance Bond	Is a performance bond from an authorised insurer promising to pay Council without reference to the developer/contractor, an agreed amount upon the developer/contractor failing to perform their obligation under the contract.
Cash Bond	An amount paid by a developer/contractor to guarantee performance that is held in Council's Trust Account.
Call up	A call-up of a financial security is when Council requests a cash payment from a financial institution who has issued a financial security when a developer/contractor cannot perform part or all of their entire obligation.

## RELEVANT LEGISLATION AND POLICY DOCUMENTS

### Related Council Policies and Guidelines

The following policies and guidelines are related to the effective implementation of this policy:

- Policy Guideline – Guidelines for the Acceptance, Management and Release of Financial Securities
- Investment of Surplus Funds Policy
- Tender Financial Capacity Assessment Policy
- Tender Financial Capacity Assessment Policy Guidelines

- Procurement Policy
- Procurement and Contacting Procedures

### **Related Legislation**

The following policies and guidelines are related to the effective implementation of this policy:

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020 (BIFOLA Act)*
- *Queensland Building and Construction Commission (QBCC) Act 1991 (QLD)*

### **Related Documents**

The following forms are related to the effective implementation of this policy and are referred to in the *Policy Guideline – Guidelines for the Acceptance, Management and Release of Financial Securities*:

- Acceptance Checklist
- Release Form

### **HUMAN RIGHTS COMPATIBILITY STATEMENT**

In developing this Policy, the subject matter has been considered in accordance with the requirements of the Human Rights Act 2019. It is considered that the subject matter does not conflict with any human rights, including the right to property and the right to freedom of movement, and supports a human rights approach to decision making by Council. This policy should be read in conjunction with the Human Rights Act 2019 and Council's Human Rights Policy.

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	Create new	N	Director Corporate Services	30 June 2025