



## Maintenance Bond and Licence Deed

### BACKGROUND

This form of deed is used for the purposes of clause 10.1.3 of PSP 3, as a condition of Council Accepting on Maintenance any Public (Municipal) Works.

The Security Bond is to be provided to Council by way of a Bank Guarantee unless Council approves its provision in cash.

### Deed Particulars

#### Applicant

*Insert name of the applicant. Include ACN if a company.*

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#### Applicant's Address & Email

*Insert address for service of notices on the Applicant.*

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#### Land

*Insert details of the land to which the bond relates.*

Lot	Plan	Address

#### Development Permit

*Insert details of the development permit requiring construction of the Works.*

*Specify conditions of the permit outlining the works that are to be the subject of the maintenance bond. Attach page if insufficient space.*

Type of development permit

- Reconfiguration of a lot  
 Operational works  
 Other

Council application no.

Date of decision notice

Conditions


#### Bond Amount

*Insert the amount of the bond being provided.*

\$
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#### How Security Bond is provided

*Insert how the Security Bond is being provided.*

- Cash  
 Bank Guarantee – details below

Issuing bank	Date of Bank Guarantee	Amount of Bank Guarantee
		\$

## Deed Particulars

<b>Landowner</b> <i>Insert the details of the owner of the Land.</i>	<input type="checkbox"/> Same as Applicant	
	<input type="checkbox"/> Other – details below	
	Name	
Address		

## Deed Conditions

### 1. Definitions

**Accept off Maintenance** – see clause 10.1.6 of PSP 3. It occurs for Maintained Works when Council sends the letter referred to in note 10.1.6A(f) of PSP 3.

**Accept on Maintenance** – see clause 10.1.2(1) of PSP 3.

**Applicant** – see the Deed Particulars.

**Bank Guarantee** – a bank guarantee complying with clause 10.1.4(1)(j) of PSP 3 or which is accepted by Council as security for the Secured Obligations.

**Bond Amount** – see the Deed Particulars.

**Claims** – liabilities, losses, penalties, payments, costs, charges, expenses and claims arising directly or indirectly from any cause including in negligence, trespass, some other tort, contract, under statute or otherwise and whether direct, indirect or consequential.

**Conditions** – the conditions of the Development Permit specified in the Deed Particulars.

**Council** – Ipswich City Council.

**Development Permit** – the development permit specified in the Deed Particulars.

**Insolvency Event** – the following:

- (a) if the Applicant or a person comprising the Applicant is a company – that company becoming an externally-administered body corporate (as defined by the *Corporations Act 2001*), even if before the date provided by subclause 2.1; or
- (b) if the Applicant or a person comprising the Applicant is an individual – that individual becoming an insolvent under administration (as defined by the *Corporations Act 2001*), even if before the date provided by subclause 2.1.

**Land** – see the Deed Particulars.

**Landowner** – the person (if any) identified as such in the Deed Particulars if that person has entered into this deed, or otherwise the Applicant.

**Maintenance Obligations** – the obligations under subclause 2.1.

**Maintenance Period** – the period for Maintained Works that starts when the Maintained Works are Accepted on Maintenance and ends when those Maintained Works are Accepted off Maintenance (see clause 9.10.4 and note 9.10.4A of PSP 3), which may vary for different components of the Maintained Works.

**Maintained Works** – Public (Municipal) Works required under the Conditions.

**PPSA** – the *Personal Property Securities Act 2009*.

**PSP 3** – Council's *Planning Scheme Policy 3 – General Works*.

**Public (Municipal) Works** – see clause 10.1.2(1) of PSP 3.

**Rectification Charges** – the following:

- (a) the costs incurred by Council in carrying out or procuring the carrying out of any Rectification Works and any additional amount certified by Council as the fair estimated cost of carrying out

## Deed Conditions

or arranging the Rectification Works or dealing with the Applicant's failure to comply with subclause 2.1 (including Council's charges for supervision, interest, administration charges, legal costs and charges on a full indemnity basis, overheads and any reasonable contingency sum determined by Council); and

- (b) the amount of any Claim to which the indemnity in subclause 5.6 applies.

**Rectification Works** – the following (including physical works, site works, design work and professional services relating to any of the following):

- (a) any works necessary to remedy a failure by the Applicant to comply with the Maintenance Obligations or a breach of the Maintenance Obligations; and
- (b) any works necessary to remedy a failure by the Applicant to ensure that the Maintenance Obligations were complied with or a breach of the Maintenance Obligations; and
- (c) any alteration or rectification of any works done in respect of or in purported compliance with the Maintenance Obligations; and
- (d) any other works that Council considers appropriate to mitigate the effects of any works done in respect of or in purported compliance with the Maintenance Obligations; and
- (e) any works carried out or commissioned by Council in order to fulfil the Secured Obligations after an Insolvency Event; and
- (f) testing of any works described above; and
- (g) the compilation of "as constructed" information with respect to any works described above.

**Release Conditions** – the Applicant has applied in writing to Council for the return of the Security Bond (or the partial return of the Security Bond to the extent that Council holds it as security for a particular component of the Maintained Works) and either:

- (a) the Maintenance Period for the Maintained Works (or that component of the Maintained Works) has expired and the Secured Obligations in respect of those Maintained Works have been fully satisfied; or
- (b) all of the following apply:
  - (i) the Landowner has sold or transferred the Land to someone other than Council without breaching subclause 6.1, or has granted to someone other than Council or the Applicant a right to occupy the Land without breaching subclause 6.2; and
  - (ii) the purchaser, transferee or occupier has given to Council a Bank Guarantee for the Bond Amount complying with clause 10.1.4(1)(j) of PSP 3 or, if it is accepted by Council in cash, an amount of cash equalling the Bond Amount; and
  - (iii) the purchaser, transferee or occupier has entered into an agreement with Council regarding the Bank Guarantee or cash which is in a form acceptable to Council and complies with clauses 10.1.4 and 10.1.8 of PSP 3.

**Secured Obligations** – the Maintenance Obligations and the Applicant's obligation to indemnify Council under subclause 5.6.

**Security Bond** – the following:

- (a) a Bank Guarantee given to Council for the Bond Amount or any part of it as security under this deed (whether before or after this deed is entered into); and
- (b) an amount of cash paid to Council in the amount of the Bond Amount or any part of it as security under this deed (whether before or after this deed is entered into).

## 2. Maintenance Obligations

2.1 The Applicant must ensure that:

- (a) for the duration of the Maintenance Period the Applicant maintains the Maintained Works; and
- (b) the Applicant promptly rectifies any latent defects or design defects in the Maintained Works of

## Deed Conditions

which Council gives notice to the Applicant during the Maintenance Period; and

- (c) for the duration of the Maintenance Period the Applicant maintains and repairs the Maintained Works (and replaces or reconstructs them to the extent they cannot be repaired) as required by Council so that they:
  - (i) comply with the Development Permit and PSP 3; and
  - (ii) function for the intended purpose and are free from defects; and
- (d) the Applicant complies with any obligations under PSP 3 which are expressed to apply during the Maintenance Period with respect to the Maintained Works.

2.2 The Applicant has given, or will give, the Security Bond to Council to secure compliance with the Secured Obligations.

### 3. When Council may use the Security Bond

- 3.1 Council may exercise the enforcement powers under subclause 3.2 (and may do so more than once) if:
- (a) a Secured Obligation is not satisfied; or
  - (b) an Insolvency Event occurs.
- 3.2 The enforcement powers that Council may exercise are:
- (a) to the extent that the Security Bond is a Bank Guarantee:
    - (i) to call on the issuer of the Bank Guarantee to pay all or part of the Bond Amount to Council to satisfy the Rectification Charges; or
    - (ii) to call on the issuer of the Bank Guarantee to pay all or part of the Bond Amount to Council, to be held by Council under this deed as if the Security Bond was cash; and
  - (b) to the extent that the Security Bond is cash – to apply the cash to satisfy the Rectification Charges.
- 3.3 If an obligation under subclause 2.1 is not satisfied and the amount of the Rectification Charges exceeds the amount of the Rectification Charges satisfied by Council using the Security Bond, the Applicant must pay the difference to Council as a debt.
- 3.4 Council has and may exercise the rights given in subclauses 3.1, 3.2 and 3.3 regardless of whether the Applicant:
- (a) owns the Land or ceases to be the owner of the Land; or
  - (b) is bound by the Conditions or ceases to be bound by the Conditions; or
  - (c) is in breach of subclause 2.1 or not.

### 4. Reinstatement of Security Bond

- 4.1 If Council uses all or any part of the Security Bond to satisfy Rectification Charges under subclause 3.2, Council may give notice to the Applicant requiring the Applicant to reinstate the Security Bond by doing one or more of the following things specified in the notice:
- (a) giving Council a Bank Guarantee for the difference between the Bond Amount and the amount of, or secured by, the Security Bond then being held by Council;
  - (b) paying to Council in cash the difference between the Bond Amount and the amount of, or secured by, the Security Bond then being held by Council.
- 4.2 If Council gives the Applicant a notice under subclause 4.1, the Applicant must comply with the notice within two business days (that is, days other than Saturdays, Sundays and public and special holidays in Ipswich). If the Applicant:
- (a) does not comply with the notice within that time, Council may recover from the Applicant, as a debt, the difference between the Bond Amount and the amount of, or secured by, the Security

## Deed Conditions

Bond then being held by Council; and

- (b) complies with the notice, the Bank Guarantee given to Council or the cash paid to Council is taken to be part of the Security Bond for the purposes of this deed.

### 5. Licence to enter the Land

5.1 The Landowner grants to Council a licence to:

- (a) enter on the Land and stay there for as long as is reasonably necessary for the purposes of:
  - (i) monitoring the progress of the satisfaction of the Maintenance Obligations and inspecting the Land and the Maintained Works; and
  - (ii) checking whether the Maintained Works are being maintained in accordance with this deed; and
  - (iii) carrying out any inspection, testing or investigations to help Council decide whether, or how, to carry out any Rectification Works; and
  - (iv) carrying out any Rectification Works; and
- (b) bring onto, and use and store on, the Land any equipment, material or things connected with an entry on the Land for a purpose specified in paragraph (a); and
- (c) exclude the Landowner and any other person from a part of the Land being used to carry out Rectification Works or store any equipment, material or things (including by fencing off that part of the Land); and
- (d) remove from the Land any soil or other material in respect of any inspection, testing or investigations or the carrying out of Rectification Works and dispose of the soil or material in the way Council decides without being liable to account to the Landowner; and
- (e) use the resources of the Land for the purpose of carrying out any inspection, testing or investigations or Rectification Works.

5.2 Council may grant sublicences to other people (such as its employees, agents, contractors and subcontractors) to do any or all of the things specified in subclause 5.1.

5.3 The licence under subclause 5.1 and Council's right under subclause 5.2 continue until the Incomplete Works have been completed and Accepted on Maintenance.

5.4 The Landowner warrants that:

- (a) the Landowner is the occupier of the Land; or
- (b) the Landowner has obtained the consent of the occupier of the Land to the grant of the licence in subclause 5.1 or can grant that licence without the consent of the occupier.

5.5 The Landowner releases Council and its employees, agents, contractors, subcontractors and sublicensees from all Claims relating to their doing anything permitted by the licence under subclause 5.1 or a sublicense under subclause 5.2, except to the extent that the Claims arise from their negligence.

5.6 The Landowner indemnifies Council and its employees, agents, contractors, subcontractors and sublicensees against all Claims relating to their doing anything permitted by the licence under subclause 5.1 or a sublicense under subclause 5.2, and in relation to any breach of this deed by the Landowner, except to the extent that the Claims arise from their negligence.

### 6. Changes of ownership or occupation of the Land

6.1 The Landowner must not sell or transfer the Land to anyone other than Council unless:

- (a) the purchaser or transferee has entered into a deed in favour of Council:
  - (i) which legally binds the Landowner and is enforceable by Council; and
  - (ii) under which the purchaser or transferee agrees, from the date of the sale or transfer, to

## Deed Conditions

be bound by the obligations of the Landowner under this deed immediately before the sale or transfer; and

(iii) which is in a form acceptable to Council; and

(b) the Landowner has given Council the original of the deed and notice of the sale or transfer and the date on which it took place or is to take place.

6.2 The Landowner must not grant to another person, other than Council or the Applicant, the right to occupy the Land unless:

(a) the occupier has entered into a deed in favour of Council:

(i) which legally binds the Landowner and is enforceable by Council; and

(ii) under which the occupier agrees, from the date of taking occupation, to be bound by the obligations of the Landowner under this deed immediately before that date; and

(iii) which is in a form acceptable to Council; and

(b) the Landowner has given Council the original of the deed and notice of the grant of the right of occupation and the date on which the occupier took occupation or is to do so.

## 7. Progressive Reduction of Security Bond (different Maintenance Periods)

7.1 This clause applies only if there are different Maintenance Periods in respect of different components of the Maintained Works.

7.2 To the extent that the Security Bond is a Bank Guarantee and has been given to Council, Council will reduce the amount of the Bank Guarantee if and to the extent that:

(a) the Release Conditions have been satisfied for a particular component of the Maintained Works and 1 month has elapsed since they were satisfied; and

(b) Council has not used the Security Bond under this deed; and

(c) Council has not returned the Bank Guarantee to its issuer when using the Security Bond under this deed,

by either:

(d) giving the Bank Guarantee back to the Applicant if the Applicant has given Council a Bank Guarantee for the difference between the Bond Amount and the part of the Bond Amount that Council holds as security in respect of the particular component of the Maintained Works referred to in paragraph (a); or

(e) notifying the issuer of the Bank Guarantee in writing that Council releases the issuer from any obligations under the Bank Guarantee in respect of the part of the Bond Amount that Council holds as security in respect of the particular component of the Maintained Works referred to in paragraph (a).

7.3 To the extent that the Security Bond is cash that has been paid to Council, Council will if and to the extent that:

(a) the Release Conditions have been satisfied for a particular component of the Maintained Works and 1 month has elapsed since they were satisfied; and

(b) Council has not used the Security Bond under this deed,

refund to the Applicant the part of the Security Bond that equals the amount of it that Council holds as security in respect of the particular component of the Maintained Works referred to in paragraph (a).

7.4 To remove any doubt, Council may still use the Security Bond (if it is otherwise entitled to do so under this deed) during the period specified in paragraph 7.2(a) or 7.3(a).

7.5 To the extent that the Security Bond is cash, including cash from calling on a Bank Guarantee, Council may keep any interest that it earns on the Security Bond.

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### 8. Return of Security Bond

- 8.1 To the extent that the Security Bond is a Bank Guarantee and has been given to Council, Council will give the Bank Guarantee back to the Applicant if and to the extent that:
- (a) the Release Conditions have been satisfied and 1 month has elapsed since they were satisfied; and
  - (b) Council has not used the Security Bond under this deed; and
  - (c) Council has not returned the Bank Guarantee to its issuer when using the Security Bond under this deed.
- 8.2 To the extent that the Security Bond is cash that has been paid to Council, Council will refund the Security Bond to the Applicant if and to the extent that:
- (a) the Release Conditions have been satisfied and 1 month has elapsed since they were satisfied; and
  - (b) Council has not used the Security Bond under this deed.
- 8.3 To remove any doubt, Council may still use the Security Bond (if it is otherwise entitled to do so under this deed) during the period specified in paragraph 8.1(a) or 8.2(a).
- 8.4 To the extent that the Security Bond is cash, including cash from calling on a Bank Guarantee, Council may keep any interest that it earns on the Security Bond.

### 9. PPSA

- 9.1 This clause applies only if and to the extent that the Security Bond is provided to Council in cash.
- 9.2 The Applicant agrees with Council to contract out of sections 95 (to the extent it would require Council to give a notice to the Applicant), 96, 117, 118 (to the extent it allows Council to give a notice to the Applicant), 120, 121(4), 123, 125, 126, 128, 129, 130 (to the extent it allows Council to give a notice to the Applicant), 132(3)(d), 132(4), 134(1), 135, 142, 143 and 157(1) of the PPSA so that those sections will not apply in respect of the Security Bond or any security interest in the Security Bond held by Council.
- 9.3 Council may, on its own initiative and at any time, lodge and register a financing statement or a financing change statement under the PPSA in relation to any security interest created by this deed.

### 10. Other provisions

- 10.1 Council's rights and powers under this deed are cumulative with any other rights and powers it has. Council may exercise its rights and powers under this deed and its other rights and powers all at the same time or at different times and may exercise them in any order Council chooses without Council losing the ability to exercise them later.
- 10.2 Council will not be taken to have waived a right or power in the absence of an express written waiver signed by Council's chief executive officer or a delegate of the chief executive officer who is acting within the scope of his or her delegation, and then only to the extent expressly provided in the written waiver.
- 10.3 Council does not lose the ability to exercise a right or power as a result of any delay, information given to the Applicant or another person (even if incorrect) or other act, omission or conduct of Council other than a waiver under subclause 10.2.
- 10.4 A provision of this deed continues to be enforceable by Council even after the Incomplete Works are Accepted on Maintenance and after the licence under subclause 5.1 can no longer be exercised unless that would produce an absurd or obviously unintended outcome.
- 10.5 A variation of this deed is binding on Council only if it has been put in writing and signed by Council's chief executive officer or a delegate of the chief executive officer who is acting within the scope of his or her delegation. Any verbal, written or other statement, representation, agreement or understanding that existed before this deed was entered into and that would otherwise prevent Council from enforcing

## Deed Conditions

this deed according to its express terms is cancelled and has no further effect.

- 10.6 Headings in the Deed Conditions are for reference purposes only and must be ignored in the interpretation of this deed.
- 10.7 If the Applicant or the Landowner comprises two or more persons, this deed binds them jointly and severally.
- 10.8 If Council is required or permitted to give the Applicant or the Landowner a notice under or relating to this deed:
- (a) Council may do so:
    - (i) by delivering or sending the notice by any form of prepaid post to the Applicant or the Landowner (as the case requires) at the address shown for them in the Deed Particulars; or
    - (ii) by using a method provided by section 39 of the *Acts Interpretation Act 1954* or, if the Applicant or the Landowner (as the case requires) is a company, section 109X of the *Corporations Act 2001*; or
    - (iii) if the Applicant or the Landowner (as the case requires) is the owner of any land in Council's local government area, by using a method that Council could use to give them a rate notice under the *Local Government Act 2009*; and
  - (b) if the Applicant or the Landowner (as the case requires) comprises two or more persons, Council need only give the notice to one of those persons; and
  - (c) a notice given by any form of prepaid post is taken to have been served when it would be delivered in the ordinary course of the post unless the contrary is proven.
- 10.9 This document is executed by the Applicant (and the Landowner, if the Landowner executes it) as a deed. It is taken to have been sealed and delivered by the Applicant (and the Landowner, if the Landowner executes it) on the date (or dates) on which it is executed by it (or them). Council may enforce this deed:
- (a) as a deed regardless of any delay by Council in executing it; or
  - (b) as a deed poll even if Council has not executed it at all.

## Execution by Applicant (if a company)

### Executed as a deed by the Applicant under section 127 of the Corporations Act 2001

*If the Applicant has only one director who is also its company secretary, and has only one director and no company secretary, that director must sign*

*Otherwise, the signatures of two officers (each of whom must be a director or company secretary) is required*

Signature of director/company secretary

Name of director/company secretary signing above

Signature of director/company secretary

Name of director/company secretary signing above

Date signed




## Execution by Applicant (if an individual)

**Signed, sealed and delivered by the Applicant**

Signature of Applicant

Name of Applicant signing above

Signature of witness

Name of witness signing above

Date signed


## Execution by Applicant (if an individual)

**Signed, sealed and delivered by the Applicant**

Signature of Applicant

Name of Applicant signing above

Signature of witness

Name of witness signing above

Date signed


## Execution by Landowner (if a company)

**Executed as a deed by the Applicant under section 127 of the Corporations Act 2001**

*If the Applicant has only one director who is also its company secretary, and has only one director and no company secretary, that director must sign*

*Otherwise, the signatures of two officers (each of whom must be a director or company secretary) is required*

Signature of director/company secretary

Name of director/company secretary signing above

Signature of director/company secretary

Name of director/company secretary signing above

Date signed


### Execution by Landowner (if an individual)

**Signed, sealed and delivered by the Applicant**

Signature of Applicant

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Name of Applicant signing above

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Signature of witness

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Name of witness signing above

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Date signed

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### Execution by Landowner (if an individual)

**Signed, sealed and delivered by the Applicant**

Signature of Applicant

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Name of Applicant signing above

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Signature of witness

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Name of witness signing above

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Date signed

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### Execution by Landowner (if an individual)

**Signed, sealed and delivered by the Applicant**

Signature of Applicant

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Name of Applicant signing above

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Signature of witness

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Name of witness signing above

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Date signed

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## Execution by Council

**Signed, sealed and delivered for Council as duly authorised delegate under section 238 of the *Local Government Regulations 2012***

Signature of Council chief executive officer/delegate

Name/position of person signing above

Signature of witness

Name of witness signing above

Date signed


**Information Privacy Collection Notice**

Ipswich City Council is collecting your personal information in accordance with the *Integrated Planning Act 1997, Sustainable Planning Act 2009 or Planning Act 2016* so that we can process your application and perform our responsibilities under the planning legislation. We will not disclose your personal information outside of Council unless we are required by law or you have given your consent. However, in order to perform the above functions we may need to disclose your personal information to the Chief Executive who may in turn make this information available to others in accordance with the Regulation. By complete and signing this form and returning it to Council, we will consider that you have given us your consent to manage your personal information in the manner described in Council’s Privacy Statement, Personal Information Digest and this collection notice.