



Rolling Bond and Licence Deed

BACKGROUND

This form of deed is used for the purposes of clause 10.1.4 of PSP 3, when a Plan of Subdivision is to be approved prior to Public (Municipal) Works being Accepted on Maintenance.

It also operates as a maintenance bond for the purposes of clause 10.1.3 of PSP 3, as a condition of Council Accepting on Maintenance any Public (Municipal) Works.

It is used in relation to a Development Permit that approves or authorises a staged development.

The Security Bond is to be provided to Council by way of a Bank Guarantee unless Council approves its provision in cash. The Security Bond is held as security in relation to multiple Stages.

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 any specific development permit covering development for which this deed will be used.

Type of development permit Council application no. Date of decision notice	<input type="checkbox"/> Reconfiguration of a lot <input type="checkbox"/> Preliminary approval <input type="checkbox"/> Other <table border="1" style="width: 100%;"> <tr> <td style="height: 20px;"></td> </tr> <tr> <td style="height: 20px;"></td> </tr> </table>		

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.

<input type="checkbox"/> Cash <input type="checkbox"/> Bank Guarantee – details below		
Issuing bank	Date of Bank Guarantee	Amount of Bank Guarantee
		\$

Deed Particulars

Landowner <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	
Authorised Delegates <i>Does the Applicant appoint any Authorised Delegates with authority to undertake transactions under this deed?</i> <i>If there are two or more Authorised Delegates, how can they act?</i>	<input type="checkbox"/> No <input type="checkbox"/> Yes – details below	
	Name(s)	
	Position title(s)	
	<input type="checkbox"/> Any one <input type="checkbox"/> Any two acting together <input type="checkbox"/> Other – details below	
Special conditions <i>Insert any special conditions.</i>		

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 – the amount specified as such in 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.

Council – Ipswich City Council.

Development Permit – the development permit specified in the Deed Particulars. It also includes:

- (a) any development permit for operational works in respect of the development authorised by the development permit specified in the Deed Particulars; and
- (b) any current or future development permit in respect of the Land; and
- (c) if the development permit specified in the Deed Particulars is for a preliminary approval – any other development permit for development approved by the development permit specified in the Deed Particulars, or which is a related approval (under section 341(7) of the *Sustainable Planning Act 2009*) to the development permit specified in the Deed Particulars.

Incomplete Works – Public (Municipal) Works required under Incomplete Works Conditions that have not yet been Accepted on Maintenance as at the date of approval of a Plan of Subdivision under the *Sustainable Planning Act 2009*. The term also includes any Public (Municipal) Works that are specified or described in a Bond Allocation Agreement under paragraph 2.2(b).

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Incomplete Works Conditions – conditions of a Development Permit under which Public (Municipal) Works are required to be Accepted on Maintenance before the date of approval of a Plan of Subdivision unless satisfactory security is given to Council.

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 3.1 or 4.1; 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 3.1 or 4.1.

Land – see the Deed Particulars. It includes every part of that land.

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

Maintained Works – Public (Municipal) Works required under a Development Permit, once they have been Accepted on Maintenance. The term also includes any Public (Municipal) Works that are specified or described in a Bond Allocation Agreement under paragraph 2.2(a).

Maintenance Obligations – the obligations under subclause 4.1.

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 10.1.1 and note 9.9.1A(3) of PSP 3), which may vary for different components of the Maintained Works.

Non-Project Lot – a separate lot under the *Land Title Act 1994* which is created by the registration of a Plan of Subdivision, and which is not a Project Lot.

Plan of Subdivision – a survey plan for reconfiguration approved or authorised by a Development Permit.

PPSA – the *Personal Property Securities Act 2009*.

Project Lot – the Land or, after the reconfiguration of the Land by a Plan of Subdivision, a separate lot under the *Land Title Act 1994* which is part of the Land and which lot:

- (a) is to be, or may be, reconfigured in a later Stage; or
- (b) is to be (in whole or part) dedicated or transferred to Council or to the State under a condition of the Development Permit or under an infrastructure agreement or another development permit; or
- (c) is or includes a place where Incomplete Works are, or are or will be required to be, constructed or Maintenance Obligations are, or are or will be required to be, carried out.

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 or arranging the Rectification Works or dealing with the Applicant's failure to comply with subclause 4.1 (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 8.6 applies.

Rectification Works – Rectification Works (Completion), Rectification Works (Maintenance) and Rectification Works (Performance).

Rectification Works (Completion) – 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 Incomplete Works

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Conditions or a breach of the Incomplete Works Conditions; and

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

Rectification Works (Maintenance) – 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 Maintenance 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.

Rectification Works (Performance) – 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 Secured Obligations, or a breach of the Secured Obligations, in respect of Relevant Infrastructure Works; and
- (b) any alteration or rectification of any works done in respect of or in purported compliance with the Secured Obligations in respect of Relevant Infrastructure Works; and
- (c) any other works that Council considers appropriate to mitigate the effects of any works done in respect of or in purported compliance with the Secured Obligation in respect of Relevant Infrastructure Works; and
- (d) any works carried out or commissioned by Council in order to fulfil the Secured Obligations in respect of Relevant Infrastructure Works after an Insolvency Event; and
- (e) testing of any works described above; and
- (f) 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 and either:

- (a) all of the following apply:
 - (i) all Incomplete Works have been completed and Accepted on Maintenance; and
 - (ii) all Maintenance Periods for all Maintained Works have expired and the Maintenance

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Obligations in respect of those Maintained Works have been fully satisfied; and

- (iii) there is no aspect of the development authorised or approved by the Development Permit that has not been completed and in respect of which the Development Permit has not lapsed; or
- (b) all of the following apply:
 - (i) the Landowner has sold or transferred the Land to someone other than Council without breaching subclause 9.1, or has granted to someone other than Council or the Applicant a right to occupy the Land without breaching subclause 9.2; 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.

Relevant Infrastructure Works – the following:

- (a) Public (Municipal) Works specified or described in a Bond Allocation Agreement under paragraph 2.2(c); and
- (b) all works necessary or reasonably required by Council to reinstate, restore or make good any damage done to the Relevant Land in the course of or in respect of those Public (Municipal) Works.

Secured Obligations – the Applicant's obligations under subclause 3.1, the Maintenance Obligations, the Applicant's obligations under clause 5, and the Applicant's obligation to indemnify Council under subclause 8.6.

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); and
- (c) a Bank Guarantee or cash referred to in paragraph 7.2(b).

Stage – a stage of the development authorised by the Development Permit.

Unallocated Security Bond Amount – from time to time, the value of the Security Bond being held by Council less the total of the amounts specified in Bond Allocation Agreements that have not ceased to have effect for the purposes of this deed due to subclause 2.3.

2. Allocation of Security Bond

- 2.1 The Applicant and Council may from time to time make Bond Allocation Agreements.
- 2.2 A **Bond Allocation Agreement** is a written agreement under which a specified amount of the Unallocated Security Bond Amount is accepted by Council as security in respect of:
 - (a) Maintenance Obligations in respect of Maintained Works specified or described in the agreement; or
 - (b) Incomplete Works specified or described in the agreement; or
 - (c) Public (Municipal) Works to be carried out on land (**Relevant Land**) specified or described in the agreement.
- 2.3 A Bond Allocation Agreement ceases to have effect for the purposes of this deed when:
 - (a) if the Bond Allocation Agreement is one described in paragraph 2.2(a) – the Maintenance Period for the specified or described Maintained Works has expired and the Maintenance Obligations in respect of those Maintained Works have been fully satisfied; or

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- (b) if the Bond Allocation Agreement is one described in paragraph 2.2(b) – the specified or described Incomplete Works have been completed and Accepted on Maintenance; or
 - (c) if the Bond Allocation Agreement is one described in paragraph 2.2(c) – the specified or described Incomplete Works have been completed and Accepted on Maintenance; or
 - (d) in any case – the Applicant and Council agree in writing that it will cease to have effect.
- 2.4 If a Bond Allocation Agreement ceases to have effect for the purposes of this deed, it may nevertheless continue to have effect for other purposes if it so provides.

3. Obligations regarding Incomplete Works

- 3.1 The Applicant must ensure that all Incomplete Works are completed and Accepted on Maintenance by:
- (a) 3 months after the date of approval of the Plan of Subdivision; or
 - (b) the later date that Council approves in writing in its discretion.

4. Maintenance Obligations

- 4.1 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 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.

5. Obligations relating to Performance Bonding

- 5.1 This clause applies if a Bond Allocation Agreement described in paragraph 2.2(c) comes into existence.
- 5.2 If Council owns or is in possession of the Relevant Land, Council (subject to subclause 5.3) grants to the Applicant a licence to:
- (a) enter on the Relevant Land and stay there for as long as is reasonably necessary for the purposes of:
 - (i) carrying out the Relevant Infrastructure Works; and
 - (ii) carrying out any inspection, testing or investigations associated with the carrying out of, or preparations for the carrying out of, the Relevant Infrastructure Works; and
 - (iii) satisfying the Secured Obligations in respect of the Relevant Infrastructure Works; and
 - (b) bring onto, and use and store on, the Relevant Land any equipment, material or things connected with an entry on the Relevant Land for a purpose specified in paragraph (a); and
 - (c) remove from the Land any soil or other material in respect of any inspection, testing or investigations or the carrying out of Rectification Works (Performance) and dispose of the soil or material in the way Council decides without being liable to account to the Applicant; and
 - (d) use the resources of the Relevant Land for the purpose of carrying out any inspection, testing or investigations or Rectification Works (Performance).
- 5.3 Before the licence under subclause 5.2 may be exercised, unless the Bond Allocation Agreement

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provides that the Applicant is not required to do so, the Applicant must give Council evidence satisfactory to Council that the Applicant holds public liability insurance cover of at least \$20,000,000 per claim on terms satisfactory to Council (including, if required by Council, that Council is noted as an interested party on the insurance).

- 5.4 The Applicant 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 5.2 while the licence under subclause 5.2 may be exercised.
- 5.5 The licence under subclause 5.2 and the Applicant's right under subclause 5.4 expire on the Completion Deadline for the Relevant Infrastructure Works.
- 5.6 The Applicant releases Council from all Claims relating to the Applicant and its employees, agents, contractors, subcontractors and sublicensees entering the Relevant Land, being on the Relevant Land, doing anything on the Relevant Land, doing anything permitted by the licence under subclause 5.2 or a sublicense under subclause 5.4 or breaching this deed, except to the extent that the Claims arise from Council's negligence.
- 5.7 The Applicant indemnifies Council against all Claims relating to the Applicant and its employees, agents, contractors, subcontractors and sublicensees entering the Relevant Land, being on the Relevant Land, doing anything on the Relevant Land, doing anything permitted by the licence under subclause 5.2 or a sublicense under subclause 5.4 or breaching this deed, except to the extent that the Claims arise from Council's negligence.
- 5.8 The Applicant must ensure that:
 - (a) if Council does not own and is not in possession of the Relevant Land, the Applicant procures the consent of the owner and occupier of the Relevant Land before entering the Relevant Land or doing any work on the Relevant Land; and
 - (b) the Relevant Infrastructure Works are completed and Accepted on Maintenance by the Completion Deadline; and
 - (c) the Applicant promptly rectifies any latent defects or design defects in the Relevant Infrastructure Works of which Council gives notice to the Applicant; and
 - (d) no damage is done to any Council land or any other asset owned by or under the control of Council (including public roads) by the Applicant or in respect of the Relevant Infrastructure Works and any such damage is promptly rectified.

6. When Council may use the Security Bond

- 6.1 Council may exercise the enforcement powers under subclause 6.2 (and may do so more than once) if:
 - (a) a Secured Obligation is not satisfied; or
 - (b) an Insolvency Event occurs.
- 6.2 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 Security Bond to pay all or part of the Available Amount to Council to satisfy the Rectification Charges; or
 - (ii) to call on the issuer of the Security Bond to pay all or part of the Available 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 an amount or amounts of the cash, up to the Available Amount, to satisfy the Rectification Charges.
- 6.3 The **Available Amount** is:
 - (a) in respect of Maintenance Obligations in respect of Maintained Works specified or described in a Bond Allocation Agreement under paragraph 2.2(a) that has not ceased to have effect for the purposes of this deed due to subclause 2.3 – the amount specified in the Bond Allocation Agreement as security in respect of those Maintenance Obligations; or

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- (b) in respect of Incomplete Works specified or described in a Bond Allocation Agreement under paragraph 2.2(b) that has not ceased to have effect for the purposes of this deed due to subclause 2.3 – the amount specified in the Bond Allocation Agreement as security in respect of those Incomplete Works; or
 - (c) in respect of Public (Municipal) Works specified or described in a Bond Allocation Agreement under paragraph 2.2(c) that has not ceased to have effect for the purposes of this deed due to subclause 2.3 – the amount specified in the Bond Allocation Agreement as security in respect of those Public (Municipal) Works; or
 - (d) in respect of any other Secured Obligations – the Unallocated Security Bond Amount.
- 6.4 If a Secured Obligation 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.
- 6.5 Council has and may exercise the rights given in subclauses 6.1, 6.2 and 6.4 regardless of whether the Applicant:
- (a) owns the Land or ceases to be the owner of the Land; or
 - (b) is bound by the Development Permit or the Incomplete Works Conditions or ceases to be bound by the Development Permit or the Incomplete Works Conditions; or
 - (c) is in breach of subclause 4.1 or not.

7. Reinstatement of Security Bond

- 7.1 If Council uses all or any part of the Security Bond to satisfy Rectification Charges under subclause 6.2, 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.
- 7.2 If Council gives the Applicant a notice under subclause 7.1, 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 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.

8. Licence to enter the Land

- 8.1 The Landowner grants to Council a licence to:
- (a) until the Incomplete Works have been completed and Accepted on Maintenance – enter on the Land and stay there for as long as is reasonably necessary for the purposes of:
 - (i) monitoring the progress of, and inspecting, the Land and the Incomplete Works; and
 - (ii) checking whether the Incomplete Works have been completed or can be Accepted on Maintenance; 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) after the Incomplete Works have been Accepted on Maintenance – enter on the Land and stay

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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
- (c) 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
 - (d) 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
 - (e) 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
 - (f) use the resources of the Land for the purpose of carrying out any inspection, testing or investigations or Rectification Works.
- 8.2 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 8.1.
- 8.3 The licence under subclause 8.1 and Council's right under subclause 8.2 continue until the Incomplete Works have been completed and Accepted on Maintenance.
- 8.4 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 8.1 or can grant that licence without the consent of the occupier.
- 8.5 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 8.1 or a sublicense under subclause 8.2, except to the extent that the Claims arise from their negligence.
- 8.6 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 8.1 or a sublicense under subclause 8.2, and in relation to any breach of this deed by the Landowner, except to the extent that the Claims arise from their negligence.
- 8.7 The licence under subclause 8.1, Council's right under subclause 8.2 and the Landowner's warranty under subclause 8.4 cease to apply in respect of a part of the Land if:
- (a) that part of the Land is or becomes a Non-Project Lot; and
 - (b) the Landowner ceases to be the owner and occupier of that Non-Project Lot.

9. Changes of ownership or occupation of the Land

- 9.1 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 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

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- (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.
- 9.2 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.
- 9.3 Subclauses 9.1 and 9.2 do not apply in relation to a sale, transfer or grant of a right of occupation of a Non-Project Lot.

10. Return of Security Bond after final Stage

- 10.1 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 Security Bond to its issuer when using the Security Bond under this deed.
- 10.2 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.
- 10.3 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 10.1(a) or 10.2(a).
- 10.4 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.

11. Administration of this deed by Authorised Delegates

- 11.1 The Applicant may appoint people as **Authorised Delegates** for the purposes of this deed. People may be appointed as Authorised Delegates either:
- (a) by name; or
 - (b) by reference to a position title.
- 11.2 Each person whose name or position title is shown in the Deed Particulars as an Authorised Delegate is appointed as an Authorised Delegate.
- 11.3 The Applicant may by notice to Council:
- (a) appoint an Authorised Delegate or two or more of them; or
 - (b) revoke the appointment of a person as an Authorised Delegate.
- 11.4 If there are two or more Authorised Delegates, they may act severally (i.e. any one of them may act alone) unless:
- (a) it is indicated in the Deed Particulars that they may only act if two of them are acting together or

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- if two or more of them are acting in some combination specified in the Deed Particulars; or
- (b) the Applicant indicates this by notice to Council.
- 11.5 Subject to subclause 11.4, the Authorised Delegates have the authority on behalf of the Applicant to do anything under or concerning this deed that the Applicant can do, including entering into:
- (a) Bond Allocation Agreements; and
- (b) agreements described in paragraph 2.3(d); and
- (c) deeds or agreements that vary or have the effect of varying this deed.
- 11.6 If an Authorised Delegate is appointed or named by reference to a position title, Council may rely on a declaration or warranty by a person that he or she holds the position with that title unless Council has actually knowledge that the person does not hold that position.
- 11.7 A notice to Council under this clause is effective only if it is obvious on the face of the notice that it is meant to be a notice for the purposes of this clause.

12. PPSA

- 12.1 This clause applies only if and to the extent that the Security Bond is provided to Council in cash.
- 12.2 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.
- 12.3 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.

13. Other provisions

- 13.1 If there are any special conditions in the Deed Particulars, those special conditions prevail over these Deed Conditions to the extent of any inconsistency between the two.
- 13.2 A term that is used but not defined in this deed, and which has a definition in the *Sustainable Planning Act 2009*, has that defined meaning unless the context in which the term is used indicates a different intention.
- 13.3 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.
- 13.4 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.
- 13.5 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 13.4.
- 13.6 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 8.1 can no longer be exercised unless that would produce an absurd or obviously unintended outcome.
- 13.7 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 this deed according to its express terms is cancelled and has no further effect.

Deed Conditions

- 13.8 Headings in the Deed Conditions are for reference purposes only and must be ignored in the interpretation of this deed.
- 13.9 If the Applicant or the Landowner comprises two or more persons, this deed binds them jointly and severally.
- 13.10 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.
- 13.11 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

--

Name of Applicant signing above

--

Signature of witness

--

Name of witness signing above

--

Date signed

--

Execution by Landowner (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 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 Council

Signed, sealed and delivered for Council as duly authorised delegate under section 238 of the *Local Government Regulation 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* or *Sustainable Planning Act 2009* so that we can process your application and perform our responsibilities under the Regulation. 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.