



Shire of Dardanup

Infrastructure

Directorate

APPENDICES

Item 12.3.1 – 12.3.3

ORDINARY COUNCIL MEETING

To Be Held

Wednesday, 22nd November 2023

Commencing at 5.00pm

At

Shire of Dardanup
ADMINISTRATION CENTRE EATON
1 Council Drive - EATON

This document is available in alternative formats such as:
~ Large Print
~ Electronic Format [disk or emailed]
Upon request.

RISK ASSESSMENT TOOL

OVERALL RISK EVENT: Omnibus Amendment to Approved Budgets for Various Ongoing and New Capital Works Projects

RISK THEME PROFILE:

13 - Project Management

RISK ASSESSMENT CONTEXT: Project

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
FINANCIAL IMPACT	Unbudgeted Expenditure	Moderate (3)	Almost Certain (5)	High (12 - 19)	Seek approval from Council to establish new projects in the current (2023/24) budget for new works.	Minor (2)	Unlikely (2)	Low (1 - 4)
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	The Shire is required to co-contribute \$1 for every \$2 of Grant received from RRG.	Major (4)	Almost Certain (5)	Moderate (5 - 11)	Seek approval from Council to establish new projects in the current (2023/24) budget for new RRG grant funded works.	Insignificant (1)	Unlikely (2)	Not required.
REPUTATIONAL	The Shire's reputation with the RRG may be affected by failing to fully meet the financial obligation of Grants. Dowdells Line is receiving significant community complaint, and the Moore Busher Intersection will have economic impacts on the Region.	Minor (2)	Possible (3)	Moderate (5 - 11)	Advise Grant funding agencies as soon as possible of any alteration to approved projects, with explanation of reasons for change. Complete works as soon as possible on new works at Dowdells Line and Moore/Busher Rds.	Insignificant (1)	Unlikely (2)	Not required.
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.

Appendix ORD: 12.3.1)

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
PROPERTY	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.



COUNCIL POLICY NO:-
[Infr] CP404 – DRAFT SHIRE ACCEPTANCE OF BONDS

GOVERNANCE INFORMATION			
Procedure Link:	PRO?? – or NA	Administrative Policy Link:	NA

ADMINISTRATION INFORMATION							
Version:		New	OCM	date	Res: ???/??	Synopsis:	Policy created.
Version:							

1. RESPONSIBLE DIRECTORATE

Infrastructure

2. PURPOSE OR OBJECTIVE

The purpose of this Policy is to facilitate the efficient processing of requests for accepting a bond in lieu of completing works.

The Shire is responsible for clearing conditions of Development Approval issued by the Council and the Joint Development Assessment Panel (JDAP), in addition to clearing conditions of Subdivision Approval issued by the Western Australian Planning Commission (WAPC).

In some cases, the developer is unable to complete some of the works in a timely manner, for reasons outside of their control, and requests that the Shire clears the condition and accepts a bond as a guarantee that the works will be completed within a prescribed time.

Where landscaping works are required as a condition of subdivision, the developer is responsible for maintaining the landscape during a two-year establishment period. If clearances are sought prior to the completion of this establishment period, a landscape maintenance bond is required.

Extractive Industry developments usually have a requirement to reinstate the site post extraction works. This is managed through the implementation of a rehabilitation plan. Extractive Industry rehabilitation bonds are required to be paid by Extractive Industry licensees as an undertaking that the rehabilitation works will be completed.

This policy statement has been prepared to clarify the developer’s responsibility in seeking clearances to conditions of approval under the control of the Shire of Dardanup and specifies the acceptable levels of risk in relation to accepting bonds, that the Council is willing to delegate to the Chief Executive Officer.

3. DEFINITIONS

Definitions are taken as those in the *Local Government Act 1995* and associated legislations.

4. POLICY

This policy will apply to all developments, subdivisions and extractive industries within the whole of the Shire of Dardanup.

4.1 Bond Requests

The request for the bonding of outstanding and/or incomplete works must be initiated by the developer or their agent. The request must be in writing and should include as a minimum:

- What outstanding and/or incomplete items are requested for bonding;
- Purpose and reason for bonding each item;

- Civil Construction items will require engineering drawings, specifications and cost estimates prepared by a consulting engineer;
- Landscape Construction items will require landscape drawings, specifications and cost estimates prepared by a consulting landscape architect;
- Cost of items to be bonded;
- A timetable and arrangements for the completion of the bonded work; and
- What benefit there is to the community in clearing conditions prior to works being completed.
- Extractive Industries will have the bond amount conditioned within the development approval.

4.2 Establishing the Value of the Bond

For Development conditions, the developer or their agent will provide a detailed itemised quotation for each item to be bonded. The bond amount will not include GST but will include a surcharge amount of 30% to cover price escalations.

For Subdivision conditions, the engineering consultant will provide the value of the outstanding works as listed in the schedule of rates in the contract. The bond amount will not include GST but will include a surcharge amount of 30% to cover price escalations.

For subdivision landscape maintenance bonds, the developer or their agent will provide a detailed itemised quotation for each maintenance item to be bonded per month. The Landscape Maintenance Bond will be no less than the total value of the maintenance activities required from Practical Completion for 2 full summer periods ending 31 May. The bond amount will not include GST.

For Development Approval – Industry Extractive, rehabilitation bond amounts will be determined from the Shire of Dardanup Schedule of Fees and Charges for the current financial year in accordance with Policy Infa CP055 – Extractive Industries – Site Rehabilitation. The bond amount will not include GST.

4.3 Determining the acceptance of a bond request.

The Chief Executive Officer or their subdelegate will consider the request and approve it if it meets the following criteria:

- The outstanding works are unable to be completed due to issues beyond the control of the developer;
- For subdivisions, the drainage has been installed, and the roads have had the pavement constructed and the primer seal applied;
- The outstanding works will not create a hazard or inconvenience for the public in the interim;
- The submitted costs are deemed reasonable and do not exceed \$500,000;
- The submitted timeline for completion of the works does not hinder future development and has no adverse impacts to the community; and
- There is a demonstrated benefit to the community in accepting the bond.

Any requests that do not meet the above criteria, will be refused and can be referred to Council for further consideration.

4.4 Bond Approval conditions

Bonds for outstanding works will only be accepted under the following conditions:

- Bonds can only be accepted as cash or a bank guarantee;
- Bank Guarantees must have no expiry date;
- Bonds for outstanding works with a value less than \$100,000 must be accompanied by an endorsed *Minor Bonded Works Agreement*;
- Bonds for outstanding works with a value over \$100,000 must be accompanied by an endorsed *Major Outstanding Works Bond Agreement*;

- Bonds for outstanding landscaping works with a value over \$100,000 must be accompanied by a *Landscape Outstanding Works Bond Agreement*;
- Landscape Maintenance Bonds must be accompanied by a *Landscape Maintenance Bond Agreement*; and
- Bonds for extractive industries, if required by the Shire, must be accompanied by an *Extractive Industry Rehabilitation Bond Agreement*.

Templates of the above agreements and the instructions on how to complete the agreements can be found in the related procedure PR 069 – Preparation of Bond Agreements.

4.5 Shire management of Bond

Cash bonds received by the Shire will be deposited into the Municipal Liability account. Once bond conditions have been fulfilled, and the Shire has approved the return of the bond, the bond value will be returned with no interest payable.

Bank Guarantees received by the Shire will be registered as legal documents and held in a secure area. Once bond conditions have been fulfilled and the Shire has approved the return of the bond, the original bank guarantee will be returned.

If bond conditions are not met by the agreed timeframe detailed in the bond agreement, the Shire will write to the developer to determine an acceptable outcome. If the Shire is unable to determine an acceptable outcome, the Shire will write to the developer to advise that the bond agreement is in default, and the Shire intends to rectify the outstanding works utilising the bond monies.

Any Shire proposal to rectify outstanding works must be supported by contractor quotations and included in a Council Meeting Agenda for determination.

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PROCEDURE

PROCEDURE NO & TITLE	PR069 – PREPARATION OF BOND AGREEMENTS
Responsible Directorate	Infrastructure Directorate

1. PURPOSE OR OBJECTIVE

The Shire receives requests to bond outstanding works for subdivision and development projects where creation of titles or occupancy permits are requested prior to the completion of all works. Some of the outstanding works is the two-year establishment of landscaped areas within Public Open Space.

The Shire also approves developments with conditions, which include requirements for a bond to be submitted to the Shire, as a surety that rehabilitation will be completed at extractive industry sites.

Council Policy Infr CP403 - Shire Acceptance of Bonds, details what information is required to support a bond request, how to determine the bond value, what criteria the Council will use to accept a bond, and what conditions should be placed on the acceptance of a bond.

The conditions specify that all bonds must be accompanied by a prepared and endorsed Bond Agreement to the satisfaction of Council.

This Procedure details how to prepare the following bond agreements:

- Minor Bonded Works Agreement
- Major Outstanding Works Bond Agreement
- Landscape Outstanding Works Bond Agreement
- Landscape Maintenance Bond Agreement
- Extractive Industry Rehabilitation Bond Agreement

2. DEFINITIONS

Definitions are taken as those in the *Local Government Act 1995* and associated legislations.

3. PROCEDURE

The templates for the various bond agreements and the instructions on how to complete the agreements, for both the proponent and Council, are as follows:

3.1 Minor Bonded Works Agreement

The Minor Bonded Works Agreement is to be used for outstanding works with a bonded value less than \$100,000 for subdivision or development projects.

Engineering drawings need to be approved by the Shire prior to any cost estimates being determined from the drawings. The usual items that are bonded using this agreement are portions of footpath, fencing, street tree planting and battleaxe driveways that either cannot be completed until some works by third parties are completed, or the developer would prefer to install them once residents move in to prevent damage and items being stolen.

The Minor Bonded Works Agreement should be supported by a plan showing the location of the outstanding works and a detailed cost estimate of the items. At some point in the future, the

PROCEDURE

developer will request their bond to be returned, and whomever is dealing with the request at the time must have enough information to ascertain that the outstanding items have been installed as per the plans at the correct locations. This is especially important with uniform fencing and letterboxes.

The reduced risk to the Council by capping the value allows for a simpler bond agreement which can be administered more quickly by the Director Infrastructure.

The template for the Minor Bonded Works Agreement can be found at the below location.

TARDIS CASE: [Bond Agreement Templates](#)

DOC: [Minor Bonded Works Agreement template](#)

3.2 Major Outstanding Works Bond Agreement

The Major Outstanding Works Bond Agreement is to be used for outstanding works with a bonded value over \$100,000 for subdivision projects. The higher value of the bond is reflective of Council's higher exposure in the event that the developer runs into financial problems and walks away from the project. In this situation, the Council would be liable for completing the works since, once clearances are issued, the lot owners will build residences and will be expecting the subdivision to be finished in accordance with the approved plans.

It is for this reason that roads should never be bonded until they have a completed pavement with primer seal applied.

The Major Outstanding Works Bond Agreement is much more rigorous in detail than the Minor Bonded Works Agreement and is intended to step out the whole process of managing the works and the bonds to both the developers and to Council's satisfaction. The experience has been that the developers generally welcome this level of rigor in how Council deals with their finances, and it gives them clear pathways to achieving the return of their bonds.


In the Subdivisions header, include the relevant WAPC subdivision approval number, approval date and relevant conditions pertaining to the outstanding works.

The preamble should include details of approvals, commencement dates and requests for bonding.

The Engineering Drawings should be approved by the Shire prior to any cost estimations being determined for outstanding works by the developer (usually a consulting engineer).

If a significant portion of works will remain incomplete while clearances are being sought, it is prudent to apportion the works into Stage 1 for works that will be completed at practical completion and Stage 2 for works that will be subject to a future practical completion once finished. Plans should be submitted showing the two differing works areas which can then be referred to within the bond agreement.

Staging plans and cost estimates, based on the contract values, should be provided by the developer (usually a consulting engineer). Once satisfactory, include these as attachments to the bond agreement. This information is very handy for future reference when the developer requests for bond amounts to be returned.



PROCEDURE

The template for the Major Outstanding Works Bond Agreement can be found at the below location and care should be taken to only update the areas highlighted so as not to change the intent of the agreement.

TARDIS CASE: [Bond Agreement Templates](#)

DOC: [Major Outstanding Works Bond Agreement template](#)

3.3 Landscape Outstanding Works Bond Agreement

The construction of Public Open Space (POS) areas is often requested to be delayed to the cooler months of the year, which are more suitable for the planting and establishment of trees, plants and lawns.

Landscape drawings need to be prepared and approved by the Shire prior to cost estimations being prepared by the developer (usually a Landscape Consultant). Once the drawings and cost estimates are approved by the Shire for use in determining bond values, they should be attached to the bond agreement.

In the Subdivisions header, include the relevant WAPC subdivision approval number, approval date and relevant conditions pertaining to the outstanding works.

The preamble should include details of approvals, commencement dates and requests for bonding.

Developers Covenants – Ceding the land to the Crown. It is important that, even though the POS area may not be completed or even commenced when clearances are sought, the land for the POS must be ceded to the Crown on the same Deposited Plan as the other created lots. This gives the Shire the authority to enter the land if required to conduct works and removes the risk of the land not being ceded to the Crown before the subdivision approval lapses, which is normally within four years of approval.

Practical Completion – Prior to practical completion being achieved, the proponent must provide a Landscape Maintenance Bond, which is a surety for the developer to continue to maintain and establish the plantings of a landscape development for a period of two summer periods ending on 31 May.

The template for the Landscape Outstanding Works Bond Agreement can be found at the below location and care should be taken to only update the areas highlighted so as not to change the intent of the agreement.

TARDIS CASE: [Bond Agreement Templates](#)

DOC: [Landscape Outstanding Works Bond Agreement template](#)

3.4 Landscape Maintenance Bond Agreement

The construction of POS in subdivisions requires the developer to maintain and establish the plantings for a minimum period of two summer periods ending on 31 May prior to formal handover to the Shire. This is conditioned in the subdivision approval and provides an instrument to ensure developers monitor the establishment of the plantings and provide replacement plants where needed with Shire



PROCEDURE

oversight. In the absence of this bonding arrangement, POS areas have historically been neglected for two years and, just before the two summer period ended, the developer would replace any dead plants, which the Shire would then have to establish.

The landscape maintenance schedule and costings need to be submitted by the developer (usually a landscape consultant) to determine the cost of the maintenance activities for the two summer period ending 31 May. This should include any power usage for bore irrigated landscapes, or water cartage costs for establishing non-irrigated landscapes. The schedule and costings should be reviewed and verified by the Shire's Parks and Gardens Supervisor. Once the maintenance schedule and cost estimates are approved by the Shire for use in determining bond values, they should be attached to the bond agreement.

In the Subdivisions header, include the relevant WAPC subdivision approval number, approval date and relevant conditions pertaining to the outstanding works.

The preamble should include details of approvals, commencement dates and requests for bonding.

The Landscape Maintenance Bond Agreement specifies that the developer or their agent will forward at the start of each month a report detailing what maintenance activities have been undertaken, including duties, dates and times of each activity. The Shire Parks and Gardens team will then review the report and inspect the site to determine compliance. If there are any issues, the Shire will inform the developer to rectify within a specified timeframe. In the event that the developer fails to rectify the defects by a certain time, the Shire can rectify the defects and invoice the developer. In the event that the developer fails to pay the invoice, the value of rectification works undertaken by the Shire can be taken from the bond.

This procedure ensures that, regardless of the developer's capacity to maintain the landscape, resources are available to ensure the establishment of the landscape within the two summer period before handover.

The template for the Landscape Maintenance Bond Agreement can be found at the location below and care should be taken to only update the areas highlighted so as not to change the intent of the agreement.

TARDIS CASE: [Bond Agreement Templates](#)

DOC: [Landscape Maintenance Bond Agreement template](#)

3.5 Extractive Industry Rehabilitation Bond Agreement

Development Applications for Industry Extractive are received by the Shire from time to time. The proposals are for the extraction of materials such as sand or gravel and always require rehabilitation of the site back to its former land use, often being pasture for grazing or native vegetation.

Public consultation of extractive industry proposals often attract concerns from nearby landowners in regard to rehabilitation of the site, as there is a history of substandard rehabilitation that has been carried out at older pit sites throughout the South West Region.



PROCEDURE

Proposals generally include a rehabilitation plan, which outlines what the site will be returned back to after extraction has ceased. The concern is often that, once the resource has been extracted, there is little incentive for the proponent to provide adequate resources to rehabilitate the site to the pre-extraction standard. This is especially of concern to native vegetation sites.

The *Shire of Dardanup Extractive Industry Local Law 2022* Clause 5.1(1) indicates for the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that the licensee shall give to the local government a bond, bank guarantee or other security.

The Extractive Industry Rehabilitation Bond Agreement provides certainty to licensees of what the Shire's expectations are in regard to rehabilitation as well as give the Shire the ability to utilise the bonds in the event that the licensee fails to rehabilitate the site in accordance with the agreement.

Development Approval conditions should include the requirement for the Rehabilitation Bond Agreement, so that drafts of the agreement can be agreed to prior to Development Approval being issued.

The planning approval and extractive industry license approval details and relevant conditions should be detailed in the initial background section. The preamble needs to identify the rehabilitation plan that the bond agreement refers to and refer to it by name throughout the agreement.

Owners covenants – it is important that the owner of the property is included in the agreement to guarantee access to the site for the purposes of rehabilitation by the licensee or the Shire.

Annual Review – This gives the Shire the opportunity to assess the rehabilitation efforts at the site annually, provide feedback, and review the bonding requirements as stages are completed and new stages commenced.

The template for the Extractive Industry Rehabilitation Bond Agreement can be found at the below location and care should be taken to only update the areas highlighted so as not to change the intent of the agreement.

TARDIS CASE: [Bond Agreement Templates](#)

DOC: [Extractive Industry Rehabilitation Bond Agreement template](#)

4. DOCUMENT CONTROL

DOCUMENT RESPONSIBILITIES:	
Owner:	Development Engineer
Reviewer:	Director Infrastructure
Decision Maker:	Manager/CEO/EMT
COMPLIANCE REQUIREMENTS:	
Legislation:	<i>Local Government Act 1995</i> <i>Shire of Dardanup Extractive Industry Local Law 2022</i>
Other (Plans, Strategies, Policies, Procedures, Standards, Promapp, Delegations):	Infr CP403 - Shire Acceptance of Bonds Minor Bonded Works Agreement template Major Outstanding Works Bond Agreement template Landscape Outstanding Works Bond Agreement template Landscape Maintenance Bond Agreement template Extractive Industry Rehabilitation Bond Agreement template

PROCEDURE

DOCUMENT MANAGEMENT:			
Risk Rating:	Moderate	Records Ref:	R0001459133
Review Frequency	Biennial	Next Due:	XX-XX-XXXX
Version #	Date & Decision Reference:	Synopsis:	
1	XX-XX-XXXX Details	PR069 Created & endorsed by Manager/CEO/EMT	

Note: Changes to Compliance Requirements may be made without the need to take the Procedure to Council or EMT/CEO for review.

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(Appendix ORD: 12.3.2C)

MINOR BONDED WORKS AGREEMENT TEMPLATE

PAGE 1 OF 2

This agreement is made between the Shire of Dardanup (the "Council") and the below mentioned developer:

1. For the purpose of accepting a bond payment for incomplete subdivision construction works following practical completion of subdivision construction works and the clearance of subdivision conditions.
2. To list the items to be bonded and particulars of the bond.
3. Accepting the terms and conditions by which the bond has been accepted by the Shire of Dardanup.

Note: In the event that the developer does not sign this agreement, clearance will not be issued unless items are completed to the satisfaction of the Shire of Dardanup.

Developer Name and Address:			
Original Lot:			
Subdivision Name:			
Subdivision Stage:			
Deposited Plan:		WAPC reference:	
Practical Completion Date:		Shire File Ref:	
Items to be Bonded:			
Item	Description	Amount \$ *	Reason
Total Bonded Amount \$:			* Bond amounts is equal to the agreed value of work plus 30% surcharge
Date Works to be completed <i>(Typically three (3) months unless otherwise agreed.)</i>			
Bond type (tick ✓):	<input type="checkbox"/> Cash bond <input type="checkbox"/> Bank guarantee		
Date Received:		Reference:	

INITIALS: _____

Attachments relevant to the bond:		
Item	Description	Document Reference

Acceptance of Terms & Conditions of the Bond and Execution of this Agreement:

By signing this agreement, both parties agree to the following terms and conditions:

1. Particulars are as per the above information and attachments.
2. Bonded works must be completed by the developer (or their agent) before the expiry date.
3. If the bonded works are not completed by the developer (or their agent) by the expiry date, the following conditions may apply:
 - a. The bond is forfeited to the Shire, including any interest earned on the bond amount.
 - b. The Shire shall undertake the works utilizing the bond.
 - c. The Shire shall recover from the developer any additional costs incurred over and above the bond amount as a result of completing the works. This includes the use of any interest earned on the bond.
4. The Council may consider an extension of time on the expiry date for the bond. The developer must make a request at least 14 days prior to the expiry date.
5. The bonded works to be completed by the developer (or their agent) is subject to the specification and verification activities as specified under the engineering drawings and specifications approved for construction for the development.
6. The bonded works to be completed by the developer (or their agent) is subject to a practical completion inspection and approval of the Council. Any remedial works deemed necessary shall be undertaken by the developer.
7. On acceptance by the Council of the completed bonded works, the defects liability period shall commence on the date of the Council accepting the completed bonded works.

Signed for and on behalf of the SHIRE OF DARDANUP, 1 Council Drive, EATON WA 6232

Signed

Name of Signatory

Position Held

Date

Witness

Name of Witness

Signed for and on behalf of the DEVELOPER (Name & Address)

Signed

Name of Signatory

Position Held

Date

Witness

Name of Witness



OUTSTANDING WORKS BOND AGREEMENT

Site Location	Lot XXXXX
Parties	XXXXX Shire of Dardanup (the Shire)
Attachments	XXXXX Outstanding Works schedule

Site location plan to go here

Subdivision Conditions

The Western Australian Planning Commission (WAPC) administers all subdivision in Western Australia in accordance with the *Planning and Development Act 2005*.

The WAPC approved the subdivision application 157771 for the subject site on 11 July 2019, which included the following conditions;

10. Engineering drawings and specifications are to be submitted and approved, and works undertaken in accordance with the approved engineering drawings and specifications and approved plan of subdivision, for the filling and/or draining of the land, including ensuring that stormwater is contained on-site, or appropriately treated and connected to the local drainage system. Engineering drawings and specifications are to be in accordance with an approved Urban Water Management Plan (UWMP) for the site. (Local Government)

16. Engineering drawings and specifications are to be submitted, approved, and subdivisional works undertaken in accordance with the approved plan of subdivision, engineering drawings and specifications, to ensure that those lots not fronting an existing road are provided with frontage to a constructed road(s) connected by a constructed road(s) to the local road system and such road(s) are constructed and drained at the landowner/applicant's cost. (Local Government)

19. Satisfactory arrangements being made with the local government for the full cost of upgrading and/or construction of East Road where it abuts the subdivision area to a standard of 'single carriageway, two – lane, rural and outer high speed road'. (Local Government)

Local Government Guidelines

Once a subdivision application has been approved with conditions set out by the WAPC, the *Local Government Guidelines for Subdivisional Development, 2017* are to be used to guide local government and the development industry through engineering specification, construction and post-construction subdivisional approval.

The *Local Government Guidelines for Subdivisional Development, 2017* have been adopted by the Shire of Dardanup as the minimum requirements for the subdivisional development of land within the Shire of Dardanup.

Contained in the *Local Government Guidelines for Subdivisional Development, 2017* are guidelines for the management and bonding of outstanding works under the following sections;

1.20 Bonding outstanding works

Bonding of incomplete works shall be by negotiation between the Local Government and the developer. Bonds may be in the form of a cash payment, bank guarantee or by written agreement between the Local Government and the developer.

1.20.1 Bond applications

The developer may lodge a bond in the form of cash or an unconditional guarantee from a financial institution (bank guarantee) acceptable to the Local Government in lieu of completion of all or part of the subdivisional works.

Applications for bonding shall be in writing and shall include the following information:

- *concise reference to the extent, nature and location of the work to be bonded;*
- *a timetable for the proposed future completion of the bonded work;*
- *an itemised estimate of the costs of the bonded work, including the contract price and the name and address of the contractor responsible for the bonded works;*
- *reasons for requesting the bonding of the incomplete works; and*
- *any other information that will assist the assessment of the application.*

Compliance with the above requirements does not necessarily imply acceptance of the bond and each request shall be subject to the approval of the Local Government.

1.20.2 Bond agreement

In cases where bonding is approved the developer shall enter into a written bond agreement with the Local Government, which clearly states:

- *the name and address of the person or persons responsible for the payment or arranging the unconditional guarantee;*
- *the amount of the payment or unconditional guarantee;*
- *the name, stage number and location of the subdivision;*
- *the WAPC reference number of the subdivision; and*
- *a concise explanation of the purpose of the bond referring to all items for which it is to be utilised.*

It is recommended that the earliest stage at which bonding will be considered is at the completed drainage infrastructure and the road limestone or sub-base stage. However, this is to be determined by the Local Government.

Agreements should detail what the bond is for, the amount agreed by the parties, the default conditions and how the Local Government can have unrestricted access to bond monies to complete works in case of the developer defaulting on the works in question.

A bank guarantee is recommended as an alternative to a cash bond as the Local Government is guaranteed access to funds should the developer default on works. It is however, recommended that the following conditions apply:

- *the bank guarantee is clearly in favour of the Local Government;*

(Appendix ORD: 12.3.2D)

- *the conditions of the bank guarantee should clearly state its purpose and what works are being bonded;*
- *the bank guarantee has no expiry date and is only released upon the approval of the Local Government;*
- *the bank guarantee shall not have an expiry date but shall be directly tied to the outstanding works and the date on which the Local Government approves their completion;*
- *these conditions should also detail how the Local Government will demonstrate to the bank concerned that the developer/contractor has defaulted and that certain conditions of the bond have been ignored upon which demonstration the bank will release to the Local Government the bonded monies;*
- *the conditions of the bank guarantee must be clear that upon demonstrated default the bank concerned will release the bond monies without restriction upon demand by the Local Government; and*
- *the bond agreement must be legally checked to ensure the intent of the bond can be administered by the Local Government. This could be done by setting up a legal pro-forma which could be used from one development to another, reducing time delays with legal advisers.*

1.20.3 Calculation of bond amount

The calculation of a bond amount is to be negotiated between the developer and the Local Government.

In calculating the amount, it is suggested to consider:

- *the contractual amount for the works being bonded that can be taken from the contract documents supplied by the consulting engineer;*
- *a financial penalty against the developer should the Local Government have to carry out the works either by its own day labour workforce or by hiring another contractor. (it is suggested a 25 per cent surcharge be placed on the contractual cost for the work);*
- *obligatory GST charges by any new contractor who is brought in, which would need to be calculated on the contractual costs and the 25 per cent surcharge (it should be noted that if the Local Government was to engage a new contractor then GST would apply); and*
- *a non-refundable administration fee by Local Government to handle the setting up of the bond agreement and its implementation, should the need arise (a fee of \$1000 plus GST is recommended as reasonable).*

Bonds should be returned to developers on their written request in a timely manner.

Preamble

XXXX through its agent has submitted civil engineering design drawings for the provision of roads, drainage and footpaths for the subdivision of Lot XXXX and commenced construction in April 2020. The Shire received a request from XXXX in July 2020 to delay finishing some aspects of the works due to the instability of the soils during the wet winter weather. The works left outstanding will be known as Stage 2 Outstanding Works. The Shire has also received a request for clearances of subdivision conditions which will require bonding of the Stage 2 outstanding works.

1. Developers Covenants

1.1 Acknowledgement of responsibility for completing outstanding works

XXXX acknowledges that it has sole responsibility for undertaking any and all outstanding works in accordance with the Shire approved *32067 Construction Drawings* and any subsequent variations from the date of practical completion Stage 1 until the date the Shire accepts practical completion for Stage 2 Outstanding Works.

1.2 Practical Completion Stage 1

XXXX will prepare a Deposited Plan of Survey (DP) and initiate the process of ceding the road reserve to the Crown prior to requesting Practical Completion inspection with the Shire.

XXXX will request in writing for a practical completion inspection to be conducted with the Shire once construction works for Stage 1 are completed (Stage 1 being items that can be finished in July 2020). The request for practical completion is to be accompanied by:

- Advice of Supervisor/Manager responsible for maintenance and contact details;
- Stage 2 Outstanding Works bond for the value of no less than the total value of the outstanding items for Stage 2 plus 30% in accordance with the Shire approved *32067 Construction Drawings* and any subsequent variations; and
- Signed Outstanding Works Bond Agreement (this document).

A Practical Completion Certificate will be issued once the Shire considers works in Stage 1 are complete.

1.3 Undertaking of monitoring and maintenance works

XXXX will undertake and complete the monitoring and maintenance works for all Stage 2 Outstanding Works items until the Stage 2 items achieve practical completion. XXXX will ensure that the outstanding items remain stable and do not impact on any other areas within the subdivision area and beyond. This includes scouring of drains, batters and shoulders, and road surface defects as well as required road and path sweeping.

1.4 Shire may undertake monitoring and maintenance works

- a) XXXX grants access to the Shire (and its officers, agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion

(Appendix ORD: 12.3.2D)

Clause 1.3 and indemnifies the Shire for its reasonable costs and expenses in administering any portion of Clause 1.3.

- b) The Shire may only exercise its rights under clause 1.4(a) if XXXX fails to undertake the monitoring and maintenance works in accordance with the Clause 1.3 within the period specified in 1.4(c) once notified in writing by the Shire.
- c) The period between Shire notification of a maintenance defect and the deemed failure to act is as follows:
 - i. Safety issues with public risk - Area to be made safe immediately (e.g. bunt area or remove hazard) and remedied within 48hrs unless otherwise agreed in writing due to issues outside the control of XXXX.
 - ii. All other defects 14 days

1.5 Outstanding Works Bond

XXXX will lodge with the Shire either a cash bond or a bank guarantee to the satisfaction of the Shire for the value of \$ 262,381.60 being the calculated value of the Stage 2 outstanding works.

XXXX will calculate the value of the outstanding works bond by assessing the cost of the outstanding works as detailed in the Stage 2 Outstanding Works schedule documentation and applying a 30% surcharge.

XXXX acknowledge that should any invoices remain unpaid after 30 days from issue in relation to Clause 1.4(a); the Shire will recover the value of the invoice from the outstanding works bond held by the Shire for this site.

1.6 Shire may undertake outstanding works

- a) XXXX grants access to the Shire (and its officers, agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved Stage 2 outstanding works, and indemnifies the Shire for its reasonable costs and expenses in administering any portion of the approved Stage 2 Outstanding Works. XXXX shall pay to the Shire on demand all costs incurred by the Shire or which the Shire may be required to pay under clause 1.6(a).
- b) The Shire may only exercise its rights under clause 1.6(a) if XXXX fails to undertake the outstanding works in accordance with the Stage 2 *Outstanding Works schedule* within 12 months of granting a clearance once notified in writing by the Shire.

XXXX acknowledge that should any invoices remain unpaid after 30 days from issue in relation to Clause 1.6(a); the Shire may apply the proceeds of any bond or bank guarantee provided by XXXX under clause 1.5 towards its costs under this clause.

1.7 Practical Completion Stage 2

XXXX will request in writing for a practical completion inspection to be conducted with the Shire once Stage 2 Outstanding Works are completed.

A Practical Completion Certificate will be issued once the Shire considers works in Stage 2 are complete.

2. Shires Covenants

2.1 Acknowledgement of responsibility for completing outstanding works

The Shire acknowledges that XXXX has sole responsibility for undertaking any and all Stage 2 Outstanding Works in accordance with the Shire approved 32067 Construction Drawings and any subsequent variations from the date of practical completion Stage 1 until the date the Shire accepts practical completion for Stage 2 Outstanding Works.

2.2 Practical Completion Stage 1

The Shire, after receiving a written request from XXXX or its agent, will conduct a practical completion inspection within 14 days and forward a condition report including defects list to XXXX. Once the Shire is satisfied that the defects have been rectified, the required ascon information is in order, the outstanding works bond has been received, and the Outstanding Works Bond Agreement has been signed by both parties then a Certificate of Practical Completion Stage 1 will be issued.

2.3 Shire notification of maintenance defects

The Shire will be conducting regular visual site inspections and may receive customer requests from the public.

If any defects are detected in relation to clause 1.3, the Shire will notify XXXX in writing of the defect and the date by which the defect is to be rectified before the Shire exercises its rights under clause 1.4(a).

2.4 Shire rectification of maintenance defects

The Shire will instruct its officers, agents and contractors to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion Clause 1.3 for which defects have been notified under clause 1.4(c) and the rectification date has elapsed. All reasonable costs and expenses incurred in administering the rectification will also be invoiced to XXXX for payment.

2.5 Shire undertaking of outstanding works

The Shire will instruct its officers, agents and contractors to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *Stage 2 Outstanding Works* for which defects have been notified under clause 1.6(b) and the rectification date has elapsed. All reasonable costs and expenses incurred in administering the rectification will also be invoiced to XXXX for payment.

2.6 Shire use of Outstanding Works Bond

Should any invoices remain unpaid after 30 days from issue in relation to Clause 1.4(a) or Clause 1.6(a); the Shire will recover the value of the invoice from the Outstanding Works bond held by the Shire for this site.

2.7 Practical Completion Stage 2

The Shire, after receiving a written request from XXXX or its agent, will conduct a practical completion inspection once Stage 2 Outstanding Works are completed.

A Practical Completion Certificate will be issued once the Shire considers works in Stage 2 are complete.

2.8 Return of Outstanding Works Bond

The Shire will return the outstanding works bond within 14 days once written practical completion of Stage 2 Outstanding Works has been achieved.

(Appendix ORD: 12.3.2D)

Executed by XXXXXX

in accordance with Sec 127(1) of the Corporations Act (2001).

Signature of Director

Date

Full name of Director

Signature of Secretary

Date

Full name of Secretary

Executed by Shire of Dardanup

Chief Executive Officer André Schönfeldt

Date



**LANDSCAPE OUTSTANDING WORKS
BOND AGREEMENT**

Site Location	Stage XXX
Parties	Company or Person Shire of Dardanup (the Shire)
Attachments	1. Landscape Construction Drawings XXXXX 2. Streetscapes Construction Drawing Stage XXXX 3. Cost Estimate Reveg POS Stage XXXX 4. Cost Estimate Streetscape Stage XXXX

(Appendix ORD: 12.3.2E)

STAGE XXXX LANDSCAPE OUTSTANDING WORKS BOND AGREEMENT



Subdivision Conditions

The Western Australian Planning Commission (WAPC) administers all subdivision in Western Australia in accordance with the *Planning and Development Act 2005*.

The WAPC approved the subdivision application NUMBER for the subject site on DAY MONTH YEAR, which included the following conditions;

21. The Public Open Space reserve shown on the approved plan of subdivision being shown on the diagram or plan of survey (deposited plan) as reserve for Public Open Space and Drainage and vested in the Crown under Section 152 of the Planning and Development Act 2005, such land to be ceded free of cost and without any payment of compensation by the Crown. (Local Government)

22. Arrangements being made for the proposed Public Open Space to be developed by the landowner/applicant to a minimum standard and maintained for two summers through the implementation of an approved landscape plan providing for the development and maintenance of the proposed public open space in accordance with the requirements of Liveable Neighbourhoods and to the specifications of the local government. (Local Government)

Local Government Guidelines

Once a subdivision application has been approved with conditions set out by the WAPC, the *Local Government Guidelines for Subdivisional Development, 2017* are to be used to guide local government and the development industry through engineering specification, construction and post-construction subdivisional approval.

The *Local Government Guidelines for Subdivisional Development, 2017* have been adopted by the Shire of Dardanup as the minimum requirements for the subdivisional development of land within the Shire of Dardanup.

Preamble

APPLICANT has submitted Landscape Construction drawings for LOCATION as well as a Cost Estimates, which have been accepted by the Shire as being suitable for outstanding works bond estimation and will be referred to in this agreement as XXXX

1. Developers Covenants

1.1 Ceding of the land to the Crown

APPLICANT will prepare a Deposited Plan of Survey (DP) and initiate the process of ceding the reserve to Crown at the same time as requesting clearance for Conditions XXXX.

1.2 POS outstanding works bond

APPLICANT will lodge an outstanding works bond to the value of \$XXX,XXX in the form of a bank guarantee to the satisfaction of the Shire prior to requesting clearance of Condition XXXXX The bank guarantee will have no expiry date.

1.3 POS construction timing

APPLICANT will commence construction of the *LOCATION* in accordance with approved landscape drawings prior to DAY MONTH YEAR with works being completed DAY MONTH YEAR.

1.4 Shire may undertake outstanding works

- a) APPLICANT grants access to the Shire (and its officers, agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATION* and indemnifies the Shire for its reasonable costs and expenses in administering any portion of the approved *LOCATION*.
- b) The Shire may only exercise its rights under clause 1.4(a) if APPLICANT fails to undertake the construction works in accordance with the approved *LOCATION* within the period specified in 1.4(c) once notified in writing by the Shire.
- c) The period between Shire notification of non-compliance with clause 1.3 and the deemed failure to act will be 3 months.
- d) APPLICANT acknowledge that should any invoices remain unpaid after 30 days from issue in relation to Clause 1.4(a); the Shire will recover the value of the invoice from the POS Outstanding Works bond held by the Shire for this site.

1.5 Practical Completion

APPLICANT will request in writing for a practical completion inspection to be conducted with the Shire once construction works are completed. The request for practical completion is to be accompanied by:

- Advice of Supervisor/Manager responsible for maintenance and contact details;
- Relevant 'As-cons' – digital copy must include both pdf and dwg formats;
- Landscape construction cost summary;
- Landscape Maintenance Bond for the value of no less than the total value of the maintenance activities required for 2 summer periods ending DAY MONTH YEAR in accordance with the Shire approved *LOCATION* Landscape Maintenance Plan; and
- Signed Landscape Maintenance Agreement.

A Practical Completion Certificate will be issued once the Shire considers works are practically complete (except for minor defects).

Shires Covenants

2.1 Shire notification of non-compliance with clause 1.3

If the timing constraints shown in clause 1.3 are not achieved, the Shire will notify APPLICANT in writing of the non-conformance and the date by which the non-conformance is to be rectified before the Shire exercises its rights under clause 1.4(a).

2.2 Shire use of LOCATION outstanding works bond

Should any invoices remain unpaid after 30 days from issue in relation to Clause 1.4(a); the Shire will recover the value of the invoice from the POS Outstanding Works bond held by the Shire for this site.

2.3 Practical Completion

The Shire, after receiving a written request from APPLICANT, will conduct a practical completion inspection within 14 days and forward a condition report including defects list to APPLICANT. Once the Shire is satisfied that the defects have been rectified, the required ascon information is in order, the landscape maintenance bond has been received, and the Landscape Maintenance Agreement has been signed by both parties then a Certificate of Practical Completion will be issued. The date of this certificate will serve as the final practical completion date to which all agreements relate.

2.4 Return of Outstanding Works Bond

The Shire will return the balance of the LOCATION Outstanding Works bond to APPLICANT within 14 days of the Practical Completion Certificate being issued for the LOCATION in accordance with clause 1.5.

Executed by APPLICANT

in accordance with Sec 127(1) of the Corporations Act (2001).

Signature of Director

Date

Full name of Director

Signature of Director/Secretary

Date

Full name of Director/Secretary

Executed by Shire of Dardanup

Chief Executive Officer André Schönfeldt

Date



LANDSCAPE MAINTENANCE

BOND AGREEMENT

Site Location	LOCATION	
Parties	APPLICANT	Shire of
Dardanup (the Shire)		
Attachments	Approved LOCATION POS & Streetscapes Landscape Maintenance Plan	





Subdivision Conditions

The Western Australian Planning Commission (WAPC) administers all subdivision in Western Australia in accordance with the *Planning and Development Act 2005*.

The WAPC approved the subdivision application XXXX for the subject site on DAY MONTH YEAR, which included the following conditions;

21. The Public Open Space reserve shown on the approved plan of subdivision being shown on the diagram or plan of survey (deposited plan) as reserve for Public Open Space and Drainage and vested in the Crown under Section 152 of the Planning and Development Act 2005, such land to be ceded free of cost and without any payment of compensation by the Crown. (Local Government)

22. Arrangements being made for the proposed Public Open Space to be developed by the landowner/applicant to a minimum standard and maintained for two summers through the implementation of an approved landscape plan providing for the development and maintenance of the proposed public open space in accordance with the requirements of Liveable Neighbourhoods and to the specifications of the local government. (Local Government)

Local Government Guidelines

Once a subdivision application has been approved with conditions set out by the WAPC, the *Local Government Guidelines for Subdivisional Development, 2017* are to be used to guide local

(Appendix ORD: 12.3.2F)

government and the development industry through engineering specification, construction and post-construction subdivisional approval.

The *Local Government Guidelines for Subdivisional Development, 2017* have been adopted by the Shire of Dardanup as the minimum requirements for the subdivisional development of land within the Shire of Dardanup.

Contained in the *Local Government Guidelines for Subdivisional Development, 2017* are guidelines for the management and bonding of landscape maintenance under the following sections;

6.3.3.3 Landscape maintenance agreement

A maintenance agreement based on the management plan shall be entered into by the developer with the local government as part of the approval. The agreement shall be legal in nature and be prepared at the cost of the developer.

6.3.3.4 Landscape maintenance bond

All plantings shall be supported by a maintenance and watering period of at least two summer periods to ensure full establishment. This condition shall be guaranteed by way of a maintenance bond in the form of cash or guarantee from a financial institution acceptable to the local government.

The landscape maintenance bond can be expected to equal five percent of the contract value of the landscape works (excluding GST) as acceptable to the local government to be held in trust until handover of the public open space.

The bond will be returned when the maintenance period has been completed satisfactorily.

Preamble

APPLICANT through its agent has submitted landscaping and irrigation design drawings as well as a maintenance schedule and costings for the LOCATION POS and the Millbridge Stage 20 Streetscapes which have been approved by the Shire as the *LOCATION POS & Streetscapes Landscape Maintenance Plan*.

1. Developers Covenants

1.1 Acknowledgement of responsibility for landscape maintenance works

APPLICANT acknowledges that it has sole responsibility for undertaking any and all monitoring and maintenance works in accordance with the Shire approved *LOCATION POS & Streetscapes Landscape Maintenance Plan* from the date of practical completion until the date the Shire accepts handover.

1.2 Practical Completion

APPLICANT will prepare a Deposited Plan of Survey (DP) and initiate the process of ceding the reserve to Crown prior to requesting Practical Completion inspection with the Shire.

APPLICANT will request in writing for a practical completion inspection to be conducted with the Shire once construction works are completed. The request for practical completion is to be accompanied by:

- A request for clearance of Conditions 21 & 22 of WAPC 161051;
- Advice of Supervisor/Manager responsible for maintenance and contact details;
- Relevant 'As-cons' –digital copy must include both pdf and dwg formats;
- Landscape construction cost summary;
- Twelve month projected maintenance schedule with summary of quantities and costs;
- Landscape Maintenance Bond for the value of no less than the total value of the maintenance activities required for 2 summer periods ending DAY MONTH YEAR in accordance with the Shire approved *LOCATION POS & Streetscapes Landscape Maintenance Plan*; and
- Signed Landscape Maintenance Agreement (this document).

A Practical Completion Certificate will be issued once the Shire considers works are practically complete (except for minor defects).

Where works are incomplete, the Shire may issue a clearance of conditions subject to receipt of a bond for the contract value of the outstanding works plus 30%.

1.3 Undertaking of monitoring and maintenance works

APPLICANT will undertake and complete the monitoring and maintenance works until the site is accepted by the Shire for handover which will include 2 summer periods (being 1st December to 31st May) after the practical completion certificate is issued by the Shire. APPLICANT will forward to the Shire electronically (records@dardanup.wa.gov.au) at the start of each month a report detailing what maintenance activities have been undertaken, including duties, dates and times of each activity.

1.4 Shire may undertake monitoring and maintenance works

- a) Subject to clauses 1.4(b) and 1.4(c), APPLICANT grants access to the Shire (and its officers, agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATION POS & Streetscapes Landscape Maintenance Plan* and indemnifies the Shire for its reasonable costs and expenses in administering any portion of the approved *LOCATION POS & Streetscapes Landscape Maintenance Plan*.

(Appendix ORD: 12.3.2F)

- b) The Shire may only exercise its rights under clause 1.4(a) if APPLICANT fails to undertake the monitoring and maintenance works in accordance with the *LOCATION POS & Streetscapes Landscape Maintenance Plan* within the period specified in 1.4(c) once notified in writing by the Shire.
- c) The period between Shire notification of a maintenance defect and the deemed failure to act is as follows:
- i. Safety issues with public risk- Area to be made safe immediately (e.g. bunt area or remove hazard) and remedied within 48hrs unless otherwise agreed in writing due to issues outside the control of APPLICANT.
 - ii. Reticulation defect 7 days
 - iii. Mowing and gardening defect 14 days
 - iv. All other defects 28 days

1.5 Landscape Maintenance Bond

The Landscape Maintenance Bond will be no less than the total value of the maintenance activities required from Practical Completion for 2 summer periods ending DAY MONTH YEAR in accordance with the Shire approved *LOCATION POS & Streetscapes Landscape Maintenance Plan*. The bond has been calculated to be \$XX,XXX.

The Shire may allow for the reduction of the bond after 12 months.

APPLICANT acknowledge that should any invoices remain unpaid after 30 days from issue in relation to Clause 1.4(a); the Shire will recover the value of the invoice from the landscape maintenance bond held by the Shire for this site.

1.6 Handover

APPLICANT will request in writing for a handover inspection to be conducted with the Shire once the two summer period is nearing completion but no earlier than DAY MONTH YEAR. The following items will be forwarded to the Shire by APPLICANT prior to handover taking place:

- Instruction manuals for all infrastructure;
- Maintenance requirement documents;
- Amended as constructed drawings if changes have occurred since practical completion; and
- Twelve month projected maintenance schedule with summary of quantities and costs.

A Handover Certificate will be issued once the Shire considers works are complete.

2. Shires Covenants

2.1 Acknowledgement of responsibility for landscape maintenance works

The Shire acknowledges that APPLICANT has sole responsibility for undertaking any and all monitoring and maintenance works in accordance with the Shire approved *LOCATION POS & Streetscapes Landscape Maintenance Plan* from the date of practical completion until the date the Shire issues handover.

2.2 Practical Completion

The Shire, after receiving a written request from APPLICANT or its agent, will conduct a practical completion inspection within 14 days and forward a condition report including defects list to APPLICANT. Once the Shire is satisfied that the defects have been rectified, the required as-constructed information is in order, the landscape maintenance bond has been received, and the Landscape Maintenance Agreement has been signed by both parties then a Certificate of Practical Completion will be issued. The date of this certificate will serve as the final practical completion date to which all agreements relate.

2.3 Shire notification of maintenance defects

The Shire will assess whether APPLICANT are achieving compliance with the *LOCATION POS & Streetscapes Landscape Maintenance Plan* by reviewing the monthly maintenance activities report forwarded by APPLICANT and by conducting regular visual site inspections.

If any defects are detected, the Shire will notify APPLICANT in writing of the defect and the date by which the defect is to be rectified, in accordance with the time frames listed in clause 1.4(c), before the Shire exercises its rights under clause 1.4(a).

2.4 Shire rectification of maintenance defects

The Shire will instruct its officers, agents and contractors to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATION POS & Streetscapes Landscape Maintenance Plan* for which defects have been notified under clause 2.3 and the rectification date has elapsed. All reasonable costs and expenses incurred in administering the rectification will also be invoiced to APPLICANT for payment.

2.5 Shire use of Landscape Maintenance Bond

Should any invoices remain unpaid after 30 days from issue in relation to Clause 1.4(a); the Shire will recover the value of the invoice from the landscape maintenance bond held by the Shire for this site.

2.6 Handover

The Shire, after receiving a written request from APPLICANT or its agent, will conduct a handover inspection, once the two summer period of maintenance is nearing completion, within 14 days and forward a condition report including defects list to APPLICANT.

Handover will occur once the Shire is satisfied that all the defects have been rectified and the following items have been satisfactorily received;

(Appendix ORD: 12.3.2F)

- Instruction manuals for all infrastructure;
- Maintenance requirement documents;
- Amended as-constructed drawings if changes have occurred since practical completion; and
- Twelve month projected maintenance schedule with summary of quantities and costs.

A Handover Certificate will be issued within 7 days of rectification of all defects and satisfactory receipt of the items listed in this clause 2.6.

2.7 Return of Landscape Maintenance Bond

The Shire, after receiving a written request from APPLICANT or its agent, will consider reducing the required bond 12 months after practical completion to the value of the outstanding monitoring and maintenance works up to 31st May of the second year. The Shire will not be unreasonable in their consideration to reduce the bond.

The Shire will return the landscape maintenance bond within 7 days of issuing the Handover Certificate.

(Appendix ORD: 12.3.2F)

Executed by APPLICANT

in accordance with Sec 127(1) of the Corporations Act (2001).

Signature of Director

Date

Full name of Director

Signature of Director/Secretary

Date

Full name of Director/Secretary

Executed by Shire of Dardanup

Chief Executive Officer –Andre Schonfeldt

Date



EXTRACTIVE INDUSTRY REHABILITATION BOND AGREEMENT

Site Location	LOCATION
Parties	APPLICANT Shire of Dardanup (the Shire)
Attachments	Approved LOCATION Rehabilitation Plan



Statutory Environment

Local Planning Scheme No3

The site is zoned 'Special Use' under Local Planning Scheme No. 3 (LPS3) and the objectives of the zone are:

- To facilitate special categories of land uses which do not sit comfortably within any other zone.
- To enable Council to impose specific conditions associated with the special use.

Extractive Industry Local Law

Under the Shire of Dardanup Extractive Industry Local Laws:

Clause 2.1

'A person shall not carry out an extractive industry –

- a) Unless the person is the holder of a valid and current licence; and
- b) Otherwise than in accordance with any terms and conditions set out in, or applying in respect of the licence'.

Clause 2.3

- 1) 'Subject to subclause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and shall forward the application duly completed and signed by both the applicant and the owner of the land to the CEO together with:

(j) consent in writing to the application from the owner of the excavation site.'

Clause 5.1

- 1) For the purpose of ensuring that an extraction site is properly restored or reinstated, the local government may require that –
 - a) as a condition of a licence; or
 - b) before the issue of a licence,

the licensee shall give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, for a sum determined by the local government from time to time.

- 2) A bond required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

Clause 5.2

- 1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either –
 - a) Within the time specified in those conditions; or

- b) Where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then; subject to local government giving the licensee 14 days' notice of its intention to do so –
 - c) The local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of the work that remains undone; and
 - d) The licensee shall pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.
- 2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.
- 3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1

2023/24 Schedule of Fees and Charges

Extractive Industry Rehabilitation Bond

\$5,000 per hectare

Planning Approval

At the ordinary Shire of Dardanup Council meeting on DAY MONTH YEAR, Council approved the application for Development Approval for an 'Industry – Extractive' on Lot LOCATION under the Shire of Dardanup Town Planning Scheme No. 3 and the greater Bunbury Region Scheme subject to conditions including the following:

- (c) Prior to commencement of works, a rehabilitation plan shall be submitted to and approved by the Shire. Once approved, the landowner/proponent is responsible to ensure that the development is carried out at all times and in all respects in accordance with the plan.*

Extractive Industry Licence Approval

At the ordinary Shire of Dardanup Council meeting on DAY MONTH YEAR, Council authorised the Chief Executive Officer to issue an Extractive Industry Licence for the extraction of sand and gravel at Lot LOCATION, and subject to but not limited to the following:

- (a) The licensee is to furnish to the Shire a surveyor's certificate each year, prior to the renewal fee being payable, certifying the quantity of material extracted and that the material has not been extracted below the final contour levels outlined within the approved excavation programme.*
- (b) The lodging of a \$55,100 bond or bank guarantee with the Shire for restoration and reinstatement of the extraction site.*
- (c) The licence period being 5 years from the date of issue.*

Preamble

APPLICANT has submitted a rehabilitation plan for Lot LOCATION which was prepared by *Lundstrom Environmental Consultants Pty Ltd* dated DAY MONTH YEAR.

The rehabilitation plan has been approved by the Shire as the *LOCATION Rehabilitation Plan*.

1. Licensees Covenants

1.1 Acknowledgement of responsibility for rehabilitation works

APPLICANT acknowledges that it has sole responsibility for undertaking all rehabilitation, monitoring, maintenance works in a staged manner and reporting in accordance with the Shire approved *LOCATIONRehabilitation Plan* from the date of initial licence issue until the site is accepted by the Shire as meeting the completion criteria as detailed in the *LOCATIONRehabilitation Plan* which is likely to be beyond the term of approval for the planning consent and the extractive industry licence.

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, APPLICANT will complete rehabilitation of the site in accordance with the *LOCATIONRehabilitation Plan* as follows:

- a) All outstanding earthworks will be completed to establish finished levels within 12 months;
- b) All outstanding planting/seeding will be completed within 12 months; and
- c) Ongoing monitoring, weed control and replanting where required will be conducted until completion criteria is achieved to the Shire's satisfaction which is expected within 4 years.

1.2 Rehabilitation Bond

APPLICANT have lodged with the Shire a bank guarantee to the satisfaction of the Shire for the value of \$XX,XXX for the operational area of Stage 1 being 4.14ha.

Bank Guarantees will be prepared with no expiry date.

Prior to commencement of further stages of extraction, APPLICANT will lodge additional bonds if required by the Shire to the Shires satisfaction.

1.3 Annual Review of Rehabilitation

APPLICANT will submit a rehabilitation review to the Shire prior to 30 June each year detailing what rehabilitation effort has been applied during the current year, the success of the effort and what rehabilitation effort is planned for the coming year. The detail will include earthworks, deep ripping, planting, erosion repair, weed control and replanting. All remaining areas of rehabilitation will be categorised as either;

- a) Awaiting earthworks to established finished levels;
- b) Awaiting planting/seeding; or
- c) Awaiting completion criteria being met.

Each category will be reported in terms of area in hectares and will be presented on a Rehabilitation Staging Plan.

APPLICANT acknowledge that if any defects are detected with the rehabilitation and notified to APPLICANT in writing by the Shire, no further stages will have clearing commenced until the defects are rectified.

1.4 Undertaking of monitoring and maintenance works

APPLICANT will undertake and complete the monitoring and maintenance works until the site is accepted by the Shire as meeting the completion criteria as detailed in the *LOCATION Rehabilitation Plan* which is likely to be beyond the term of approval for the planning consent and the extractive industry licence.

Shire may undertake rehabilitation works

- a) APPLICANT grants access to the Shire (and its officers, agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATION Rehabilitation Plan*, and indemnifies the Shire for its reasonable costs and expenses in administering any portion of the approved *LOCATION Rehabilitation Plan*. APPLICANT shall pay to the Shire on demand all costs incurred by the Shire or which the Shire may be required to pay under clause 1.5.
- b) The Shire may only exercise its rights under clause 1.5(a) if APPLICANT fails to undertake the rehabilitation works in accordance with the *LOCATION Rehabilitation Plan* within the periods specified in 1.1 once notified in writing by the Shire that rehabilitation must be commenced.

APPLICANT acknowledge that should any invoices remain unpaid after 30 days from issue in relation to Clause 1.5(a); the Shire may apply the proceeds of any bond or bank guarantee provided by APPLICANT under clause 1.2 towards its costs under this clause.

2. Owners Covenants**2.1 Acknowledgement of responsibility for rehabilitation works**

The Owner acknowledges that APPLICANT has sole responsibility for undertaking all rehabilitation, monitoring, maintenance works in a staged manner and reporting in accordance with the Shire approved *LOCATIONRehabilitation Plan* from the date of initial licence issue until the site is accepted by the Shire as meeting the completion criteria as detailed in the *LOCATIONRehabilitation Plan* which is likely to be beyond the term of approval for the planning consent and the extractive industry licence.

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, The Owner acknowledges that APPLICANT will complete rehabilitation of the site in accordance with the *LOCATIONRehabilitation Plan* as follows:

- a) All outstanding earthworks will be completed to establish finished levels within 12 months;
- b) All outstanding planting/seeding will be completed within 12 months; and
- c) Ongoing monitoring, weed control and replanting where required will be conducted until completion criteria is achieved to the Shire's satisfaction which is expected within 4 years.

2.2 Guarantee of Access

The Owner grants access to APPLICANT (and its agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATIONRehabilitation Plan* until the site is accepted by the Shire as meeting the completion criteria as detailed in the *LOCATIONRehabilitation Plan* which is likely to be beyond the term of approval for the planning consent and the extractive industry licence.

2.3 Shire may undertake rehabilitation works

- a) The Owner grants access to the Shire (and its officers, agents and contractors) to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATIONRehabilitation Plan*, which is likely to be beyond the term of approval for the planning consent and the extractive industry licence.
- b) The Shire may only exercise its rights under clause 1.5(a) if APPLICANT fails to undertake the rehabilitation works in accordance with the *LOCATIONRehabilitation Plan* within the periods specified in 1.1 once notified in writing by the Shire that rehabilitation must be commenced.

3. Shires Covenants

3.1 Acknowledgement of responsibility for rehabilitation works

The Shire acknowledges that APPLICANT has sole responsibility for undertaking all rehabilitation, monitoring, maintenance works in a staged manner and reporting in accordance with the Shire approved *LOCATIONRehabilitation Plan* from the date of initial licence issue until the site is accepted by the Shire as meeting the completion criteria as detailed in the *LOCATIONRehabilitation Plan* which is likely to be beyond the term of approval for the planning consent and the extractive industry licence.

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, APPLICANT will complete rehabilitation of the site in accordance with the *LOCATIONRehabilitation Plan* as follows:

- a) All outstanding earthworks will be completed to establish finished levels within 12 months;
- b) All outstanding planting/seeding will be completed within 12 months; and
- c) Ongoing monitoring, weed control and replanting where required will be conducted until completion criteria is achieved to the Shire's satisfaction which is expected within 4 years.

3.2 Annual Review

The Shire, after receiving a written annual review from APPLICANT, will conduct an onsite inspection within 60 days and forward a compliance report including a status of the rehabilitation to APPLICANT. The report will detail areas requiring further attention in either category or areas that are accepted as being completed. Bond calculations will be reviewed annually as part of the annual review.

Prior to commencement of further stages of extraction, The Shire will assess if additional bonds are required and invoice APPLICANT accordingly.

3.3 Shire notification of rehabilitation failure

The Shire will assess whether APPLICANT are achieving compliance with the *LOCATIONRehabilitation Plan* by reviewing the annual review forwarded by APPLICANT and by conducting regular visual site inspections.

If any defects are detected with the rehabilitation, the Shire will notify APPLICANT in writing of the defect and advise that no further stages will be approved for clearing until the defects are rectified.

Where the carrying on of an extractive industry on the site permanently ceases or on the expiration or cancellation of the licence applicable to the site, whichever first occurs, the Shire will notify the licensee in writing to complete rehabilitation of the site in accordance with the *LOCATIONRehabilitation Plan* as follows:

- a) All earthworks to be completed to establish finished levels within 12 months;
- b) All planting/seeding to be completed within 12 months; and
- c) Ongoing monitoring, weed control and replanting where required to be conducted until completion criteria is achieved to the Shire's satisfaction which is expected within 4 years.

Where the requirements detailed in 3.3(a), (b) or (c) are not achieved, the Shire will notify APPLICANT and the owner in writing advising 14 days' notice of its intention to enter the site to complete the rehabilitation.

3.4 Shire rectification of rehabilitation failure

The Shire may instruct its officers, agents and contractors to enter onto and undertake all reasonable and necessary actions on the site required to administer any portion of the approved *LOCATION Rehabilitation Plan* for which defects have been notified under clause 3.3 and the rectification date has elapsed. All reasonable costs and expenses incurred in administering the rectification will also be invoiced to APPLICANT for payment.

3.5 Shire use of Rehabilitation Bond

Should any invoices remain unpaid after 30 days from issue in relation to Clause 1.5(a); the Shire will apply the proceeds of any bond or bank guarantee provided by APPLICANT under clause 1.2 towards any costs incurred by the Shire or which the Shire may be required to pay under clause 1.5.

3.6 Return of Rehabilitation Bond

The Shire, after receiving a written request from APPLICANT, will consider reducing the required bond after completing its annual review to the value of the outstanding rehabilitation works.

The Shire will return the rehabilitation bond within 14 days once written advice of acceptance of the completion criteria is forwarded by the Shire.

(Appendix ORD: 12.3.2G)

LOCATION REHABILITATION BOND AGREEMENT

Executed by APPLICANT

Signature of Director

Date

Full name of Director

Signature of Director

Date

Full name of Director

Executed by (owner)

Signature

Date

Executed by Shire of Dardanup

Chief Executive Officer – André Schönfeldt

Date

RISK ASSESSMENT TOOL

OVERALL RISK EVENT: Adoption of Shire Acceptance of Bonds Policy

RISK THEME PROFILE:

3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)

13 - Project Management

6 - Community Engagement

RISK ASSESSMENT CONTEXT: Operational

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
HEALTH	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
FINANCIAL IMPACT	Not limiting the staging of when an outstanding works bond would be considered could result in the Shire being responsible for constructing roads and drainage for created lots if the developer becomes insolvent	Major (4)	Possible (3)	High (12 - 19)	Limiting the acceptance by Shire officers of outstanding works bonds to after roads are primer sealed and drainage installed.	Minor (2)	Unlikely (2)	Low (1 - 4)
FINANCIAL IMPACT	Not preparing detailed bond agreements endorsed by all parties could result in legal disputes if the Shire attempted to utilise the bond where a developer defaults	Major (4)	Possible (3)	High (12 - 19)	Embedding the requirement for bond agreements in the bond policy and following the prepared procedure and bond agreement templates will reduce any risk of litigation if the bond was to be accessed	Minor (2)	Unlikely (2)	Low (1 - 4)
SERVICE INTERRUPTION	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
LEGAL AND COMPLIANCE	Not preparing detailed bond agreements endorsed by all parties could result in legal disputes if the Shire attempted to utilise the	Major (4)	Possible (3)	High (12 - 19)	Embedding the requirement for bond agreements in the bond policy and following the prepared procedure and bond agreement templates will reduce any risk of litigation if the bond was to be accessed	Minor (2)	Unlikely (2)	Low (1 - 4)

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
	bond where a developer defaults							
REPUTATIONAL	Not limiting the staging of when an outstanding works bond would be considered could result in extensive delays in provision of roads and drainage if the developer becomes insolvent	Moderate (3)	Possible (3)	Moderate (5 - 11)	Limiting the acceptance by Shire officers of outstanding works bonds to after roads are primer sealed and drainage installed.	Minor (2)	Unlikely (2)	Low (1 - 4)
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
PROPERTY	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.

RISK ASSESSMENT TOOL

OVERALL RISK EVENT: Reallocation of Bridge Maintenance Budget

RISK THEME PROFILE:

- 1 - Asset Sustainability Practices
- 15 - Purchasing and Supply

RISK ASSESSMENT CONTEXT: Operational

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
HEALTH	Bridge 3669-Dowdells Line is closed to heavy vehicles	Major (4)	Almost Certain (5)	Extreme (20 - 25)	Reallocation of budget from Account J12306	Insignificant (1)	Rare (1)	Low (1 - 4)
HEALTH	Bridge collapse	Major (4)	Almost Certain (5)	Extreme (20 - 25)	Reallocation of budget from Account J12306	Insignificant (1)	Rare (1)	Low (1 - 4)
FINANCIAL IMPACT	Bridge 3678 – Pile Rd may require urgent works in this financial year	Minor (2)	Unlikely (2)	Low (1 - 4)	Based on previous inspections this is unlikely in this financial year	Insignificant (1)	Rare (1)	Low (1 - 4)
SERVICE INTERRUPTION	Bridge 3669-Dowdells Line is closed to heavy vehicles and closed during repairs	Major (4)	Almost Certain (5)	Extreme (20 - 25)	The bridge will be under traffic management during repairs but with the availability of contractors would be closed for a longer period if closed to heavy vehicles.	Insignificant (1)	Rare (1)	Low (1 - 4)
LEGAL AND COMPLIANCE	Compliance to MRWA requirements	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required	Insignificant (1)	Rare (1)	Low (1 - 4)
REPUTATIONAL	Shire responsibility to maintain the bridge asset so reputation if it fails.	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required.	Insignificant (1)	Rare (1)	Low (1 - 4)
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
PROPERTY	Risk of bridge collapse or further deterioration resulting in closure of the bridge	Catastrophic (5)	Possible (3)	High (12 - 19)	Undertake bridge repairs as quoted	Insignificant (1)	Rare (1)	Low (1 - 4)

Appendix ORD: 12.3.3