

## Approval of Subdivision Plan Prior to Completion of all Subdivision Works

### Head of Power

*Local Government Act 2009*

### Related Legislation

*Planning Act 2016*

*Planning Regulation 2017*

### Objectives

The objectives of this policy are to:

- (1) establish Council's policy position on approving a Subdivision Plan prior to the completion of all Subdivision Works; and
- (2) ensure that certain requirements are satisfied prior to Council agreeing to the early approval of a Subdivision Plan; and
- (3) set out the standard documentation and security requirements that are required to be completed and lodged with Council where a development proponent is seeking Council's approval of their Subdivision Plan prior to completion of all Subdivision Works.

### Definitions/Application

#### Application

This policy applies where a development proponent is seeking Council's approval of a Subdivision Plan prior to completion of all Subdivision Works, except where it is contrary to either the Development Permit or a Water Approval for the Subdivision.

#### Definitions\*

**"Approval of Subdivision Plan"** - is Council's approval of the Subdivision Plan as required by the Approval Provisions. That approval takes the form of the signature of an authorised officer of Council on the back of the Subdivision Plan.

**"Approval Provisions"** - means either of the following depending on when the development was approved:

- (i) Chapter 3, Part 7 of the *Integrated Planning Act 1997*;
- (ii) Chapter 6, Part 10 of the *Sustainable Planning Act 2009* and Schedule 19 of the *Sustainable Planning Regulation 2009*; or
- (iii) *Planning Act 2016*

**"Certificate of Completion"** means a notice issued by Unitywater confirming that:

- (i) the Water Connection Works have been completed and accepted on maintenance;
- (ii) all conditions of the Water Approval for the Water Connection Works have been complied with; and
- (iii) all fees and charges associated with the Water Approval that are owed by the Developer to Unitywater have been paid.

**"Council Administered Works"** – means that component of the Subdivision Works required to be completed pursuant to conditions of the development approval/s.

**"Early Approval of a Subdivision Plan"** - means approval of the Subdivision Plan prior to completion of all of the required Subdivision Works.

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**“Maintenance Bond”** - is the financial security issued in favour of the Council to secure the Developer’s performance of its obligations during the “On Maintenance Period” for the Council Administered Works. The value of such security is to be calculated in accordance with Council’s requirements at the time that the securities are accepted.

**“On Maintenance Period”** for the Council administered works - means the period commencing when Council accepts those aspects of the Subdivision Works on maintenance and concluding when the Council accepts those same aspects off maintenance.

**“Operational Works”** - has the meaning given to it in the *Planning Act 2016*.

**“Planning Act”** - means either the *Planning Act 2016*, *Integrated Planning Act 1997 (repealed)* or the *Sustainable Planning Act 2009 (repealed)*, depending on the context in which it is used.

**“Provisional Certificate of Completion”** means a notice issued by Unitywater confirming that the Developer has:

- (i) provided sufficient security to Unitywater to ensure completion of all Water Connection Works and compliance with all conditions of the Water Approval for those works; and
- (ii) paid all fees and charges associated with the Water Approval that are owed by the Developer to Unitywater.

**“Reconfiguring a Lot”** - has the meaning given to it in the *Planning Act 2016*.

**“RPEQ”** - means a registered professional engineer of Queensland.

**“Subdivision Plan”** - has the meaning given to it in the *Planning Regulation 2017*.

**“Subdivision Works”** - means all works (particularly the Operational Works and the Water Connection Works) required to be completed pursuant to conditions of the development approval/s and conditions of any required Water Approval for a subdivision development.

**“Subdivision”** - means Reconfiguring a Lot.

**“Unitywater”** - is the entity described as the Northern SEQ Distributor-Retailer Authority in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**“Unitywater Administered Works”** – means that component of the Subdivision Works required to be completed pursuant to conditions of the Water Approval/s.

**“Water Approval”** – has the meaning given to it in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**“Water Connection Works”** – means all works associated with the provision of water supply and wastewater infrastructure that is, or on completion will become, the property of Unitywater.

\*A term not defined in this policy has the meaning given to it in the Planning Act (or its regulations), and where not defined in the Planning Act (or its regulations) the meaning given to it in the applicable planning scheme.

## Policy Statement

### Preliminary

- 1.1 The former *Integrated Planning Act 1997 (IPA)* and the *Sustainable Planning Act 2009 (SPA)* and the current *Planning Act 2016* provide a mechanism for an applicant to provide satisfactory security to a local government to secure the performance of a party to the fulfilment of a condition/s of a development approval. A similar mechanism exists in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009 (SEQ Water Act)* to secure the performance of a party to the fulfilment of a condition/s of a Water Approval.
- 1.2 Council's decision in relation to satisfactory security is discretionary, however this policy provides for that discretion to be exercised where the requirements of this policy are satisfied.
- 1.3 This security will be in the form of an infrastructure agreement secured by either a cash bond or a financial security complying with the Council's policy on the "Provision of Financial Securities".

### Policy

- 2.1 It is Council's policy to require that:
  - (i) at least 50% of the Council Administered Works for the Subdivision have been completed;
  - (ii) all earthworks are completed;
  - (iii) where the required Subdivision Works incorporate Water Connection Works, evidence is provided that Unitywater has issued either a Certificate of Completion or a Provisional Certificate of Completion in respect of those Water Connection Works;
  - (iv) a certificate is provided to Council from a RPEQ certifying:
    - at least 50% of the Council Administered Works have been completed; and
    - all earthworks have been completed; and
    - the details and estimated costs provided in the accompanying schedule of uncompleted Council Administered Works as at the date of the certificate; and
    - that the information contained in the certificate and accompanying schedule of uncompleted Council Administered Works is accurate.
- 2.2 It is Council's policy that the only agreement that Council will enter into is its proforma "Infrastructure Agreement for Early Approval of Subdivision Plan" and that no amendments to that proforma are permitted (other than any amendments made from time to time by, or with the approval of, the Legal Services Department).

### Proforma Infrastructure Agreement

- 3.1 A copy of the proforma "Infrastructure Agreement for Early Approval of Subdivision Plan" is a related link to the Policy.
- 3.2 The infrastructure agreement includes the following requirements:
  - (i) satisfactory security is to be provided by the developer to cover the construction of all uncompleted Council Administered Works;
  - (ii) that financial security is in a form that satisfies Council's policy on the "Provision of Financial Securities" or is provided as a cash bond;
  - (iii) that contracts have been awarded for all uncompleted Council Administered Works; and
  - (iv) that all Council Administered Works will be completed within 3 months of the date of the infrastructure agreement, unless otherwise provided.

**Financial Security for construction of all uncompleted Council Administered Works**

- 4.1 The value of the financial security to be lodged with Council for construction of all uncompleted Council Administered Works is to be no less than the estimated cost to complete all of those uncompleted works plus an additional 25%. Where that equates to less than \$5,000 or the value of the Maintenance Bond, the value of the security to be provided is to be the greater of the value of the Maintenance Bond and \$5,000.
- 4.2 The financial security provided for the uncompleted Council Administered Works will not be released until the following has occurred:
- (i) the uncompleted Council Administered Works have been completed to Council's satisfaction;
  - (ii) the Developer's Obligations in the "Infrastructure Agreement for Early Approval of Subdivision Plan" have been satisfied; and
  - (iii) the Developer has provided to Council (subject to clause 4.3 below) a Maintenance Bond in favour of Council.
- 4.3 Alternatively, the Developer can elect not to have the financial security provided for the uncompleted Council Administered Works released and instead have that security reduced to the value of the Maintenance Bond.
- 4.4 All financial securities, except cash bonds, must comply with Council's policy on the "Provision of Financial Securities".

**Previous non-compliant applicants**

- 5.1 Notwithstanding the above, it is Council's practice that early approval of a Subdivision Plan may not be available to those applicants who have previously not complied with the obligations/undertakings in relation to the early approval of a Subdivision Plan.
- 5.2 For those applicants, any request for early approval of a Subdivision Plan will be considered on a case by case basis and determined in Council's absolute discretion.
- 5.3 Additional requirements, in Council's absolute discretion, may be required for those applicants.
- 5.4 Applicants should seek advice from the Council on any additional requirements it may require in this respect before lodging the request.

**Review Triggers**

This policy is reviewed internally for applicability, continuing effect and consistency with related documents and other legislative provisions when any of the following occurs:

- (1) The related documents are amended.
- (2) The related documents are replaced by new documents.
- (3) Amendments which affect the allowable scope and effect of a policy of this nature are made to the head of power.
- (4) Other circumstances as determined from time to time by a resolution of Council.

Notwithstanding the above, this policy is to be reviewed at least once every two years for relevance and to ensure that its effectiveness is maintained.

## Responsibility

This Policy is to be:

- (1) implemented by the Manager Development Services; and
- (2) reviewed and amended in accordance with the "Review Triggers" by the Manager Development Services in consultation with the Legal Services Department.

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### Related Links:

- Proforma "Infrastructure Agreement for Early Approval of Subdivision Plan" (with schedules and annexures)
- Policy No 11-2150-23 "Provision of Financial Securities"
- Council's standard terms documents for registering an easement (Dealing Nos. 702748303 and 713427522)
- Schedule 2 – RPEQ Certificate