

SECURITY DEPOSITS INTEREST PAYMENTS POLICY

Reference number:	POL 051
Approval date:	17 October 2022
Policy owner:	Chief Financial Officer
Next review:	September 2025

Council requires applicants to lodge a security deposit or bond usually in association with building or subdivision works approvals. Examples include footpaths, kerb and guttering, road works, drainage or environmental works. Council's authority to apply a condition that requires an applicant to provide security is included under Section 97 of the Local Government Act 1993, Section 80A (6) of the Environmental Planning & Assessment Act 1979, and Section 138 of the Roads Act 1993.

Under Section 97 (5) of the Local Government Act 1993, a security deposit (or part) if repaid, is to include any interest accrued on the deposit (or part) as a consequence of its investment.

This Policy details how Council will treat its obligation under Section 97 (5) of the Local Government Act 1993.

Purpose

The purpose of this Policy is to facilitate the processing of applications received for interest payments on security deposits held by Council pursuant to a development or approval condition.

Scope

This Policy applies to all security payments paid to Council. It does not apply to other (non-cash) forms of security held by Council including bank guarantees.

Policy Provisions

General Provisions

The calculation and payment of interest on a security deposit held by Council pursuant to Section 97 of the Local Government Act 1993 will be undertaken by the Finance Division upon the receipt of notification and approval from the appropriate Directorate to refund the security deposit.

Security deposits, when received, are paid into Council's main bank account within its consolidated fund and are recorded in the General Ledger as a liability. The deposits are reported in Council's audited Annual Financial Statements in the balance sheet as a current liability.

On application, calculation of the applicable interest for refund will be undertaken. Where the application fee is greater than the interest calculation, no interest payment will be made.

- **Interest Rate:** The interest rate applicable on Council's main trading account – the median interest rate between the date the deposit was received and at the time of refund.

Example:

A \$20,000 security deposit was paid to Council on 1 May 2016. The security deposit was eligible for refund on 1 May 2020.

Council's main trading account interest rate as at 1 May 2016 was 1.75% and was 0.25% on 1 May 2020. Therefore, the median interest is 1.0%.

The deposit was held for a 4-year period, therefore the applicable interest available to the depositor is:

$\$20,000 \times 1.0\% = \200 per annum, multiplied by 4 years = \$800.00

Less the applicable application fee of (\$450.00) = \$350.00 available to the depositor.

Legislative Context

NSW Local Government Act 1993 Section 97:

Conditions concerning security

- (1) *An approval may be granted subject to a condition that the applicant provides to the council security for the payment of the cost of either or both of the following:*
 - (a) *making good any damage that may be caused to any council property as a consequence of doing or not doing anything to which the approval relates,*
 - (b) *completing any works (other than works prescribed by the regulations) that may be required in connection with the approval.*

Note: Works the completion of which may be required in connection with an approval could include footpaths, kerbing and guttering, road works, trunk drainage and environmental controls.

- (2) *The security is to be for such reasonable amount as is determined by the council and specified in the condition.*
- (3) *The security may be provided, at the applicant's choice, by:*
 - (a) *a deposit with the council, or*
 - (b) *a guarantee satisfactory to the council.*

- (4) *Security provided by way of deposit may be paid out to meet any cost referred to in subsection (1).*
- (5) *A security deposit (or part) if repaid to the person who provided it is to be repaid with any interest accrued on the deposit (or part) as a consequence of its investment.*

Environmental Planning and Assessment Act 1979 Section 80A (6):

- (6) *Conditions and other arrangements concerning security*

A development consent may be granted subject to a condition, or a consent authority may enter into an agreement with an applicant, that the applicant must provide security for the payment of the cost of any one or more of the following:

- (a) *making good any damage caused to any property of the consent authority (or any property of the corporation) as a consequence of the doing of anything to which the consent relates,*
 - (b) *completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with the consent,*
 - (c) *remedying any defects in any such public work that arise within 6 months after the work is completed.*
- (7) *The security is to be for such reasonable amount as is determined by the consent authority.*
- (8) *The security may be provided, at the applicant's choice, by way of:*
 - (a) *deposit with the consent authority, or*
 - (b) *a guarantee satisfactory to the consent authority.*
- (9) *The security is to be provided before carrying out any work in accordance with the development consent or at such other time as may be agreed to by the consent authority.*
- (10) *The funds realised from a security may be paid out to meet any cost referred to in subsection (6). Any balance remaining is to be refunded to, or at the direction of, the persons who provided the security.*

Roads Act 1993, Section 138:

138 Works and structures

- 1) *A person must not:*
 - a) *erect a structure or carry out a work in, on or over a public road, or*
 - b) *dig up or disturb the surface of a public road, or*
 - c) *remove or interfere with a structure, work or tree on a public road, or*

- d) *pump water into a public road from any land adjoining the road, or*
- e) *connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.*

Maximum penalty: 10 penalty units.

- 2) *A consent may not be given with respect to a classified road except with the concurrence of RMS.*
- 3) *If the applicant is a public authority, the roads authority and, in the case of a classified road, RMS must consult with the applicant before deciding whether or not to grant consent or concurrence.*
- 4) *This section applies to a roads authority and to any employee of a roads authority in the same way as it applies to any other person.*
- 5) *This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the Pipelines Act 1967 or under any other provision of an Act that expressly excludes the operation of this section.*

Council's annual Fees and Charges Document details the amount of the Section 138 bond.

Related Documents

- Wagga Wagga City Council, Annual Fees and Charges
- Activities in Public Road Reserve Policy – POL 008

Responsibilities

The Finance Division will calculate and process the applicable interest payment on the security deposit (less the application fee) when notification/approval has been received for the refund of the security deposit held pursuant to Section 97 of the Local Government Act 1993.

Reporting Requirements

Deposits held by Council are reported as part of the audited Annual Financial Statements.

Approval Arrangements

As per allocated Delegated Authority - Delegation 3.02.

Review procedures

This Policy will be reviewed every four years.

Definitions

Term	Definition
Application Fee	An application fee (as set out in Council's annual Fees and Charges) will be payable for all successful requests for security deposit interest payments.
Interest Rate	The rate of interest applicable to Council's main trading account.
Interest period	The total number of days from the date the security deposit is received by Council to the estimated date it is to be refunded to the depositor.
Security Deposit	Funds received from a depositor as security in accordance with Section 97 of the Local Government Act 1993, Section 80A (6) of the Environmental Planning & Assessment Act 1979 and/or Section 138 Roads Act 1993.

Revision History

Revision number	Council resolution	Council meeting date
1	Res No: 11/282.3	21 November 2011
2	Res No: 13/224.1	26 August 2013
3	General Manager approval	August 2016
4	Res No: 17/279	28 August 2017
5	Revision approval under General Manager delegated authority	20 November 2020
6	Res No: 22/354	17 October 2022