



# Gladstone Regional Council

## Council Policy

Title	FINANCIAL INSTITUTION UNDERTAKINGS
Policy Number	P-2017-14
Responsible Directorate	OFFICE OF THE CHIEF FINANCIAL OFFICER
Responsible Officer	CHIEF FINANCIAL OFFICER
Date of Adoption	06 JUNE 2017
Resolution Number	G/17/3065
Date Review Due	06 JUNE 2020

### 1.0 PURPOSE:

To set out:

1. the circumstances under which Council may accept, at its sole discretion, by way of an Acceptable Undertaking in lieu of cash, security for the recoupment of any cost Council may incur in satisfying any obligation, by any person, under any agreement with, or approval granted by Council. Such security is normally called upon by Council as a result of that person failing to satisfy an obligation or being in breach of the relevant agreement with, or approval by Council.
2. the acceptable form of the financial institution undertaking.

### 2.0 SCOPE:

All cases under which Council may accept security for the recoupment of any costs Council may incur in satisfying an obligation by any person where that security is not in the form of cash.

### 3.0 RELATED LEGISLATION:

- *Statutory Bodies Financial Arrangement Act 1982;*
- *Statutory Bodies Financial Arrangement Regulation 2007*

### 4.0 RELATED DOCUMENTS:

- Acceptable Form of Financial Institution Undertaking (Attachments 1 and 2)

## 5.0 DEFINITIONS:

To assist in interpretation of this policy the following definitions apply:

- **"Acceptable Undertaking"** means an undertaking in the form of the *"Acceptable Form of Financial Institution Undertaking"* forming Attachments 1 and 2 to this policy which Council has accepted as an undertaking in accordance with this policy.
- **"Trading Bank"** means a bank organised chiefly to handle the everyday financial transactions of businesses.
- **"Merchant Bank"** means a bank dealing in commercial loans and investment.
- **"Financial Institution Undertaking"** means security provided from a licensed Trading Bank or Registered Insurer.
- **"Registered Insurer"** means an authorised insurer under section 122 of the Insurance Act 1973.

## 6.0 POLICY STATEMENT:

### 6.1 Acceptance of Security

Council may accept, at its sole discretion, by way of an Acceptable Undertaking in lieu of cash, security for the recoupment of any cost Council may incur in satisfying any obligation, by any person, under any agreement with, or approval granted by Council. Such security is normally called upon by Council as a result of that person failing to satisfy an obligation, or being in breach of the relevant agreement with, or approval by Council.

Where Council accepts an undertaking in lieu of cash the undertaking must:

- a. be provided in an acceptable form of the financial institution undertaking as set out in Attachments 1 and 2 to this policy;
- b. be from a Financial Institution (referred to as the "Issuing Entity" in the Acceptable Undertaking) that is a licensed Trading Bank (not a Merchant Bank) or Registered Insurer with a Financial Institution Rating of a minimum long term rating of A- or A3 in the scale set out in Clause 6.2 for amounts up to \$5 million and a minimum long-term rating of AA- or Aa3 in the scale set out in Clause 6.2 for amounts in excess of \$5 million.
- c. be irrevocable allowing Council to make an unfettered claim against the financial institution undertaking without regard to the customer providing the guarantee;
- d. provide the Name and ABN of the Issuing Entity, Beneficiary, and Customer;
- e. provide the purpose of the financial institution undertaking;
- f. exclude a termination date, where requested by Council;
- g. be governed by the laws of Queensland;

- h. be the original document;
- i. separate financial institution undertakings must be issued for separate obligations;  
and
- j. be approved by the Chief Financial Officer or delegate.

Where an agreement or contract specification increases during the term of the agreement, the circumstance may exist where the financial institution undertaking is no longer sufficient to satisfy the obligation. In such circumstances, Council may request an additional financial institution undertaking be issued for the relative shortfall.

Where an Issuing Entity, for which an existing financial institution undertaking has been provided to Council, has its Financial Institution Rating downgraded to an unacceptable rating in accordance with Clause 6.1(b), Council may request a new financial institution undertaking be issued by an alternative entity.

## 6.2 Financial Institution Rating

The scale used for Financial Institution Rating is as follows:

Moody's	Standards & Poors	Fitch
Aaa	AAA	AAA
Aa1	AA+	AA+
Aa2	AA	AA
Aa3	AA-	AA-
A1	A+	A+
A2	A	A
A3	A-	A-
Baa1	BBB+	BBB+
Baa2	BBB+	BBB+
Baa3	BBB-	BBB-

## 7.0 ATTACHMENTS:

- 1. Acceptable Form of Financial Institution Undertaking (1) - Financial Institution Undertaking; and
- 2. Acceptable Form of Financial Institution Undertaking (2) - Bank Guarantee.

## 8.0 REVIEW TRIGGER:

This policy will be reviewed when any of the following occur:

- 1. The related legislation/documents are amended or replaced.
- 2. Other circumstances as determined from time to time by a resolution of Council.

3. Periodic Review – 3 years from date of adoption.

TABLE OF AMENDMENTS		
Originally Adopted	07 May 2013	G/13/1533
Amendment 1	02 June 2015	G/15/2446
Amendment 2	06 June 2017	G/17/3065
Amendment 3	<INSERT DATE COUNCIL MEETING>	<INSERT RESOLUTION NUMBER>

.....  
LEISA DOWLING  
ACTING CHIEF EXECUTIVE OFFICER

ATTACHMENT 1 - ACCEPTABLE FORM OF FINANCIAL INSTITUTION UNDERTAKING (1)

**FINANCIAL INSTITUTION UNDERTAKING**

**Date:** ##[Day and month]##..... , 20##.

**Issuing Entity:** ##[Name and ABN]##.  
*Delivery Address:* ##.  
*Postal Address:* PO Box ##,  
##.  
*Facsimile:* ##.

**Beneficiary:** Gladstone Regional Council (ABN 27 330 979 106)  
*Delivery Address:* 101 Goondoon Street, Gladstone, Qld, 4680.  
*Postal Address:* P. O. Box 29, Gladstone DC, Qld, 4680.  
*Facsimile:* (07) 4975 8500.

**Issuing Entity Customer:** ##[Name and ABN]##.

**Causal Agreement:** Security Agreement ##[Release of Reconfiguration Plan]## between the Beneficiary and the Customer, dated ##:  
(1) ##[relating to a development permit for reconfiguration of a lot, Beneficiary reference ##, issued on ## ##[and modified on ##];  
(2) in connection with the Customer's development of property at ##]##.

**Purpose of Undertaking:** To secure to the Beneficiary recoupment of the cost the Beneficiary incurs in satisfying an obligation that:  
(1) the Causal Agreement obliges the Customer to satisfy; and  
(2) the Customer fails to satisfy, in breach of the Causal Agreement.

**Basis of Undertaking:** (1) The Issuing Entity gives the Beneficiary this Undertaking:  
(a) *at Customer request;*  
(b) *to secure to the Beneficiary the discharge of certain Customer obligations to the Beneficiary under the Causal Agreement.*  
(2) In return, the Beneficiary promises to pay the Issuing Entity \$1.00 if the Issuing Entity demands payment (which promise the Beneficiary confirms by accepting receipt of this instrument).

**Secured Sum:** ##[Amount in words and figures]##.

**Expiry Date:** ##[If applicable to the contract]##

1. The Issuing Entity irrevocably and unconditionally undertakes to pay the Beneficiary upon demand:
  - (a) money not exceeding the Secured Sum; or
  - (b) a series of amounts not exceeding, in aggregate, the Secured Sum.
2. This undertaking is not an obligation of suretyship.
3. The Issuing Entity will make payment pursuant to the undertaking:
  - (a) without seeking Customer permission;
  - (b) irrespective of an instruction from the Customer that it not make the payment;
  - (c) without requiring the Beneficiary to demonstrate its entitlement to demand or obtain the payment (whether under the Causal Agreement or otherwise); and
  - (d) upon production of this instrument to the Issuing Entity (for surrender, if paragraph 6 applies, or for verification, if paragraph 6 does not apply).
4. In particular (though without limitation), the undertaking is not conditional upon:
  - (a) the satisfaction of a requirement in the Causal Agreement;
  - (b) the satisfaction of a requirement in a security or agreement other than the Causal Agreement;
  - (c) the satisfaction of any other obligation not specified in this instrument; or
  - (d) the occurrence of an event other than a demand by the Beneficiary.
5. Further, the Issuing Entity's liability upon the undertaking will not be qualified, diminished, or discharged by:
  - (a) variation of the Causal Agreement;
  - (b) a requirement in an agreement or security other than this instrument;
  - (c) an indulgence the Beneficiary grants the Customer concerning discharge of the Customer's obligations, or enforcement of the Beneficiary's entitlements, under the Causal Agreement; or
  - (d) a compromise or release that the Beneficiary agrees with or grants to the Customer concerning the Causal Agreement.
6. If it demands an amount that, by itself or in aggregate with amounts previously paid pursuant to the undertaking, equals the Secured Sum, the Beneficiary will surrender this instrument to the Issuing Entity in exchange for payment.
7. The Beneficiary may not transfer the benefit of this undertaking.
8. The undertaking will continue until whichever of the following events occurs first:
  - (a) in response to a demand by the Beneficiary, the Issuing Entity pays the Beneficiary the Secured Sum;
  - (b) in response to a demand by the Beneficiary, the Issuing Entity pays the Beneficiary a sum that, in aggregate with other sums paid to the Beneficiary pursuant to this undertaking, equals the Secured Sum;
  - (c) by deed, the Beneficiary releases the Issuing Entity from the undertaking;

- (d) the Beneficiary presents this instrument to the Issuing Entity for surrender.
9. The Issuing Entity may terminate or reduce its liability upon the undertaking, without Beneficiary concurrence, by paying the Beneficiary:
- (a) all or part of the Secured Sum; or
  - (b) all or part of the difference between the Secured Sum and the aggregate of money previously paid to the Beneficiary pursuant to the undertaking.
10. A notice (including a demand) or an agreement given or made by the Beneficiary pursuant to the undertaking:
- (a) will be in writing; and
  - (b) will be signed by a person who possesses lawful authority to give the notice for the Beneficiary.
11. The Beneficiary may present at or post to any Issuing Entity branch a demand for payment upon the undertaking.
12. If, when it is required to make a payment upon the undertaking, the Issuing Entity has an office or offices at Gladstone, the Issuing Entity will make the money available for collection at that office or one of those offices.
13. A notice given by the Issuing Entity concerning the undertaking:
- (a) will be in writing; and
  - (b) will be executed by the Issuing Entity, or signed on its behalf by a person, or persons, authorised to sign.
14. This instrument is a deed, irrespective of:
- (a) its format;
  - (b) its terminology;
  - (c) whether it records anything passing from the Beneficiary in return for the undertaking; and
  - (d) whether it records the Issuing Entity receiving anything from the Beneficiary in return for the undertaking.
15. Queensland law governs the undertaking.
16. Disputes upon the undertaking are to be adjudicated by:
- (a) Queensland courts of competent jurisdiction; and
  - (b) the High Court of Australia (as the forum of final appeal).

**Issuing Entity Signature (Single attorney)**

SIGNED, SEALED, and DELIVERED on behalf of **##[NAME]##**:

- as a deed;
- under Power of Attorney No. **#[Number]#**;
- by its attorney, who certifies that **he/she** possesses no notice of revocation of **his/her** powers as attorney under that instrument;
- in the presence of a witness:

..... Attorney		..... Witness
..... Full name [ <i>Print</i> ]		..... Full name [ <i>Print</i> ]

**Issuing Entity Signature (Dual attorneys)**

SIGNED, SEALED, and DELIVERED on behalf of **##[NAME]##**:

- as a deed;
- under Power of Attorney No. **#[Number]#**;
- by its attorneys, each of whom certifies that he/she possesses no notice of revocation of his/her powers as attorney under that instrument;
- in the presence of a witness:

..... Attorney		..... Attorney
..... Full name [ <i>Print</i> ]		..... Full name [ <i>Print</i> ]
..... Witness		
..... Full name [ <i>Print</i> ]		

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ATTACHMENT 2 - ACCEPTABLE FORM OF FINANCIAL INSTITUTION UNDERTAKING (2)

**BANK GUARANTEE**

**Date:** ##[Day and month]##....., 20##.

**Undertaking Number:** ##[Undertaking Reference Number]##

**Issuing Entity:** ##[Name and ABN]##.

*Delivery Address:* ##.

*Postal Address:* PO Box ##,  
##.

*Facsimile:* ##.

**Beneficiary:** Gladstone Regional Council (ABN 27 330 979 106)

*Delivery Address:* 101 Goondoon Street, Gladstone, Qld, 4680.

*Postal Address:* P. O. Box 29, Gladstone DC, Qld, 4680.

*Facsimile:* (07) 4975 8500.

**Issuing Entity** ##[Name and ABN]##.

**Customer:**

**Purpose of Undertaking:** The Customer is required to provide security to the Beneficiary for the performance of obligations under a contract for:  
##[Reference contract number, development application number, etc]##  
.....  
.....

The Issuing Entity has agreed to provide this undertaking which the Beneficiary has agreed to accept as the security.

**The Issuing Entity unconditionally undertakes** to pay on written demand any sum which may from time to time be demanded by the Beneficiary to a maximum aggregate sum (Guaranteed Amount) of:

##[Amount in words and figures]## .....

This undertaking is to continue until one of the following events occurs:

- the Issuing Entity receive notification from the Beneficiary that this undertaking is no longer required;
- the return of this undertaking to the Issuing Entity;
- payment to the Beneficiary by the Issuing Entity of the whole of the Guaranteed Amount or such lesser sum as may be required by the Beneficiary;
- ##[If applicable to the contract]## the arrival of the Expiry Date, namely ##[Expiry Date]##, and no demand may be made on the Issuing Entity unless made and delivered to the Issuing Entity prior to the Expiry Date.

Should the Beneficiary notify the Issuing Entity in writing that it requires payment to be made to it of the whole or any part of parts of the Guaranteed Amount, it is unconditionally agreed that such payment will be made to the Beneficiary forthwith without further reference to the Customer and notwithstanding any notice given by the Customer to the Issuing Entity not to pay same. The Issuing Entity reserves the right to require proof of identity of any person acting on behalf of the Beneficiary before making payment to the Beneficiary.

Provided always that the Issuing Entity may at any time without being required to do so pay to the Beneficiary the Guaranteed Amount less any amount it may have already paid hereunder and thereupon the Issuing Entity's liability under this undertaking shall immediately cease.

The Benefit of this undertaking is personal and not capable of assignment but claims by the Beneficiary may be paid at the Beneficiary's direction to other persons.

This undertaking will be governed by the laws of Queensland ("Governing Jurisdiction").

**Executed by** ##[Name and Position]## for and on behalf of ##[Issuing Entity Name and ABN]##.

..... ##[Signature of Executing Officer]##