

Performance agreements – A guide to obtaining an early subdivision clearance

Development Services – information sheet 47

What are Performance Agreements?

In certain circumstances, a developer may be eligible to request the early clearance of subdivision conditions before works required to provide water related services are completed. If acceptable to the Water Corporation, this can be done by the developer entering into a Performance Agreement and lodging a suitable security with the Corporation. This brochure summarises the Water Corporation's policy.

If the developer's application for a Performance Agreement is acceptable, there is still an obligation to meet the other conditions of the Land Development Agreement, before clearance is issued. The acceptance of a Performance Agreement request will be at the Water Corporation's discretion.

What works can be the subject of a Performance Agreement?

A Performance Agreement may be acceptable in the following cases.

- Water and/or wastewater reticulation for subdivisions of 5 lots or more from when construction has commenced.
- Prefunded headworks assets either in progress or from when contracts are let and Customer Constructed Works Agreements executed and where an alternate arrangement is made to ensure service availability to the affected lots.

Acceptable forms of financial security

Financial Guarantee

This is an agreement between the developer and a financial institution where the institution guarantees the developer's duty to carry out the works. The Corporation will need the following:

- Unconditional guarantees from approved financial institutions. This includes most large banks in Australia. (Please ensure the institution is acceptable to us before applying for the guarantee.)
- The institution providing the guarantee shall have no interest in the development

Cash

The developer may provide a cash deposit as security.

Steps in the Performance Agreement process

- 1) Complete an Application to Enter a Performance Agreement. The Corporation will then assess eligibility.
- 2) Arrange a consulting engineer to provide design drawings that comply with the Corporation's overall scheme planning and technical standards.
- 3) Pay the Performance Agreement administration fees.
- 4) Sign a *Land Servicing Performance Agreement*, which contains key performance milestones.
- 5) Provide the financial guarantee or cash.

Note: On completion of Steps 1 to 5, the Corporation is able to clear the condition related to the works component of your Land Development Agreement

- 6) At agreed dates, provide progress reports on the works to be constructed.
- 7) At the sale of any new lot, the developer must provide the purchasers with a copy of the Performance Agreement.
- 8) Complete the works according to accepted designs and the agreed timetable by the Service Obligation Date.
- 9) The developer will also need to:
 - keep all land buyers informed of any changes to the Servicing Obligation Date,
 - provide on request from the Corporation, evidence that land purchasers have been kept informed.
- 11) Once the works have been taken over, the developer's performance is assessed and financial security is returned.
- 12) In the case of reticulation works, should the Service Obligation Date not have been achieved an Account will be raised for the forfeited amounts.

For what period can works be deferred under a Performance Agreement?

The maximum periods allowed for completing deferred works to be constructed are as follows;

- a) Headworks 26 weeks
- b) Reticulation Works

	Prior to final inspection	After final inspection
<i>Subdivided lots</i>	<i>Period</i>	<i>Period</i>
<20 lots	14 Weeks	7 Weeks
20 to 50 lots	18 Weeks	9 Weeks
51 to 60 lots	22 Weeks	11 Weeks
> 60 lots	By negotiation	16 Weeks

How much will it cost?

The Performance Agreement Administration Fee amount is shown on the [Sundry Charges Fees and Contributions](#) information sheet.

A fee is charged per:

- Design submission, for water supply, wastewater and drainage headworks, and;
- *Land Development Agreement* for water supply and wastewater reticulation.

Obligations under the Agreement

In relation to reticulation if the developer defaults on the term of the agreement, the Corporation will recover a penalty of 10 % of the security amount per week after the expiration of the Service Obligation Date from the developer.

Stamp Duty is not payable on the agreement and financial security.

How to calculate the security amount?

1) Headworks assets

The accepted tender price (excluding GST) plus a loading of 50%, subject to the following minimum amounts

Water Supply	\$50,000
Wastewater	\$100,000

2) Reticulation assets prior to final inspection

- (a) For assets serving typical residential subdivisions. (R20, R25):

Water Supply	\$2,500 per lot
Wastewater	\$5,500 per lot
- (b) For assets serving large lot residential, commercial, industrial where the length of main per lot is in excess of 20 metres per lot, the amount per lot (in a) factored up by the average length of main per lot.
- (c) Irrespective of either of the above assessments, the minimum amount will be:

Water Supply	\$50,000
Wastewater	\$100,000

3) Reticulation assets after final inspection

- (a) For assets serving typical residential subdivisions. (R20, R25):

Water Supply	\$600 per lot
Wastewater	\$1 300 per lot
- (b) For assets serving large lot residential, commercial, industrial lots where the length of main per lot is in excess of 20 metres per lot, the amount per lot factored up by the average length of main per lot.
- (c) Irrespective of either of the above assessments, the minimum amount will be:

Water Supply	\$12,000
Wastewater	\$25,000

The Water Corporation reserves the right to increase amounts where circumstances dictate.

Explanation of key points

- 1) A **Land Servicing Performance Agreement** requires you to:
 - (a) agree to meet all construction costs,
 - (b) provide a financial security,
 - (c) ensure the works are constructed by the Service Obligation Date according to the Corporation's standards and specifications,
 - (d) keep all land buyers informed
 - (e) provide progress reports on the bonded works,
 - (f) indemnify the Corporation against all costs arising from your default on any term or condition.

- 2) All land buyers shall be informed that
 - (a) there will be no water and/or wastewater services before the Service Obligation Date,
 - (b) if improvements (e.g. a building) are constructed on the lots then:
 - (i) they cannot be used or occupied until services are connected.
 - (ii) the Corporation is not responsible for ensuring the building can be connected where a wastewater service is needed but not available.
 - (iii) property sewer connections will not be allowed before the Corporation deems the sewers operational.
 - (iv) where building applications are accepted before the works are complete, the landowner will be required to sign a Disclaimer.
 - (c) for any building begun during the Performance Agreement period, the land buyer must contact the Corporation on 13 13 95 after the Service Obligation Date period to activate their water service.
- 3) Each application for a Performance Agreement will be assessed for the developer's eligibility. Where a developer has defaulted, or failed to perform against agreed commitments in previous Performance Agreements the Corporation may decline to accept further requests for Performance Agreements.
- 4) In the case of applications involving reticulation assets a developer will forfeit 10% of the security amount held by the Corporation for each calendar week that the take-over of the works occurs after the Service Obligation Date.

Variations to terms and conditions

Variations to the Service Obligation Date of a signed Performance Agreement will only be considered where extenuating circumstances beyond the control of the developer can be demonstrated.

Variations to the eligibility criteria allowing access to the Performance Agreement facility will only be considered where a compelling justification is provided.