

Subdivision Bonds

PLANNING INFORMATION SHEET 13

Sections 108 and 108A of the Resource Management Act 1991 provide for a Bond to be entered into in respect of Conditions of Resource Consent.

It is at the sole discretion of the Council whether a bond will be accepted as part of the subdivision process. Council may require a bond as a Condition of Consent, including for the maintenance of Vested Assets and Landscaping, under the Code of Practice for Subdivision and Development.

Where a bond is required under a Condition of Consent or a request for Bond is accepted by the Council, the Applicant will be responsible for all costs associated with the Bond process.

What is a Bond?

A Bond is a form of surety which is drafted in document form by Council's solicitor. A Bond secures performance, by an applicant, of specific works or specific obligations. The terms of the Bond will vary on a case by case basis, depending on the circumstances for which it is being required.

The main elements of a Bond are:

- (a) A timeframe - how long is the Bond to run for.
- (b) Monetary value - the cost of the work/obligations being bonded.
- (c) Type of security - bank guarantee or cash.

Term of the Bond

The term or timeframe assigned to the Bond will either be set by the conditions of the consent, the Code of Practice for Subdivision and Development, or by agreement with Council staff on a case by case basis. Under the Code of Practice, a Bond for Maintenance of Vested Assets has a set term of twelve months from issue of 224c (of the Resource Management Act 1991) certification, and for Maintenance of Landscaping a set term of eighteen months from issue of 224c certification. In other circumstances the term of the Bond may either be of shorter or longer duration depending on the reason the Bond is being required or accepted. Where a Bond is being taken for works which have not been able to be completed, Council may only allow a three month term for example, or in situations where landscaping or planting has been completed, the term of the Maintenance Bond may extend to three or even five years.

Value of Bonds

When a Bond is required or being applied for, the onus rests on the applicant to provide a set of costings for review and approval by the Council. This set of costings will need to set out the value of the works to be bonded and will provide the basis for determining the value of the Bond. A 50% contingency will also need to be added to these costings to cover any additional costs which may arise in the event of default by the applicant and to minimise risk for the Council in the event that they are required to complete the bonded works and account for inflation. A completed application form and set of costings will need to be provided by the applicant as part of the 224c application process (or prior).

Types of security

A Bond can either be secured by cash or bank guarantee.

If a **Cash Bond**, an applicant is required to lodge cash funds either direct with Council or through Council's solicitor, who will place in their trust account for the duration of the term of the Bond.

If a **Bank Guaranteed Bond**, the applicant's banking representative will be required to be party to the Bond and provide a guarantee that payment of the Bond's agreed value will be made by the bank in the event of default by the applicant.

Types of Bonds

There are two main types of Bond associated with the subdivision process:

Completion Bond

A Completion Bond is required in circumstances where an Applicant has been unable to complete works required under their consent. A Completion Bond is often requested where an Applicant wants to complete their subdivision and obtain 224c Certification so that new titles can issue. It is at the discretion of Council whether a Completion Bond will be accepted. As example of a situation where a Bond maybe accepted is where an Applicant has not been able to complete Landscaping due to seasonal issues or a new road has not been sealed due to adverse weather conditions. Each application for Completion Bond will be considered by Council as they arise and a decision made based on individual cases. The terms of the Completion Bond will specify what works need to be completed and by when, and will have a monetary value assigned which covers the cost of completing the specified works.

Maintenance Bond

A Maintenance Bond is required in all subdivisions where there are assets to vest in the Council. This is a requirement of the Code of Practice for Subdivision and Development. It remains the applicant's responsibility to maintain any assets that are to vest in Council for a period of twelve months following issue of 224c certification. They also carry a responsibility to maintain landscaping associated with such assets for a period of eighteen months following issue of 224c certification. A Maintenance Bond may also be required for Covenant and General Landscaping Conditions which form part of the subdivision. The requirement for a Maintenance Bond will be set out in the conditions of the consent decision together with the time frame and a summary of the works to be bonded. The monetary value however, will need to be set by agreement with Council and a set of costings will need to be submitted by the applicant for this purpose.

Bond document

Once the term and monetary value of the Bond have been agreed, Council staff will arrange the drafting of a Bond which will set out all of these details, together with a set of standard provisions/rules which govern how the Bond operates and the process which occurs should there be any default by the Applicant. This document is then signed by the applicant and Council. Under Section 109 of the Resource Management Act, every Bond given under Section 108A (of the Act) is deemed to be an instrument creating an interest in the land and maybe registered against a Certificate of Title. It will be at the discretion of the Council whether a particular Bond is registered, or whether it is just retained in Council records for monitoring and enforcement (if required).

Bond release

On expiry of the term of a Bond, an applicant may apply (in writing) to Council requesting release of the Bond. An inspection of the relevant works will be made by Council staff and a decision made as to whether the applicant's obligations have been met and the Bond can therefore be discharged.

Where Council accepts that an applicant has satisfactorily completed the bonded works, instruction will be given to release the Bond in question, and an Acknowledgment of Release of Bond Instrument will be signed by the Council.

In the even that Council does not accept that the applicant's obligations have been met, the applicant will be advised of any remedial works that are required to be undertaken. Should there be further default, the enforcement provisions of the Bond will be invoked.

Note: This sheet is intended for a guide only. For further information on Subdivision Bonds, please contact Council's Development Planning Officer or a Senior Development Engineer.

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