

**Policy for Bonding Subdivision and  
Development Works**

**December 2010**

<b>Authority and Other Information</b>	
<b>Date of approval</b>	<b>8 December 2010</b>
<b>Source of approval</b>	<b>Council resolution number 18</b>
<b>Date of commencement</b>	<b>9 December 2010</b>
<b>Source of authority</b>	<b>See Legislative Reference</b>
<b>Legislative Reference</b>	<b>Section 86 of the Local Government (Building and Miscellaneous Provisions) Act 1994</b>  <b>Section 58A and 71 of the Land Use Planning and Approvals Act 1993</b>
<b>Delegations</b>	<b>General Manager</b>
<b>Strategic Plan Reference</b>	<b>1.2</b>
<b>Date of review</b>	<b>This Policy shall be reviewed once every five years or otherwise as required.</b>
<b>Previous policies withdrawn or amended</b>	<b>Not applicable</b>
<b>Department responsible for implementation</b>	<b>Planning and Legal Services &amp; Infrastructure Services</b>
<b>Department responsible for policy</b>	<b>Planning and Legal Services</b>
<b>Publication of policy</b>	<b>On the Council's website and with copies available for inspection and available free of charge from the Council Offices.</b>

### **1. Purpose and Background:**

Bonds and security, including bank guarantees, can allow the sealing of a final plan of survey or a strata scheme or a use to commence prior to the completion of all or some of the works required by a planning permit.

Often, the process enables owners of land to obtain early release of titles and enter into contracts for the sale of lots requiring further works to be completed subject to meeting the Council's requirements.

It is appropriate to provide a clear basis for the use of bonds and security to ensure fairness and equity for developers, the Council and ratepayers.

### **2. Policy statement:**

This policy will provide a basis to ensure

- a) procedural fairness and equity in the Council's administration of bonds for subdivision and development works, particularly through determining the circumstances where a bond or security is appropriate.
- b) the communities interests are protected, including the Council's operational budget.
- c) that the Council continues to support and facilitate economic development.
- d) that the interests of purchasers of lots or buildings are protected.

This will be achieved by the following provisions of the Policy which set out the circumstances under which the Council will accept a bond or security for the completion of subdivision and development works.

### **3. Application:**

- 3.1. The Council may allow bond or security for works to be provided by an owner of land prior to the issue of the certificate of practical completion or prior to the issue of a strata scheme or the approved use of the land commencing if
  - 3.1.1. the works will be carried out as required by the Council and any approved engineering design drawings, and
  - 3.1.2. the owner(s) provide an adequate bond or security to the Council in an acceptable form.
- 3.2. A bond or security will not be accepted for
  - 3.2.1. reticulated sewer or reticulated water;
  - 3.2.2. on-site wastewater management system(s);
  - 3.2.3. any matter required to protect or rehabilitate public health or the natural environment;
  - 3.2.4. vehicular access or driveway works unless the construction work is valued at \$20,000 or more.
- 3.3. A bond or security may be accepted by the General Manager where:
  - 3.3.1. a planning permit or other Council approval has been granted;
  - 3.3.2. the works to be subject to the bond or security are in conformity with the planning permit or other approval and any approved engineering design drawings;
  - 3.3.3. a minimum of 50% of all works required by the planning permit or other Council approval have been completed as demonstrated in certification provided by a practicing professional civil engineer;

- 3.3.4. all issues pertinent to the interest of public safety and all essential services including reticulated water and sewer have been completed to the satisfaction of Southern Water;
  - 3.3.5. written confirmation has been supplied that all underground telecommunications and electricity supplies have been completed;
  - 3.3.6. the full costs of works to be submitted a schedule of works to The Council including (if required);
    - 3.3.6.1. a list of all works to be subject to the bond or security;
    - 3.3.6.2. the estimated cost of completing works to be subject to the bond or security in accordance with any planning permit or other Council approval and any approved engineering design drawings plus a 10% contingency sum;
    - 3.3.6.3. certification from a professional practicing civil engineer that the information submitted under clauses 3.3.6.1 and 3.3.6.2 are reasonable and accurate; and
    - 3.3.6.4. a written statement from the owner that the all works to be subject to the bond or security will be completed within six (6) months of the date that the Bond or Security Agreement is endorsed by the General Manager.
  - 3.3.7. all fees required by the Council's fee schedule for the applicable financial year have been paid;
  - 3.3.8. the owner pays all associated costs with the bond or security including any Lands Title Office fees;
  - 3.3.9. the owner has entered into a Bond or Security Agreement with the Council and, if required at the discretion of the Council, the owner will enter into a covenant with the Council under section 71 of the *Land Use Planning and Approvals Act 1993* that registers the agreement on all relevant certificates of title;
  - 3.3.10. the owner has provided the required bond or security that is required by the Council;
  - 3.3.11. the owner satisfies any other requirements that the Council has in relation to the provision of the Bond of Security Agreement, including environmental and safety requirements; and
  - 3.3.12. in the case of non-subdivision works, the owner agrees to register the Bond or Security Agreement on the title for all relevant lots through a Part 5 Agreement with the Council.
- 3.4. A bond or security may be declined by the General Manager at their discretion and in doing so, may consider:
- 3.4.1. If the owner has failed to construct infrastructure or other works within the time specified by the Huon Valley Council or any other Council;
  - 3.4.2. If the owner has constructed infrastructure or other works to a standard not in accordance with Municipal Standard Drawings, engineering design drawings or any other relevant requirement of the Huon Valley Council or any other Council;
  - 3.4.3. The owner has previously forfeited a bond or security with the Huon Valley Council or any other Council.
- 3.5. The bond or security must:
- 3.5.1. be an amount 1.5 times that determined under clause 3.3.6 unless that amount exceeds \$100,000 where the bond or security amount must be 1.25 times the value of works;

- 3.5.2. be in the form of a cash bond or deposit or an unconditional guarantee for the amount required by clause 3.5.1 by an authorised deposit-taking institution or a money-lending, insurance or trading corporation approved by the Council;
  - 3.5.3. if in the form of a cash deposit, all monies will be held in an at-call account in the name of Huon Valley Council and all interest will be retained by the Council to a maximum of \$500; and
  - 3.5.4. if in the form of a bank guarantee be
    - 3.5.4.1. unconditional and irrevocable,
    - 3.5.4.2. in the name of the owner of the land or other party to the General Manager's satisfaction,
    - 3.5.4.3. enable the Council to have immediate access to the monies secured by the bank guarantee at any time where the Council is satisfied the owner is in breach of any requirements concerning the completion of the works or any other requirement of the Bonds or Security Agreement;
    - 3.5.4.4. not require the approval of the owner (or an agent of the owner) for the release of any monies secured by the bank agreement
- 3.6. Bond Period
- 3.6.1. All works subject to a Bond or Security Agreement are to be completed in full within six (6) months of the date that the Bond or Security Agreement is endorsed by the General Manager except for a Bond of Security Agreement pursuant to clause 3.2.8 where the bond period may be extended to a maximum of 2 years
- 3.7. Completion of works subject to a Bond or Security Agreement
- 3.7.1. The Council is not required to release a bond or security until the owner satisfactorily demonstrates to the Council that the works have been completed as required;
  - 3.7.2. The owner must, within the time specified in the Bond or Security Agreement:
    - 3.7.2.1. complete the works;
    - 3.7.2.2. arrange for a certificate of completion to be provided by the Council so that these works can be taken 'On-Maintenance' by the Council;
    - 3.7.2.3. provide progress reports on the works being constructed as required by the Council; and
    - 3.7.2.4. if required, submit to the Council final 'as-constructed' plans for the works when required by the Council.
  - 3.7.3. Following notification from the owner that the works are complete, in the opinion of the owner, Council is to inspect the works.
    - 3.7.3.1. If satisfied that the works have been satisfactorily completed the Council may release 90% of the amount and will retain the remaining 10% for an on-maintenance period expiring six months later.
    - 3.7.3.2. If at the end of six month maintenance period no new, additional or repair works are required then the remaining 10% will be released.

- 3.7.3.3. If at the end of six month maintenance period new, additional or repair works are required, the remaining 10% will be released once the work is completed to the satisfaction of the Council.
- 3.7.4. The Council will provide a certificate and release the bond if, in the opinion of the Council:
  - 3.7.4.1. the works are completed and, in the case of a road, are suitable to be taken over by the Council as a road maintainable by the Council in accordance with the *Local Government (Highways) Act 1982*, and
  - 3.7.4.2. no other related works are outstanding and need to be completed by the owner.
- 3.7.5. Where the owner has fulfilled all the requirements of the permit or other approval and has carried out the works as required, then the Council may if the Bond or Security Agreement has been registered on the owner's title, arrange for the cancellation of registration of the Agreement.
- 3.8. Failure to Comply with Terms of an Bond or Security Agreement
  - 3.8.1. The Council may, where the owner has failed to comply with the terms of the Bond or Security Agreement, serve written notice on the owner requiring the owner to either:
    - 3.8.1.1. comply with the terms of the Agreement, or
    - 3.8.1.2. show cause why the Council shall not have access to the bond to complete the works within twenty-one (21) days (or other such period required by Council) of the receipt of the notice.
  - 3.8.2. The Council may have immediate access to the bond or security pursuant to the Bond or Security Agreement, where:
    - 3.8.2.1. the owner has not complied to the satisfaction of the Council with the requirements of the notice served pursuant to clause 3.7.1;
    - 3.8.2.2. if a relevant lot(s) subject to a bond or security pursuant to clause 3.2.8 of the Policy are sold;
    - 3.8.2.3. the owner has, in the reasonable opinion of the Council, failed to comply with the terms of the Bond or Security Agreement, notwithstanding that a written notice has been served pursuant to clause 3.7.1;
    - 3.8.2.4. in the interest of public safety, certain works are required to be undertaken by the Council prior to the expiration of the term of the Bond or Security Agreement,
    - 3.8.2.5. the owner:
      - 3.8.2.5.1. is declared insolvent or bankrupt;
      - 3.8.2.5.2. in the case of a company or other corporate entity, is unable to pay its debts when required, or has a receiver, manager or administrator appointed to manage its business or assets in accordance with applicable legislation;

- 3.8.2.5.3. ceases trading or carrying on its business; iv) is a company and there is a change in the shareholders of the company which in the reasonable opinion of the Council may affect the ability of the owner to complete the infrastructure or other works as required; or
      - 3.8.2.5.4. in any other circumstance considered reasonable by the Council to ensure that the works are carried out as required, following notification to the owner.
- 3.8.3. If, in the opinion of the Council, the works are only partially completed by the required completion date, or have not been completed in accordance with the Council's requirements, then the Council may:
  - 3.8.3.1. not release any of the bond security (cash deposit or bank guarantee) provided by the owner;
  - 3.8.3.2. release part of the bond security (cash deposit or bank guarantee) provided by the owner;
  - 3.8.3.3. extend the date by which the works are to be completed to another date specified by the Council;
  - 3.8.3.4. carry out the works to ensure completion.

#### **4. Procedures:**

- 4.1. The Policy is to be implemented under delegated authority to the General Manager.
- 4.2. The Policy is to be reviewed every five (5) years or as otherwise required.

#### **5. Attachments:**

Attachment A: Bond or Security Agreement Template