

DEVELOPMENT GUARANTEES AND BONDS POLICY

Approved By: Council
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File: 126

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1. PURPOSE

The purpose of this policy is to ensure that the infrastructure associated with a development or subdivision is completed without any unnecessary financial imposition on the Council or the community.

Bonds and bank guarantees are required as security for works undertaken and are usually applied as a condition of a permit issued under the *Land Use Planning and Approvals Act 1993*. This policy outlines the requirements that will apply within the Derwent Valley municipality and provides consistency and a clear framework for current and future developers.

Further, this policy will facilitate the release of property titles prior to the completion of infrastructure where it is reasonable to do so while ensuring that the subdivision works are completed in a timely manner.

2. SCOPE

This policy applies to a variety of bonds associated with development and subdivision applications approved by the Council within the municipal area where public infrastructure forms part of the application, including:

- Infrastructure Protection Bonds
- Landscaping Bonds
- Outstanding Works Bonds
- Maintenance Bonds.

Infrastructure Protection Bond – a bond to provide surety against the damage of existing Council infrastructure (e.g., kerb, gutter, footpath, grass verge, stormwater) through the construction of the period of development works.

Landscaping Bond – a bond payable in lieu of completion of the landscaping works required through a planning permit for a subdivision or multiple tenancy development.

Outstanding Works Bond – a bond payable in lieu of completion of infrastructure works required through a planning permit for a development or subdivision.

Maintenance Bond - a bond for a development following the practical completion of civil construction works, for the duration of the maintenance period.

This policy will be reviewed regularly to provide currency with best practices, risk assessment and legislative changes.

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3. LEGISLATION

- *Building Act 2016*
- *Land Use Planning and Approval Act 1993*
- *Local Government Act 1993*
- *Local Government (Building and Miscellaneous Provisions) Act 1993*
- *Local Government (Highways) Act 1982*
- *Strata Titles Act 1998*
- *Urban Drainage Act 2013*

4. DEFINITION

The definitions of terms used in this policy

Development	as defined in the <i>Land Use Planning and Approvals Act 1993</i>
Final Plan	as defined in the <i>Local Government (Building and Miscellaneous Provisions) Act 1993</i>
Strata Scheme	as defined in the <i>Strata Titles Act 1998</i>
Subdivide	to divide the surface of a lot by creating estates or interests giving separate rights of occupation otherwise than by: <ul style="list-style-type: none"> • a lease of a building or of the land belonging to and contiguous to a building between the occupiers of that building; • a lease of airspace around or above a building; • a lease of a term not exceeding 10 years or for a term not capable of exceeding 10 years; • the creation of a lot on a strata scheme or a staged development scheme under the Strata Titles Act 1998; or • an order adhering existing parcels of land.
Subdivision	the act of subdividing or the lot subject to an act of subdividing.
Developer	The owner (person or company), or their representative, of the land prior to issue and sale of titles.

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5. POLICY

Section 86 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* provides that the Council, before approving a plan for a subdivision, 'may require security for payments and the execution of works and refuse to approve the application until such security is given'.

Sections 10 and 11 of the *Local Government (Highways) Act 1982* provide for the ability of council to ensure that suitable works are undertaken and maintained for road construction.

Part 5 of the *Land Use Planning and Approval Act 1993* also assists in providing a framework to enable the Council to accept security by way of a bond or guarantees for these works from a recognised financial institution as well as the ability to register such agreements on the Certificate of Title to which the development relates.

This process enables a developer to achieve early release of Titles and enter into contracts for the sale of lots requiring further development works, while ensuring that the works are undertaken in a timely manner to suit the operational needs of future users.

The application of a bond, its value threshold, method of calculation, construction timing or any other aspect of any bond under this policy applies unless specified otherwise in a condition of a development or subdivision permit, or a specific decision of the Council.

If the works covered by a bond are not undertaken as specified in the permit conditions, or as otherwise agreed in the bond form or deed of agreement, Council can undertake the works, or cause them to be undertaken, with the costs of the works (including the cost of any permits, documentation, tender and contract management and supervision) to drawn from the bond or guarantee with any outstanding funds released to the developer.

5.1 CALCULATION & FORM OF BOND

The Council will accept the following types of payment methods as acceptable for lodging a Bond:

- Cash/Direct Debit or Cheque
- A guarantee from a recognised financial institution

Bonds will be received and held in accordance with the Councils' accounting and document control policies. No interest will accrue on cash deposits.

Council will not release any bond, or portion of a bond, to any third parties without the written consent of the developer.

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5.1.1 CALCULATION OF BOND VALUE

The minimum value of a bond shall be based on the following calculations:

- **Infrastructure Protection Bond** – as set out in Council's Fees and Charges Register
- **Landscape Bond** – 1.5 x agreed cost of works based on an approved landscape plan
- **Outstanding Works Bond** – 1.5 x agreed cost of works based on an itemised and costed scope of works prepared by the developer's Engineer
- **Maintenance Bond** – 5% of the full contract sum or agreed estimated construction cost to be secured by the bond.

Any estimated cost of work must be based on current market values for labour and materials. Where the bond period extends beyond 12 months, the cost of any works likely to be undertaken in a future year must be indexed at a rate based on the average of the Hobart CPI for the previous 3 quarters.

Separate Bonds may be undertaken for each stage of a development or subdivision as approved through the relevant planning permit except as specified in Section 5.1.2.

5.1.2 MINOR WORKS GUARANTEE

If the value of any bond (based on the above calculations) is \$25,000 or less, the risk to the Council is low, and the administration costs are such that the use of a simplified bond form is sufficient.

A bond under this subsection must be released as a single stage.

5.1.3 MAJOR WORKS GUARANTEE

Where the value of any bond (based on the above calculations) is greater than \$25,000 the developer is to enter into a Deed of Agreement, or similar document, with Council. Dependent upon the nature of the bond and works, the Agreement may require to be registered under Section 78 of the *Land Use Planning and Approvals Act 1993*.

A bond under this subsection may be drawn down in stages in accordance with a schedule to be agreed upon with Council. The final balance of a bond, following a progressive drawdown, is not to be less than 30% of the value of the original bond.

A fee for the execution of the Agreement (as set out in Council's Fees and Charges Register) is payable by the developer, along with the costs of any registration. All costs relating to the establishment and maintenance of a bond are to be borne by the developer.

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5.2 INFRASTRUCTURE PROTECTION BOND

An Infrastructure Protection Bond is a bond of a nominated amount payable to provide surety against the damage of Council infrastructure through the construction of the development (ie: the kerb, footpath and apron at the front of new construction).

5.2.1 TAKING OF INFRASTRUCTURE PROTECTION BOND

This bond is to be levied as part of the building application for all new dwellings and major commercial constructions where access is across Council infrastructure (including land which the Council owns or maintains).

The bond is to be paid, and the bond form is signed prior to the commencement of work.

5.2.2 RELEASE OF INFRASTRUCTURE PROTECTION BOND

Upon request by the developer following the issue of a Certificate of Occupancy for the development, Council officers will inspect the development to identify if any damage to Council's land or infrastructure has occurred, which could be reasonably attributed to the construction activity.

The bond will only be released where Council is satisfied that any identified damages have been appropriately rectified.

5.3 LANDSCAPING BOND

A Landscaping Bond is a bond payable in lieu of completion of the landscaping works required through a planning permit for a subdivision or multiple tenancy development.

5.3.1 TAKING OF LANDSCAPE BOND

A Landscape Bond will only be accepted where the following criteria are met:

- The value of the bond (based on the above calculations) does not exceed \$50,000
- A Landscape Plan has been submitted by the developer and approved by Council
- A costed schedule for the establishment and initial maintenance of the approved Landscape Plan has been submitted by the developer and approved by Council.

The bond is to be paid and the bond form signed (or deed executed) prior to the issue of a Certificate of Approval for a Strata Scheme or the sealing of the Final Plans for subdivision for the lot on which the landscaping is required – whether a private lot, common property or Public Open Space.

The developer is responsible to ensure that suitable permissions for the undertaking of this work are obtained and maintained, including if the ownership of the subject property is transferred.

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5.3.2 RELEASE OF LANDSCAPING BOND

The works covered by a Landscape Bond are to be undertaken within 6 months of the issuing of the Certificate of Approval or sealing of Final Plans (or such further period as agreed with the Council).

Upon request by the developer following the completion of the works, Council officers will inspect the development to verify that the works have been completed in accordance with the approved Landscape Plan

The bond will only be released where Council is satisfied that works have been completed and sufficiently maintained.

5.4 OUTSTANDING WORKS BOND

An Outstanding Works Bond is a bond payable in lieu of completion of infrastructure works, required through the approval of a development or subdivision application.

5.4.1 TAKING OF OUTSTANDING WORKS BOND

An Outstanding Works Bond will only be accepted for uncompleted infrastructure works where the following criteria are met:

- The value of the bond (based on the above calculations) does not exceed \$250,000
- The works are detailed or required through the approval of a development or subdivision application
- The works are only for infrastructure intended to be transferred to Council following construction and a suitable maintenance period
- The works are wholly on public land, or land to be transferred to Council as part of the approved development or subdivision
- Engineering plans and specifications for the works have been submitted by the developer and approved by Council
- The developer's Engineer has provided appropriate documentation detailing how the value of the works has been calculated
- A schedule of work has been submitted by the developer and approved by Council, ensuring that the works will be completed in time to allow the development, or future development on the site, to be occupied or used
- Where the works relate to the provision of or upgrade to, the stormwater system, suitable temporary mitigation measures have been approved and implemented
- All relevant fees (as per the council's Fees and Charges Register or permit conditions) to that stage of the development have been paid
- All works required for public safety have been completed
- All necessary works for the provision of electricity, sewerage, telecommunications and water for the development have been completed and verified by the relevant utility provider.

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The bond is to be paid and the deed executed (or bond form signed) prior to the issue of a Certificate of Approval for a Strata Scheme or the sealing of the Final Plans for subdivision for which the infrastructure relates.

The developer is responsible to ensure that suitable permissions for the undertaking of this work are obtained and maintained, including if the ownership of the subject property is transferred.

5.4.2 RELEASE OF OUTSTANDING WORKS BOND

The works covered by an Outstanding Works Bond are to be undertaken in accordance with the agreed schedule (or such further period as agreed with Council).

Upon request, Council will only release the Outstanding Works Bond or requested draw down, upon receipt of an engineering certification that the specialised works have been completed. Council officers will inspect the development to verify that the works have been completed as specified. The bond will only be released where Council is satisfied that works have been completed and sufficiently maintained.

Upon release of an Outstanding Works Bond, Council will issue a Certificate of Completion for the works.

5.5 DEFECTS LIABILITY

Where private civil works become a Council asset, the Developer will be responsible for the rectification of any defects in those works which become apparent within a Defects Liability Period of twelve (12) months commencing on the date that all relevant civil works receive practical completion. Council may require an extension of the Defects Liability Period if defects with the works identified are not completed during the initial Defects Liability Period.

Where private civil works become Council assets, the Developer will be wholly responsible for;

- a. Maintaining the 'asset' for the duration of the Defects Liability Period or as otherwise conditioned;
- b. Costs associated with such maintenance
- c. Documenting and providing the council with the required ongoing maintenance schedule

5.6 MAINTENANCE BONDS

A Maintenance Bond is a bond that guarantees against defective materials or workmanship. This bond is applied to works that have been undertaken and is in place for the statutory period of 6 months under the *Local Government (Highways) Act 1982*. Maintenance Bonds may be extended if required.

5.6.1 TAKING OF MAINTENANCE BOND

A Maintenance Bond is required to be paid and the bond form signed (or deed executed) prior to the issue of a Certificate of Completion for the provision of any public road or public infrastructure (to be transferred to Council) undertaken by a private developer.

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The developer is responsible to ensure that suitable permissions for the undertaking of this work are obtained and maintained, including if the ownership of the subject property is transferred.

5.6.2 RELEASE OF MAINTENANCE BONDS

At the completion of the statutory period, Council Officers will inspect the development to identify any defects.

The bond will only be released where Council is satisfied that any identified defects have been appropriately rectified and no new defects have emerged.

If there are identified defects, the Council will extend the statutory period for up to an additional 6 months and notify the developer accordingly. If the defects are rectified within this second period, then the Council will release the bond.

If a defect is identified as high risk, the Council will notify the developer accordingly and may draw upon the bond at that time.

5.7 REFUSAL TO ACCEPT A BOND

The Council may refuse a request to accept any bond at its discretion, or at the discretion of the General Manager if it considers that such a bond presents an unacceptable risk. The criteria for determining an unacceptable level of risk includes, but is not limited to, the following:

- the developer has previously been required to carry out infrastructure or other works in accordance with a permit or other approval and has:
 - failed to ensure the construction of the infrastructure or other works within the specified time or in accordance with the Council's requirements
 - constructed infrastructure works to a standard not in accordance with Municipal Standard Drawings and other relevant Council requirements, or
 - constructed other works to a standard not in accordance with Councils' requirements.
- where the General Manager is not satisfied that the developer will be able to complete the proposed works in accordance with the requirements
- where it has been previously necessary for the Council to require forfeiture of a bond, or have access to the security provided by the developer in relation to infrastructure or other works
- where the General Manager considers that the size or nature of the bond, or any aspect of the works, presents a significant financial risk to Council or a safety risk to the public, or
- It is otherwise not in compliance with this Policy.

6. RELATED DOCUMENTS

DVC-PRO-53-Development Guarantees and Bonds Procedure
Bond Agreement Form
Bond Deed of Agreement