





TASMAN COUNCIL

Bonds & Bank Guarantees Policy

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| Policy Number | C010 |
| Responsible Officer | General Manager |
| Approval Date | March 2024 |
| Review Date | March 2028 |



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1.0 Policy Statement

Bonds and bank guarantees are required by Tasman Council as security for works to be undertaken as a condition of subdivision or other approvals. Section 86 of the *Local Government (Building and Miscellaneous Provision) Act 1993* and Part 5 of the *Land Use Planning Approvals Act 1993* provide the framework to enable Council to accept security by way of deposits or guarantees from financial institutions for these works.

2.0 Definitions

In this Policy, the following terms have the following meanings:

“Council” means the Tasman Council;

“Defects Liability/Early Title Bond Agreement” means an agreement in the terms annexed hereto and marked **‘A’ schedule A**;

“Defects Liability Period” means the period of time during which a developer shall be responsible for the rectification of defects associated with civil works that will become assets owned and maintainable by Council;

“Developer” means the holder of a permit for use and/or development issued by Council pursuant to the *Land Use Planning and Approvals Act 1993* (Tas);

“Early Title” means the early endorsement of the Final Plan of Survey prior to all relevant works being completed on site by the developer/contractor, assuming *substantial commencement* has occurred.


“Final Plan of Survey” means the final plan submitted to Council for sealing and lodgement with the Recorder of Titles pursuant to s. 89 of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Tas);

“General Manager” means the person occupying the position of General Manager of the Sorell Council appointed in accordance with the *Local Government Act 1993* (Tas);

“Outstanding Works Bond Agreement” means an agreement in the terms annexed hereto and marked **‘A’ schedule B**;

“Policy” is a reference to this policy; and

“Protection of Council Infrastructure Bond Agreement” means an agreement in the terms annexed hereto and marked **‘A’ schedule c**.

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3.0 Objective

- 3.1 To provide for the effective management of bonds and bank guarantees required as security for works to be undertaken as a condition of subdivision or other approvals to ensure there is adequate provision of services and public infrastructure. The policy covers defects liability periods and early release of title.

4.0 Scope


- 4.1 The Bonds and Bank Guarantees Procedure is to be implemented to ensure the effective management of bonds and bank guarantees. The policy covers defects liability periods and early release of title. This policy covers the form of security required to be lodged by the developer during the defect liability period following subdivision works, early endorsement of Final Plan of Survey, protection of Council services during subdivision works if relevant and the requirements associated with early release of title.

The policy will formalise the responsibilities of Council and developers during the defect liability period, after subdivision works have been completed and the early release of titles. Many other Councils already have similar policies operating.

5.0 Procedure

5.1 Civil Works - Defects Liability Period

- 5.1.1 Where private civil works become Council assets, 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 are certified by Council's General Manager as being complete. Council may require an extension of the Defects Liability Period if defects with the works are identified during the initial Defects Liability Period.
- 5.1.2 Where private civil works become Council assets, the Developer will be wholly responsible for:
- (a) Maintaining those assets for the duration of the Defects Liability Period or as otherwise conditioned;
 - (b) The costs of such maintenance; and
 - (c) Documenting the required ongoing maintenance schedule and requirements as required.

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5.1.3 Where private civil works become Council assets, Council will require the Developer to provide security to Council for the duration of the Defects Liability Period. Such security may be in the form of either;

- (a) a cash bond; or
- (b) An unconditional bank guarantee from a reputable financial institution carrying on business in Australia.

5.1.4 The value of the security provided by the Developer pursuant to paragraph 5.1.3 must be equal to ten percent (10%) of the **Total Value** of the relevant works. The Total Value of the relevant works is equal to:

- (a) The agreed value of the relevant works (referred to in this clause 5.1.4 as the **“Agreed Value”**); plus
- (b) A contingency sum equal to ten percent (10%) of the Agreed Value.

5.1.5 Council will not pay interest to a Developer with respect to any security held in the form of a cash bond.


5.1.6 Where a Defects Liability Period applies, the developer must enter into a Defects Liability Bond Agreement with Council to ensure compliance with the requirements of this Policy.

5.1.7 Notwithstanding clause 5.1.4 of this Policy, the minimum value of any security provided pursuant to paragraph 5.1.4 of this Policy will be equal to the amount of **FIVE THOUSAND DOLLARS (\$5000.00)**.

5.2 Early Endorsement of Final Plan of Survey

5.2.1 Council may permit the endorsement of a Final Plan of Survey prior to the completion of all relevant works on the following basis:

- (a) Subdivision works must be substantially completed, with only minor works outstanding (e.g. final course of road surfacing, street signs and footpaths);
- (b) Drainage and access works must be operational;
- (c) Ordinarily, deferred completion of subdivision works will only be permitted for works that subsequently become owned by the Council. For works that subsequently become owned by an authority other than Council the developer must submit a letter of release to Council from the relevant authority;
- (d) As-constructed plans for completed works must be submitted to Council prior to endorsement of the final plan;

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- (e) All outstanding works **must** be completed within six (6) months of the endorsement of the Final Plan of Survey;
- (f) A schedule of costs of works completed by the Developer’s engineer must be provided to Council;
- (g) Security for outstanding works must be provided to Council prior to endorsement of the Final Plan of Survey in the form of:
 - i. A cash bond; or
 - ii. An unconditional bank guarantee from a reputable financial institution carrying on business in Australia.
- (h) The amount of the security referred to in paragraph 5.2.1(g) of this Policy shall be not less than 1.5 times the **Total Value** of the relevant outstanding works. The Total Value of the relevant outstanding works is equal to:
 - i. The agreed value of the relevant outstanding works (referred to in this clause 2.1 as the “**Agreed Value**”); plus
 - ii. A contingency fee equal to fifty percent (50%) of the Agreed Value.

5.2.2 Where Council permits the endorsement of a Final Plan of Survey prior to the completion of all relevant works, the developer must enter into an Outstanding Works Bond Agreement with Council to ensure compliance with the requirements of this Policy.


5.2.3 Notwithstanding clause 5.2.1(h) of this Policy, the minimum value of any security provided pursuant to paragraph 5.2.1(g) of this Policy will be equal to the amount of **FIVE THOUSAND DOLLARS (\$5000.00)**.

5.3. Protection of Council Services and Infrastructure (not including BA Bonds)

5.3.1 Where the General Manager reasonably believes that any subdivision or development works pose a risk of causing injury or damage to any existing council services or infrastructure (e.g. kerb, guttering, footpaths, grass verges, service lines and the like), Council may require payment by the Developer of a security bond against any such damage.

5.3.2 If required by Council, the security bond may be in the form of either:

- (a) A cash bond in an amount to be determined by the General Manager; or

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- (b) An unconditional bank guarantee from a reputable financial institution carrying on business in Australia in an amount to be determined by the General Manager;

5.3.3 The security bond will not be released by Council until:

- (a) The General Manager is satisfied that the relevant works have been completed and no damage has been caused to any Council services or infrastructure; or
- (b) Any damage occasioned to Council services or infrastructure has been remedied to the satisfaction of the General Manager, whichever is the first to occur.

5.3.4 In the event that Council services or infrastructure are damaged and not repaired within a reasonable timeframe (but not exceeding sixty (60) days) the General Manager may, without giving notice to the Developer, apply the security bond towards repairing the relevant damage.


5.3.5 Where Council requires a security bond pursuant to clause 4.1 of this Policy, the developer must enter into a Protection of Council Infrastructure Bond Agreement with Council to ensure compliance with the requirements of this Policy.

6.0 Other Matters

- 5.1 All conditions of approval for subdivisions must be satisfied prior to the endorsement and sealing of the Final Plan of Survey by Council.
- 5.2 The General Manager (or their duly authorised nominee) is authorised to decline to allow bonding of outstanding works where the deferred completion of works would not be in the best interests of Council or the community.
- 5.3 All requests for security (e.g. a bond or a bank guarantee) must be made to the General Manager in writing by the Developer or their duly authorised representative and must be accompanied by a schedule of costs of works completed by the Developer's engineer.
- 5.4 All requests for reduction of guarantee are to be made in writing and are to include the value of all outstanding work prepared by the Developer's engineer.

7.0 Legislation

- 7.1 *Local Government (Building and Miscellaneous Provision) Act 1993.*
- 7.2 *Land Use Planning and Approval Act 1993.*

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8.0 Roles & Responsibilities

8.1 Compliance with this Policy is the responsibility of the General Manager

9.0 Approved Policy

This policy was approved at the ordinary Council meeting held on 27 March 2024, resolution number 10/03.2024/C.




Blake Repine
General Manager

Policy Developed – March 2012
 Policy Approved – March 2012
 Policy reviewed – September 2014
 Policy reviewed – June 2016
 Policy reviewed – October 2018
 Policy reviewed – March 2024
 Policy to be reviewed – March 2028

Disclaimer

That this policy be read in conjunction with any or all other Council and/or Management Policies

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Annexure A

LOCAL GOVERNMENT (BUILDING & MISCELLANEOUS PROVISIONS) ACT 1993

Section 86

BOND

Before approving the scheme of a building estate Council may, pursuant to the Provisions of Section 86 of the Local Government (Building & Miscellaneous Provisions) Act 1993 (hereinafter called 'the Section'), require security for payments and the execution of works AND WHEREAS in pursuance of the Section the TASMAN COUNCIL (hereinafter called 'the Council'), hereby requires:

INSERT OWNER NAME

(hereinafter called 'the owner'), to provide security for the execution by the owner of works listed in the Schedules hereto in accordance with the said Section before approving the owner's scheme of

INSERT APPLICATION NO AND DETAILS
at **INSERT ADDRESS**

AND WHEREAS the owner hereby agrees to provide such security by lodging with the Council a payment for the sum of **INSERT BOND AMOUNT**

NOW BY THIS BOND

I the owner, hereby bind myself to the Council as follows to:-


execute completely the works listed in Schedule "A" hereto within six months (or such further time as the Council may allow), of the scheme taking effect and;

lodge the said guarantee with the Council.

and the owner agrees that if he fails within the afore-stated times to complete the works or any part of the works listed in Schedule "A" hereto he shall within thirty (30) days of demand pay to the Council, in the case of none of the works having been completed, the total value of the works and in the case of part of the works having been completed, a sum certified by the Council's Engineer to be the cost of completing the works.

For the purpose hereof any works required to be completed hereunder shall only be deemed completed when the Council's Engineer for the time being has certified that they have been completed to his satisfaction.

THE ABOVE OBLIGATION is conditioned to be void if the owner has completed the work stated in Schedule "A" hereto to the satisfaction of the Council's Engineer to the sum of **INSERT COST AMOUNT** or such other sum as certified by the Council's Engineer to be the cost of completing the works has been paid to the Council, but in the event of the above bounded owner failing to perform such obligation or any part of them the bond shall remain in full force and effect notwithstanding no demand being made by the Council.

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**SCHEDULE
"A"**

Maintenance bond required in accordance with **INSERT CONDITION NO** and provision of **INSERT CONDITION REQUIRMENT** to the satisfaction of the General Manager in accordance with **INSERT CONDITION NO** of the Planning Permit **INSERT APPLICATION NUMBER** issued by Council on **INSERT DATE**.

**SCHEDULE
"B"**

Outstanding works bond for the works required in accordance with **INSERT CONDITION NO** and provision of **INSERT CONDITION REQUIRMENT** to the satisfaction of the General Manager in accordance with **INSERT CONDITION NO** of the Planning Permit **INSERT APPLICATION NUMBER** issued by Council on **INSERT DATE**.

**SCHEDULE
"C"**

Protection of Council Infrasture Bond as required in accordance with **INSERT CONDITION NO** and provision of **INSERT CONDITION REQUIRMENT** to the satisfaction of the General Manager in accordance with **INSERT CONDITION NO** of the Planning Permit **INSERT APPLICATION NUMBER** issued by Council on **INSERT DATE**.

Dated this _____ day of _____ **INSERT YEAR**

SIGNED SEALED AND DELIVERED

by the said Cunningham Holdings Pty Ltd _____
(Signature of Owner)

in the presence of: _____(Signature of Witness)

_____(Print Name of Witness)

_____(Address of Witness)

_____(Occupation of Witness)