

BOND POLICY

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1 Introduction

- 1.1 A Bond is like a financial guarantee or promise that a person or company (the consent holder) gives to the Council to make sure they carry out the conditions of their resource consent. The Bond is paid to the Council to ensure that if the person or business does not do what they agreed to do under the consent, the Council can step in and use the bond money to fix or complete the required work.
- 1.2 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 circumstance for which it is being required.
- 1.3 There are two main instances where a Bond requirement may arise:
 - (a) To secure compliance with conditions of a resource consent under ss108 and 220 of the Resource Management Act 1991 (RMA); or
 - (b) To secure compliance with conditions of a resource consent pursuant to s222 of the RMA, where the Council has agreed to grant a completion certificate pursuant to s224(c).
- 1.4 The main elements of a Bond are:
 - (a) A timeframe – how long the Bond will run for.
 - (b) Monetary value – the cost of the work/obligations being bonded.
 - (c) Type of security – bank guarantee or cash.
- 1.5 Section 222 of the RMA allows for subdivision consent conditions to be bonded, and a completion certificate to be issued, to enable a section 224 Certificate to be issued prior to compliance with the relevant consent conditions.
- 1.6 It is at the sole discretion of the Council whether to enter into a Bond for performance of any condition of consent under s224. In exercising its discretion, the Council will use its powers reasonably and in accordance with this policy to guide its discretion on such matters.

2 Policy Context

- 2.1 Bonds can be for land use consents as well as subdivision consents. When required by a condition of consent, Bonds can secure the ongoing performance of conditions relating to long-term effects, including (for example):
 - (a) A condition relating to the alteration or removal of structures.
 - (b) A condition relating to remedial, restoration, or maintenance work.
 - (c) A condition providing for ongoing monitoring of long-term effects.
- 2.2 The Council may still issue a Bond in relation to a subdivision consent under s222. This section applies where compliance with a condition of subdivision consent is dependent upon the completion by the owner of any work required by the territorial authority (for example, required by condition of consent).
- 2.3 Section 222 allows the consent authority to issue a certificate requiring a Bond binding the owner to carry out the work to the satisfaction of the consent authority. Where Council enters a Bond under s222, it has all the powers as if the Bond had been required as a condition of subdivision consent under s108A of the RMA.

- 2.4 The Bond policy seeks to address those instances where uncompleted subdivision works are minor in nature and have been delayed beyond the developer's control. These situations will be limited to those works where approximately 95% of the works are completed.
- 2.5 Under these circumstances it would be unreasonable to withhold the s224(c) Certificate as the risk of granting the s224(c) Certificate with the works uncompleted is minimal and the consequences of the not issuing the s224(c) Certificate would outweigh the risk of Bond the works and the administrative costs of administering the Bond.

3 Policy Objective

- 3.1 The objective of the Bond Policy is to provide the core principles on what the Council Bonds and under what circumstances these items may be bonded.

4 Approach to Bond resource consent conditions where a Bond is required

- 4.1 Where a resource consent condition refers to the requirement for a Bond, both the resource consent and the conditions it refers to need to be specific and quantifiable.
- 4.2 In particular, the resource consent will identify:
- (a) When the Bond is to be provided.
 - (b) What is to be bonded e.g. planting, maintenance of native vegetation, certain construction work.
 - (c) The amount of the Bond – to ensure the amount adequately covers the cost of the work or obligations plus contingencies.
 - (d) Whether and how the Bond quantum is to be reviewed – including specified timeframes, the parties responsible etc.
 - (e) Type of security that is required – either a cash or bank Bond.
 - (f) That the form, content, guarantor and quantum must be acceptable to the Council.
 - (g) What happens on transfer of the resource consent.

5 Approach to Bond uncompleted Subdivision Work

- 5.1 Uncompleted works may be bonded only where the developer can demonstrate that one of the following conditions apply:
- (a) Adverse weather conditions do not allow for the completion of the works.
 - (b) Future damage to the infrastructure (i.e. – final sealing) is likely during completion of works for the subdivision.
 - (c) It is more practical to complete works at a later date which will result in a better long term asset to the community.

6 Conditions for Bond uncompleted Subdivision Works

- 6.1 The developer shall submit an application (Appendix 1) to Council in support of any request to MDC to bond uncompleted works. A Bond can either be secured by cash or bank guarantee.
- 6.2 If a cash Bond, an applicant is required to lodge cash funds with Council.
- 6.3 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.
- 6.4 The Bond template for a bank Bond is attached as Appendix 2.
- 6.5 The Bond template for a cash Bond is attached as Appendix 3.

7 Bond Timeframes

- 7.1 The maximum timeframe allowed in any Bond agreement entered into with Council, to complete subdivision works required by resource consent conditions, will be one year.

8 Essential Services

- 8.1 Council will not consider Bond utilities or underground services that are required by resource consent conditions.
- 8.2 Bonds will not be taken for infrastructure vested with Council (e.g. roads).

9 Bond Amounts

- 9.1 Quotes will need to set out the value of the works to be bonded and what remedial work is required to achieve the condition of consent. This will provide the basis for determining the value of the Bond.
- 9.2 A Bond under \$25,000 needs to be a cash Bond. No interest will be paid on Bond monies held by Council.
- 9.3 A 25% contingency will be added to these costings to cover any additional costs which may arise in the event of default by the consent holder and to minimise risk for the Council in the event that they are required to complete the Bond works and account for inflation.
- 9.4 A completed application form and the two quotes must be provided by the applicant either as part of the s224c application process or prior to lodging the s224c application with Council. The s224(c) Certificate will not be issued until the request for Bond has been decided.

10 Charges

- 10.1 The associated technical, legal and administration fees for assessing Bond requests and for preparing the Bond document will be charged in accordance with the Council's Schedule of Fees and Charges for the current financial year and must be paid prior to Council issuing the RMA s224(c) certificate.

- 10.2 If the Bond is to be registered on the title, the associated cost of registering the Bond on the title will be at the consent holder's expense.

11 Bond document

- 11.1 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.
- 11.2 This document is then signed by the consent holder 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 may be registered against a Certificate of Title.
- 11.3 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).

12 Registration against title(s)

- 12.1 At Council's sole discretion, the Bond may be registered as a covenant against the record/s of titles.
- 12.2 If a bank guarantee for any Bond is over \$25,000.00 then it must be registered on the title.
- 12.3 In the event the Council determines that the Bond should be registered on the title the Owner will do all things reasonably requested by the Council to register the Bond as a covenant against the record/s of title to the Land.
- 12.4 Registering of a Bond against a title will require lawyers for both the Council and the consent holder/landowner to be involved to execute the necessary documentation to a

13 Recovering a Bond

13.1 Cash Bond

In the event of any default of the consent holder, the Council may apply the funds it holds as part of the Bond directly to the works required to be completed.

13.2 Bank Bond

In the event of any default of the consent holder on their obligation, the Council may call on the bank Bond. The Council will provide written notice of the default to the bank with the following information:

- (a) Advising that Council is calling on the Bond pursuant to the terms of the bank Bond; Future damage to the infrastructure (e.g. – final sealing) is likely during completion of works for the subdivision.
- (b) The relevant provision of the Bond that require the bank to pay;
- (c) A request for payment of the Bond sum;
- (d) Bank account details for the Bond sum to be paid into; and

- (e) A copy of the signed Bond form.

14 Enforcement Options

- 14.1 If a consent holder has defaulted on their obligations under the Bond, the Council will, within the specified time frame recorded in the Bond, and to the satisfaction of Council, enter on to the land and complete the work required to satisfy the resource consent conditions.
- 14.2 Council may then recover the cost of any work from the resource consent holder from any money or securities held by Council, in accordance with section 109(4) of the RMA.
- 14.3 Where the cost of any work done by Council exceeds the amount recovered from the Bond, the amount of that excess shall be a debt due to Council by the consent holder and can be registered as a charge on the land, in accordance with s109(5) of the RMA.

15 Delegation

- 15.1 Delegation to approve subdivision Bonds are guided by Council's delegation manual.

16 Review

- 16.1 The policy will be reviewed at least every 3 years or sooner on request.

17 Appendix 1: Bond Application Form – V3 January 2023

Send the completed application or hand it to us at

Manawatu District Council
Private Bag 10 001
135 Manchester Street
Feilding 4702

APPLICANT DETAILS

Full Name: _____
Agent/Surveyor Name: _____
Contact Phone Number: _____ Mobile: _____

APPLICATION DETAILS

Resource Consent Number: _____ Stage (if applicable) _____
Site Address: _____
Legal Description: _____

CONDITIONS TO BE BONDED

Condition Numbers: _____
Reason For Bonding (please specify e.g. vested asset maintenance, incomplete works etc.): _____

BOND TYPE

Please tick the relevant box:

☐ Cash ☐ Bank Guarantee

If you ticked 'Bank Guarantee', please specify bank details: _____

REQUESTED BOND TERM

Please specify the requested bond terms: _____ months (maximum of one year)

CALCULATION OF BOND

Bond Amount Proposed: \$ _____
25% Contingency: \$ _____
Total Bond Amount Proposed: \$ _____
Calculation Details (please specify or attach supporting calculations/costings): _____

CHECKLIST

The following documents have been attached to this application:

- ☐ A copy of the Computer Freehold Register (Certificate of Title) for the subject land that is not more than two months old.
- ☐ Two detailed quotes for the works proposed to be bonded, provided by a contractor acceptable to Council (an estimate or an amount proposed by the customer will not be acceptable).
- ☐ Bank guarantee bond requests require written confirmation from the bank that it has agreed to guarantee the bond (if required).
- ☐ Processing Fee – an administration fee to process the bond must be paid to the Manawatu District Council at lodgement of this application. Please refer to Council's fees and charges schedule.

SIGNATURE

By or on behalf of the applicant

Applicant's signature (to be signed by applicant or agent): _____

Applicant's/Agent's Name (please print): _____

Date: _____

TO BE COMPLETED BY THE LAND DEVELOPMENT MANAGER

Type of Bond: ☐ Cash ☐ Bank Guarantee

Term: _____ Months Total Amount: \$NZ _____

Additional Details/Instructions: _____

Approved by: _____ Delegated Officer

Date: _____

Date Received: _____ Processing Officers: _____

18 Appendix 2: Bank Bond Template – V1 October 2022

DEED OF BANK BOND FOR COMPLETION OF SUBDIVISION WORKS

Bond Number _____

(Site Address)_____

THIS DEED made the ____ day of ____

BETWEEN MANAWATŪ DISTRICT COUNCIL

(“the Council”)

AND

(hereinafter with their successors, administrators and assigns referred to as “the Owner”)

BACKGROUND:

- A. The Owner is the registered owner of the land described in Schedule A (the “Land”).
- B. The Council has granted to the Owner a resource consent SB_____ relating to_____ on the Land (the “Consent”) under the Resource Management Act 1991 (“RMA”).

[C and D if Bond is required pursuant to section 222 RMA]

- C. The Owner is required to carry out certain works as a condition of the Consent and has requested the Council to issue a completion certificate under the RMA in consideration of the Owner entering into this Deed prior to the completion of the works described in Schedule B (the “Works”).
- D. The Council and the Owner enter into this Deed to record the terms of the Bond pursuant to section 222 of the RMA. The Council is authorised under Section 222 of the RMA to issue a completion certificate upon the Owner entering into this Deed

and a copy of the completed Bank Bond being provided to the Council pursuant to clause 1(b) of this Deed.

[C and D if Bond is required pursuant to section 108 RMA]

- E. As a condition of the Consent, the Owner is required to provide a Bond to the Council to secure the compliance with and/or performance of certain conditions described in Schedule B (the “Works”).
- F. The Council and the Owner enter into this Deed to record the terms of the Bond pursuant to section 108(2)(b) of the RMA.

THE PARTIES AGREE:

1. BOND

- (a) The parties acknowledge and agree that the sum of \$_____ (the “Bond Sum”), is payable by the Owner to the Council to secure the performance of the Owner’s obligations under this Deed.
- (b) The Bond Sum will be payable by way of a Bank Bond from a registered Bank (the “Owner’s Bank”) executed by the Owner and the Owner’s Bank which shall be on terms and conditions entirely satisfactory to the Council and shall record that the Owner’s Bank acts as surety in favour of the Council, guaranteeing payment of the Bond Sum in respect of the obligations set out in this Deed (the “Bank Bond”).
- (c) The Council may, by written notice to the Owner’s Bank, call on the Bank Bond without reference to the Owner in the event of a default by the Owner in the observance or performance of the Owner’s obligations as set out or referred to in this Deed. The Council will release and return the Bank Bond to the Owner in accordance with clause 5.
[include clause 1(d) if the Bond is required pursuant to section 222 RMA]
- (d) The Council shall not issue a completion certificate to the Owner without the Council first receiving a fully executed and Council-approved Bank Bond pursuant to clause 1(b) above.

2. COMPLETION OF WORKS

- 18.1.1 The Owner will complete the Works to the satisfaction of the Council in accordance with the conditions of the Consent and any specifications and plans referred to in Schedule C by _____ (the “Completion Date”).
- 18.1.2 The Owner will be responsible for notifying the Council when the Works have been completed and will provide to the Council such certificates, documents or drawings as required by the Consent in respect of the Works.
- 18.1.3 The Works will be deemed to have been completed when Council’s authorised officer gives written confirmation to that effect.

3. DEFAULT OF OWNER

- (a) In the event the Owner fails to carry out the Works to the satisfaction of the Council on or before the Completion Date then the Council may without prejudice to any other rights it may have:
 - (i) complete the Works itself pursuant to Section 109(4) of the RMA; and/or
 - (ii) take any enforcement action pursuant to the RMA.
- (b) The Owner acknowledges that the Council (including its employees, agents and contractors) may from time to time enter upon the Land:
 - (i) for the purposes of monitoring or inspecting the status of the Works in accordance with section 109(3) of the RMA and section 171 of the Local Government Act 2002; and/or
 - (ii) to carry out any of the Works that remain outstanding as at the Completion Date in accordance with section 109(4) of the RMA.
- (c) In addition to the rights referred to in Clause 3(a) above the Council will have the right to recover the following from the Bond Sum:
 - (i) The costs of the Council exercising any of its rights referred to in clause 3(a) above.
 - (ii) The costs referred to in clause 6 below.
 - (iii) The cost of all Council officer time arising due to the Works not being completed by the Completion Date.
 - (iv) The cost of all Council officer time and the cost of Council employing any contractor or agent as necessary to determine whether the Works are complete and/or to determine whether the Works comply with the Consent.
 - (v) The cost of all Council officer time and the cost of any contractor or agent of the Council required for supervising and monitoring the completion of the Works.
 - (vi) Any other reasonable costs incurred by the Council connected with the Bond and/or the Works.

4. REGISTRATION

- (a) The Council may, at the Council's sole discretion, require the Bond to be registered as a covenant against the record/s of title to the Land.
- (b) In the event the Council determines that the Bond should be registered pursuant to clause 4(a) above, the Owner will do all things reasonably requested by the Council to register the Bond as a covenant against the record/s of title to the Land.

5. RELEASE OF BOND

- (a) The Council will, within a reasonable period of time from the completion of the Works, provide a written release of the Bond and will return the original Bank Bond to the Owner.
- (b) Where the Bond has been registered against the record/s of titles to the Land pursuant to clause 4(a) above, the Council will, within a reasonable period of time from the completion of the Works, do all things necessary to authorise a discharge of the covenant.

6. COSTS

SIGNED by all owners as per the Record of Title

in the presence of: _____

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

SCHEDULE A

(the “Land”)

All the land comprised in _____ (RT)

SCHEDULE B

(the "Works")

[full description of the Works (whether outstanding works required to be completed pursuant to section 222 RMA OR further conditions of the Consent to be performed pursuant to section 108 RMA) including the estimated costs of the Works plus GST, and an additional contingency sum (taking into account inflation, delays or price escalations for example), which will form the basis of the Bond Sum referred to in clause 2(a)]

SCHEDULE C

Plans and Specifications

[copies of relevant plans and/or specifications relating to the Works]

SCHEDULE D

Bank Bond

[copy of fully executed Bank Bond from the Owner's Bank]

DEED OF CASH BOND FOR COMPLETION OF SUBDIVISION WORKS

Bond Number_____

(Site Address:)

THIS DEED made the day of

BETWEEN MANAWATŪ DISTRICT COUNCIL
(“the Council”)

AND _____
(hereinafter with their successors, administrators and assigns referred to as “the Owner”)

BACKGROUND:

- A. The Owner is the registered owner of the land described in Schedule A (the “Land”).
- B. The Council has granted to the Owner a resource consent SB relating to on the Land (the “Consent”) under the Resource Management Act 1991 (“RMA”).

[C and D if Bond is required pursuant to section 222 RMA]

- C. The Owner is required to carry out certain works as a condition of the Consent and has requested the Council to issue a completion certificate under the RMA in consideration of the Owner entering into this Deed prior to the completion of the works described in Schedule B (the “Works”).
- D. The Council and the Owner enter into this Deed to record the terms of the Bond pursuant to section 222 of the RMA. The Council is authorised under Section 222 of the RMA to issue a completion certificate upon the Owner entering into this Deed and paying the Bond Sum to the Council pursuant to clause 1(b) of this Deed.

[C and D if Bond is required pursuant to section 108 RMA]

- E. As a condition of the Consent, the Owner is required to provide a Bond to the Council to secure the compliance with and/or performance of certain conditions described in Schedule B (the “Works”).
- F. The Council and the Owner enter into this Deed to record the terms of the Bond pursuant to section 108(2)(b) of the RMA.

THE PARTIES AGREE:

1. BOND

- (a) The parties acknowledge and agree that the sum of \$ ____ (the “Bond Sum”), is payable by the Owner to the Council to secure the performance of the Owner’s obligations under this Deed.
- (b) The Bond Sum will be payable on demand, by cash or direct credit, directly to the Council, and otherwise in the manner as directed by Council.

2. COMPLETION OF WORKS

- (a) The Owner will complete the Works to the satisfaction of the Council in accordance with the conditions of the Consent and any specifications and plans referred to in Schedule C by (the “Completion Date”).
- (b) The Owner will be responsible for notifying the Council when the Works have been completed and will provide to the Council such certificates, documents or drawings as required by the Consent in respect of the Works.
- (c) The Works will be deemed to have been completed when Council’s authorised officer gives written confirmation to that effect.

3. DEFAULT OF OWNER

- (a) In the event the Owner fails to carry out the Works to the satisfaction of the Council on or before the Completion Date then the Council may without prejudice to any other rights it may have:
 - (i) complete the Works itself pursuant to Section 109(4) of the RMA; and/or
 - (ii) take any enforcement action pursuant to the RMA.
- (b) The Owner acknowledges that the Council (including its employees, agents and contractors) may from time to time enter upon the Land:
 - (i) for the purposes of monitoring or inspecting the status of the Works in accordance with section 109(3) of the RMA and section 171 of the Local Government Act 2002; and/or
 - (ii) to carry out any of the Works that remain outstanding as at the Completion Date in accordance with section 109(4) of the RMA.
- (c) In addition to the rights referred to in Clause 3(a) above the Council will have the right to recover the following from the Bond Sum:
 - (i) The costs of the Council exercising any of its rights referred to in clause 3(a) above.
 - (ii) The costs referred to in clause 6 below.
 - (iii) The cost of all Council officer time arising due to the Works not being completed by the Completion Date.
 - (iv) The cost of all Council officer time and the cost of Council employing any contractor or agent as necessary to determine whether the Works are complete and/or to determine whether the Works comply with the Consent.

- (v) The cost of all Council officer time and the cost of any contractor or agent of the Council required for supervising and monitoring the completion of the Works.
- (vi) Any other reasonable costs incurred by the Council connected with the Bond and/or the Works.

4. REGISTRATION

- (a) The Council may, at the Council's sole discretion, require the Bond to be registered as a covenant against the record/s of title to the Land.
- (b) In the event the Council determines that the Bond should be registered pursuant to clause 4(a) above, the Owner will do all things reasonably requested by the Council to register the Bond as a covenant against the record/s of title to the Land.

5. RELEASE OF BOND

- (a) The Council will, within a reasonable period of time from the completion of the Works, provide a written release of this Deed and will refund to the Owner any remaining credit balance held by the Council.
- (b) Where the Bond has been registered against the record/s of titles to the Land pursuant to clause 4(a) above, the Council will, within a reasonable period of time from the completion of the Works, do all things necessary to authorise a discharge of the covenant.

6. COSTS

- (a) The Owner will pay all the Council's costs (including solicitor-client costs) of and incidental to the preparation, completion, enforcement, release and registration of the Bond including Land Information New Zealand registration fees (if any).
- (b) Where the cost of any work carried out by the Council pursuant to this Deed exceeds the Bond Sum, the Council will invoice the owner for the outstanding amount. The owner is required to make payment within the Council's normal invoicing and terms of trade. Failure to make payment on the due date may result in debt collection processes, which will result in additional costs including interest being payable. Any debt owing may be registered as a charge against the land.

7. LIABILITY

- (a) The Council will not be liable in any respect to the Owner (including however not limited to being responsible to pay any sum of interest) in the event the Works are completed and no request pursuant to Clause 2(b) above is made to the Council resulting in delays taking place in releasing the Bond or refunding any remaining credit balance held by the Council.
- (b) In the event the Council determines to complete any part of the Works pursuant to clause 3(a) above, the Owner will indemnify the Council against any action, claim, loss, damage, costs, or liability suffered or incurred by the Council directly or indirectly relating to the completion of the Works by the Council.

- (c) The liability of the Owner will not be released, varied or affected in any way by any delay, extension of time, or other indulgence granted to the Owner including, however not limited to.
 - (i) A delay, failure or neglect of the Council to enforce any obligation of the Owner the subject of this Deed; or
 - (ii) Any delay, failure or neglect of the Council to carry out the Works pursuant to clause 3(a) above.
- (d) The liability of the Owner shall not be limited to the amount of the Bond Sum.

8. VARIATION

19.1.1 This Deed may be varied by the written agreement of the Council and the Owner.

SIGNED for and on behalf of)
THE MANAWATŪ DISTRICT COUNCIL)
in the presence of:)

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

SIGNED by all owners as per the Record of Title

in the presence of:_____

Witness Signature:

Witness Name:

Witness Occupation:

Witness Address:

SCHEDULE A
(the “Land”)

All the land comprised in _____(RT)

SCHEDULE B
(the “Works”)

[full description of the Works (whether outstanding works required to be completed pursuant to section 222 RMA OR further conditions of the Consent to be performed pursuant to section 108 RMA) including the estimated costs of the Works plus GST, and an additional contingency sum (taking into account inflation, delays or price escalations for example), which will form the basis of the Bond Sum referred to in clause 2(a)]

SCHEDULE C
Plans and Specifications

[copies of relevant plans and/or specifications relating to the Works]