

1. OPERATION OF THE USE OF BONDS IN THE ENFORCEMENT OF THE RESOURCE MANAGEMENT ACT

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Corporate Plan Outputs: Consents and Applications-Enforcement, Consents & Applications and Subdivision Consents	

The purpose of this report is to seek the Council's approval for the existing practice of requiring applicants to provide bonds, where no interest is credited to the applicants, to encourage voluntary compliance with the conditions of those consents.

This report is also being submitted to the Strategy and Resources Committee.

BACKGROUND

Councillor Wells requested a report on this issue after the issue was raised by one of the organisations in her ward that had paid a bond to enable deferral of the construction of a car park.

The practice of requiring applicants for specific types of resource consents to provide a cash bond to encourage voluntary compliance with the conditions of the consents issued has been followed since the Christchurch City Council was formed in 1989.

A bond is essentially a promise to do certain work or pay a sum of money in default. The Council's remedy for non-compliance is to do the work itself and sue for the recovery of the costs involved.

A bond is able to be imposed under Section 108 (1) (b) of the Resource Management Act. They may be registered on certificates of title but do not have to be. If registered, a bond serves to notify the terms and conditions of a resource consent on the face of the certificate of title with the imposition of additional financial penalties in the event of non-compliance. A bond does not prevent dealing with the land but it is binding on successors in title.

The bonds are principally obtained from applicants for:

- Family flats
- Relocatable buildings
- Uncompleted subdivision works.

Currently the Council holds approximately 30 of the bonds for relocations with a total value of \$75,825. The Council holds approximately 155 cash bonds for private works of various types totalling \$697,000. It can be seen therefore that the bonds received and held are for relatively small amounts.

It should be noted that the standard form agreements for bonds taken for family flats, relocatable buildings and uncompleted subdivision works clearly state that the Council shall not be liable to pay interest on the bond sums.

An officer team investigated ways to improve the procedures related to the use of bonds, caveats and other legal instruments used in the administration of the City Plan. This team consulted with the Legal Services Unit as well as Denis Sheard and John Milligan.

The team endorsed the continued use of bonds but initiated further improvements to simplify and expedite the process.

Uncompleted subdivision works are bonded by either a registered works bond or a cash refundable bond. Registered works bonds do not require a cash payment therefore the issue of interest payable does not arise and accordingly these are not discussed further. Refundable cash bonds are accepted at the Subdivision Officer's discretion. In the main these bonds relate to the completion of the final surface coat for new rights of way and roads, or other minor works. It is recognised that due to weather constraints and potential damage to carriageways during house construction, that the works may need to be completed at a more appropriate time. When bonds are accepted the following criteria usually apply:

OPTIONS AVAILABLE TO ENSURE COMPLIANCE WITH CONSENT CONDITIONS

- Bonds
- Covenants
- Caveats
- Inspection and Enforcement

The officer team recommended the continued use of bonds for family flats, relocatable buildings and uncompleted subdivision works because of the following advantages:

- Use of bonds provides notice to a potential purchaser of the limitations on the use of the building.
- The bond is an enforceable agreement with the owner of a family flat to relocate the building or remove the kitchen if it is no longer needed for a dependent relative.
- The bond gives the Council the authority to enforce compliance and recover costs involved with this.
- A bond for a relocatable building and uncompleted subdivision works provides an incentive to the applicant to complete all the work so s/he can recover the bond.
- A cash bond for a relocatable building can support a caveat that could be used to prevent dealing with the land until the work is done.

- A cash bond can be released more simply, quickly and at a lower cost than a caveat.
- Is customer focused as it allows the applicant to start a project before s/he has first complied with all the conditions of the consent.

One of the main disadvantages of using bonds is the additional work for both Environmental Services Unit and Financial Services Unit staff to administer them. This is one of the reasons that interest has not been credited to applicants on cash bonds that they have been required to provide.

LEGAL POSITION RE CREDITING INTEREST ON BONDS HELD FOR CONSENT CONDITIONS

The Resource Management Act is silent on the question as to whether interest is to be paid on cash bonds received from applicants. This means that the Council must decide whether it should or should not pay interest taking into account all the relevant factors.

REASONS FOR NOT CREDITING INTEREST ON BONDS HELD FOR CONSENT CONDITIONS

- The applicant receives an interest advantage by being able to start a project before s/he has first complied with all the conditions of the consent.
- The practice recognises that there is additional work for both Environmental Services Unit and Financial Services Unit staff to administer them.
- All consent conditions are imposed to mitigate an effect and accordingly any outstanding bonded works should be completed as soon as possible. The non payment of interest acts as an incentive to complete the bonded works.
- The opportunity exists for the applicants to provide a bond with a bank guarantee. These would be less costly for the Council to administer but would generally be more expensive for the applicants to provide.

CONCLUSION

Requiring customers to provide cash bonds to encourage compliance with specific types of consent conditions is a cost effective means to achieve this for both parties. This instrument assists the applicant to more quickly achieve her/his goals in obtaining the consent. It is therefore consistent with the Council's Mission Statement with respect to the enhancement of the city's environment and the efficient delivery of high quality services.

The Council's practice of not crediting interest on cash bonds to encourage compliance with specific types of consent conditions, recognises the costs and benefits of the practice and the Council's legal obligations.

Recommendation: That the Council confirm the practice of not crediting interest on cash bonds taken to encourage compliance with specific types of consent conditions.