

# Retention money

## Auckland Council Group Policy



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## 1 Policy summary

Auckland Council will ensure that retention monies are held in accordance with the Construction Contracts Act 2002 for Auckland Council and subsidiaries where requested.

## 2 Purpose of the policy

An entity that withholds a payment to a contractor as security for performance of the contractor's obligations under a construction contract (retention money) will be required to comply with the provisions of the Construction Contracts Act 2002 (the act). This policy is to ensure that the Auckland Council Group (the group) complies with the act when it holds retention money.

## 3 Non-compliance

Non-compliance with this policy may result in non-compliance with the act. It may also result in civil or criminal liabilities.

## 4 Who the policy covers

This policy applies to Auckland Council and all substantive council-controlled organisations (the group).

## 5 Policy principles

Section 18A of the Construction Contracts Amendment Act 2015 (the act) defines retention money as "an amount withheld by a party to a construction contract (party A) from an amount payable to another party to the contract (party B) as security for the performance of party B's obligations under the contract". Retention money can be a set percentage of the contract value or an agreed amount.

Section 18C of the act requires all retention money to be held on trust in the form of cash or other liquid assets that are readily convertible to cash unless a bond or other instrument that complies with other provisions of the act (a "complying instrument") is provided in favour of the other party.

Section 18E allows the money to be commingled with other monies.

Section 18E of the act provides that retention money may only be used to remedy defects in contractual performance.

Further, section 18D requires proper accounting records to be kept that are readily auditable and available for inspection by contractors.

Retention money is normally released to the contractor upon the issue of a certificate of practical completion and/or at the end of the defects liability period, whichever is agreed in the contract, and/or upon the satisfaction of all conditions of the contract.

## 6 Applying the policy

- Auckland Council subsidiaries may apply to the council to manage their retention money.
- Where the council manages retention money for subsidiaries, the responsibility for determining and communicating the amount of retention money to the council rests with the subsidiary.
- For ease of administration and transparency, the council will maintain a dedicated retention money bank account.
- The level of retention money required to be held will be assessed on a monthly basis, and the bank account will be debited or credited as appropriate.
- Interest on retention money bank accounts remain the property of the council.

## 7 Approval

- Applications by subsidiaries and joint ventures for the council to manage retention money will be reviewed and approved by the group treasurer.
- The group treasurer will approve the opening and closing of any bank accounts that hold retention money.

## 8 Definitions

For the purposes of this policy:

**Defects Liability Period** is also referred to as a defects notification period. This is a limited period of time following practical completion during which the council can notify the contractor of defects which the contractor is required to rectify within a reasonable time. A typical defects liability period lasts for 12 months.

## Authority

<b>Owner</b>	Group Chief Financial Officer		
<b>Authorised by</b>	Finance and Performance Committee		
<b>Contact</b>	Group Chief Financial Officer		
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