
Securing performance with conditions of approval

PART 1 - INTRODUCTION

1.1 Policy position

- (1) Council as the assessment manager for a development may enter into an agreement with a development proponent subject to compliance with the requirements detailed in section 2.1 of this policy which establishes the obligations and/or secures performance with a condition of a related development permit [refer IPA section 3.5.34].
- (2) Council may accept a properly executed agreement, including provision of any required security, pursuant to clause (1) as compliance with section 3.7.2 (3)(a) and (b) of the Act.

PART 2 - IMPLEMENTATION

2.1 Requirements for entering into an agreement

- (1) A development proponent may make a formal request to Council to enter into an agreement and/or provide a security for completion of the works instead of undertaking the works required by condition of a development permit provided:
 - (a) The works are completed to the following stage:
 - (i) all earthworks for the construction works to be completed; and
 - (ii) any plumbing and drainage works within the proposed lots are completed;
 - (b) Works remaining to be completed will be completed within 3 months of the signing of the agreement;
 - (c) A certification is provided by the professional engineer responsible for the works that:
 - (i) the works are to the stage specified in Clause (1)(a) above;
 - (ii) remaining works can be completed as required in Clause (1)(b) above; and
 - (iii) the estimate of the incomplete works is true and accurate.

2.2 Format of agreement and security

- (1) The format and content of the formal agreement shall satisfy Council. [refer schedule A for sample agreement].
- (2) The agreement must be signed under seal by the parties to the agreement.
- (3) The security shall be for an amount equal to 200% of the estimated cost as agreed by Council for the outstanding works.
- (4) Security shall be either a bank bond or cash bond complying with Council's Policy No. 2.10 - Securities/Bank Guarantees.



2.3 Administration

- (1) A development proponent making a request pursuant to section 2.1 of this policy, shall pay an administration fee to cover the Council's costs of establishing and executing the agreement and security.
- (2) The administration fee shall be set by Council by resolution from time to time and will be nominated in the Council's schedule of rates and charges.
- (3) Council may consider requests to reduce the amount of security held as the development progresses based on further certification about the matters set out in section 2.1(1)(c) above.
- (4) Release of security held by Council shall not be made prior to satisfactory completion of outstanding works and (were applicable) Council's receipt of 'as constructed' drawings of outstanding works for which security is held.



Schedule A – Sample Agreement

BONDING DEED

FOR INCOMPLETE WORKS

**BETWEEN
LIVINGSTONE SHIRE COUNCIL**

**AND
THE DEVELOPMENT PROPONENT**

THIS DEED is made this day of 20.....

BETWEEN Council of the Shire of Livingstone in the State of Queensland (hereinafter referred to as "the Council") of the one part

AND (the development proponent)

WHEREAS :

- A. A development permit authorising works has been issued by the Council in respect of the land described in Part 1 of the Schedule hereto. A copy of the development permit is annexed hereto and marked "A".
- B. The development proponent's engineer certifies that the works have been completed to at least the following stage:-
 - a. all earthworks for the construction; and
 - b. any plumbing and drainage works within the proposed allotments.

A copy of the certificate provided by the development proponent's engineer responsible for the works authorised by the development permit is annexed hereto and marked "B" and is hereinafter referred to as "the Certificate".

- C. Pursuant to section 3.7.2 (3)(a) and (b) of the *Integrated Planning Act* and Planning Scheme Policy No. 7, the Council will seal any relevant the plan of survey or may authorise the commencement of a use subject to the provision of a security pursuant to section 3.5.34 of the *Integrated Planning Act* requiring the development proponent to complete all outstanding works within three (3) months from the date of signing this Deed and to maintain the works in accordance with Council's requirements.



Now this agreement Witnesses and the parties hereto acknowledge and agree as follows :-

1. In consideration of the Council sealing the relevant plan of survey or authorising the commencement of a use specified in Part 2 of the Schedule, the development proponent covenants that :-
 - (i) all works required to be carried out to satisfy the development permit shall be completed to the Council's satisfaction in accordance with the development permit within three (3) months from the date of signing this Deed; and
 - (ii) all works shall be maintained and any defects for which the development proponent is responsible remedied in accordance with Council's requirements.
2. To secure to the Council the due fulfilment by the development proponent of the obligations under this Deed the development proponent shall provide to the Council either a bank bond or a cash bond in a form satisfactory to the Council to the value of the amount specified in Part 3 of the Schedule hereto which amount shall be the value of the incomplete works as certified in the Certificate plus 100%.
 - 3.1 Should the development proponent fail to complete the incomplete works within the time specified then the Council shall be entitled to require of the bank providing the bond payment of all or any part of the monies mentioned in the bond. The Council will expend such monies on completing the incomplete works or any part thereof and remedying any defects that become evident.
 - 3.2 The development proponent undertakes that it will not interfere with the recovery by the Council of monies from the said bank despite the existence of any dispute between the Council and the development proponent.
4. The Council may exercise its rights under this Deed against the development proponent or against the bank providing the bond or partly against the development proponent and partly against the bank providing the bond.
5. The Council may carry out such other work or development including any related addition or extension to any work or development being carried out by the development proponent whether within or outside, or partly within and partly outside the perimeter of the land described in Part 1 of the Schedule as the Council may reasonably consider necessary to mitigate the effects of any incomplete or improperly completed or partly completed work of the development proponent or make any such incomplete, improperly completed or partly completed work in the opinion of Council effective or useful.



6. For the purposes of exercising its rights under this Deed, the Council and its members, agents, servants, employees, contractors and sub-contractors and others whether of a class mentioned or not and authorised by the Council shall have the full and free right and liberty to enter upon the land described in Part 1 of the Schedule with all necessary vehicles, plant, equipment and the like.
7. No waiver by the Council of any breach by the development proponent of any of the provisions of this Deed shall be implied against the Council or will be otherwise effective unless the same shall be in writing under the hand of the Council and no laches or delays by the Council at any time or times in enforcing any of its rights, powers and the like under this Deed shall prejudice or effect those rights or powers.
8. Nothing contained in this Deed shall affect prejudice or derogate from the requirements of any statute, proclamation, Order in Council, Regulation or Local Law or from the rights, powers and authorities of the Council under the provisions of any enactment or under any policy of the Council.
9. The development proponent will at all times hereafter keep the Council indemnified against all actions, proceedings, liability claims, damages, costs and expenses of any nature whatsoever which may arise directly or indirectly from any incorrect or misleading information contained in the Certificate or from the development proponent's failure to comply with Clause 1.
10. The development proponent agrees that the bond referred to in Clause 2 may be released by Council in stages as follows :-

- 10.1 On substantial completion of works where certified by the development proponent's engineer responsible for the works authorised by the development permit, the value of works completed and payment of administration fee (on each occasion).

The balance of the bond should be 2.0 times the cost of remaining works, including provision of "as constructed" drawings, but in excess of the amount in 10.2 below if works are subject to a Defects Liability Period.

- 10.2 Works subject to Defects Liability Period

The bond may be reduced to the amount necessary to secure to Council the due fulfilment by the development proponent of the development proponent's obligations under this Deed relating to the maintenance of the works in accordance with the Council's requirements when :-

- all works have been completed and accepted for the applicable Defects/Liability Period;



- for works associated with reconfiguring a lot, certification has been received by the Council from a licensed surveyor that all appropriate survey marks shown on the plan of survey are in position;
- all "as constructed" drawings and flood drainage plans have been received by the Council.

10.3 Final Release

The balance of the bond shall be released within one (1) month after either of the following whichever is relevant:

- (i) for works that are subject to a Defects Liability Period, the expiry of the Defects/Liability Period provided all the works including any remedial works have been completed in accordance with the development permit and to the satisfaction of the Council.;
- or
- (ii) for works other than for (i) above, after receipt of written notification from the development proponent that works have been completed in accordance with the development permit and inspected by Council to determine that works are completed to the satisfaction of the Council.

11. The execution of this Deed is contingent upon payment by the development proponent of:

- (i) the Council’s administration fee of \$..... ; and
- (ii) all State/Commonwealth duty and taxes payable in respect of this Deed and the bond.

The Seal of **THE COUNCIL OF THE SHIRE OF LIVINGSTONE**)

was affixed hereto this day of ,)

20 pursuant to a resolution of the Council duly)

authorising the same in the presence of:)

(insert name)) **MAYOR**

(insert name))

) **CHIEF EXECUTIVE OFFICER**



Planning Scheme Policy No. 7

and in the presence of: *(insert name)*)

Justice of the Peace

Signed and sealed by *(development proponent)*)

this day of , 20)

and in the presence of: *(insert name)*)

Justice of the Peace



SCHEDULE

Part 1 – Description of land:

(i) RPD:

(ii) Location:

Part 2 – Plan of survey/Approved Use:

A(i) Plan nos:

A(ii) Prepared by:

A(iii) Dated:

B(i) Approved use:

Part 3 – Amount of security:

(i) Bond for: \$

