# BONDING DEED

FOR DEFECTS LIABILITY FOR OPERATIONAL WORKS BETWEEN

LIVINGSTONE SHIRE COUNCIL AND THE APPLICANT

THIS DEED is made this …………………day of ……………………………… BETWEEN

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

AND

The Applicant: ………………………………………………………………………………

WHEREAS:

1. A Development Approval has been issued by the Council in respect of the land described in Part 1 of the Schedule hereto.
2. The Applicant’s Engineer certifies that the works have been completed in accordance with the approved plans.

A copy of the Certificate provided by the Applicant’s Engineer is annexed hereto and is hereinafter referred to as “the Certificate”.

1. Council is prepared to accept security pursuant to Section 69 of the *Planning Regulation 2017*. Now this agreement witnesses and the parties hereto acknowledge and agree as follows:-
	1. The Applicant covenants that :-
		* all works shall be maintained and any defects for which the Applicant is responsible remedied in accordance with Council’s requirements.
	2. To secure to the Council the due fulfillment by the Applicant of the obligations under this Deed, the Applicant shall provide to the Council a Bond in a form satisfactory to the Council (Bank Guarantee or Bankers Undertaking) to the value of the amount specified in Part 3 of the Schedule hereto which amount shall be the value of 5% of the Estimated Cost of the Works.

2.1 Should the Applicant fail to complete certification of defects within one (1) month of written notification of such defects 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 may expend such monies on remedying any defects which become evident during the Defects Liability Period.

* 1. The Applicant undertakes that it will not interfere with the recovery by the Council of monies from the said bank notwithstanding the existence of any dispute between the Council and the Applicant.
	2. The Council may exercise its rights under this Deed against the Applicant or against the bank providing the Guarantee or partly against the Applicant and partly against the bank providing the Guarantee.
	3. The Council is hereby authorised to carry out such other work or development including any addition or extension to any work or development being carried out by the Applicant 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 partly completed work of the Applicant or make any such incomplete, improperly completed or partly completed work in the opinion of Council effective or useful.
	4. 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.
	5. No waiver by the Council of any breach by the Applicant 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 latches 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.
	6. Nothing contained in this Deed shall affect, prejudice or derogate from the requirements of any statute, proclamation, Order in Council, Regulation or By-laws or from the rights, powers and authorities of the Council under the provisions of any enactment or under any policy of the Council.
	7. The Applicant 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 Applicant’s failure to comply with Clause 1.

# Defects Liability Period Start

- When all subdivision works have been completed and accepted for the Defects/Liability period; and

- all “as constructed” data and information have been accepted by the Council.

# Final Release

The Applicant agrees that the Bond referred to in Clause 2 shall be released by Council within one

(1) month after the expiry of the Defects Liability period provided all the works including any remedial works have been finally and satisfactorily executed and accepted by Council.

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| Signature of Applicant**------------------------------------------------------**Full name: Title:  | **Signature of Witness****-------------------------------------------------------**(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) |
| Signed this day, the day of  |

|  |  |
| --- | --- |
| Grant/ Execution**------------------------------------------------------**Livingstone Shire Council (Delegated Officer – )  | **Signature of Witness****-------------------------------------------------------**(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec) |
| Accepted by Livingstone Shire Council under Delegated Authority Dated this day,the day of  |

Part 1

SCHEDULE

Operational Works Permit Number:

Description of Land: ………………………………………………………… Part 2

Plan number: ………………………………………………………………….. Prepared by: ………………………………………………………………….. Dated: ………………………………………………………………………….. Part 3

Bond for the sum of: $ ………………….

….3