



SINGLETON
COUNCIL

Section 138
Use of a Councils Road
Standard Terms and Conditions

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1) This Document provides consent

This document provides, and sets out the terms and conditions of, the consent (the Consent) granted by Singleton Council (Council) as the appropriate roads authority under Division 3 of Part 9 of the *Roads Act 1993* (the Roads Act) in response to the application for consent filed by the applicant listed in Item 1 (the Applicant).

Consent granted is subject to the terms and conditions of the Consent, and any Annexure and Schedules to the Consent.

2) Who has consent?

The Consent is granted to the Applicant. The Consent cannot be assigned or transferred to any other person or company.

3) What does the Consent enable?

The Consent enables the Applicant to:

- (a) Erect the Structure in, on or over the Public Road;
- (b) Carry out the Works in, on or over the Public Road; and
- (c) Use the Structure in accordance with the Permitted Use and the terms and conditions of the Consent.

The Structure is described in Item 2.

The Benefiting Property is described in Item 3.

The Public Road is described in Item 4.

The Works are described in Item 5.

The Permitted Use is described in Item 6.

4) When will the Consent commence?

The Consent commences on the date in Item 7.

5) When will the Consent end?

The Consent will end on the date in Item 8.

If there is no date in Item 8, the Consent will end on the earlier of the following occasions:

- (a) when Council decides to revoke the Consent; or
- (b) when the Applicant requests that Council revoke the Consent.

6) In which circumstances can Council revoke the Consent?

Council can revoke the Consent at any time and for any reason under section 140 of the Roads Act.

If section 140 of the Roads Act is repealed, the Consent is revoked when that repeal takes effect.



Without limiting the circumstances in which Council may revoke the Consent, Council may revoke or suspend the Consent in accordance with clauses 7-10.

7) Warning Notice

If, in Council's opinion, the Applicant is not complying with any of the terms and conditions of the Consent, Council may issue a written warning notice to the Applicant (the Warning Notice).

The Applicant must reply in writing to the Warning Notice (the **Applicant's Reply**), and the Applicant's Reply must be received by Council within 7 days of the date of the Warning Notice.

The Applicant's Reply must contain the following information:

- (a) steps the Applicant proposes to take to meet the terms and condition of the consent as outlined in the consent and specified in the Warning Notice; or
- (b) the Applicants reasons for disagreement with the Waning Notice

Council will respond to the Applicant's reply within 7 days of receipt of the Applicant's Reply (**Council's Response**).

Once the Applicant has received Council's Response, the Applicant must ensure all requirements in Council's Response are complied with immediately.

8) Suspension and revocation - events

Council may revoke or suspend the Consent, with or without issuing a Warning Notice, if any of the following events occurs:

- (a) the Applicant does not comply with the requirements of the Consent;
- (b) the Applicant's application for consent contains information that is untrue, incomplete or misleading;
- (c) the Applicant does not reply to a Warning Notice in the manner required by clause 7;
- (d) the Applicant's Reply does not set out the steps the Applicant will take to comply with the requirements of the Warning Notice;
- (e) the Applicant does not comply with the requirements of Council's Response;
- (f) the Applicant prevents or hinders, or attempts to prevent or hinder, Council from carrying out any inspections in relation to the Consent;
- (g) any fees associated with the Consent are not paid by the due date;
- (h) any approvals required to be obtained by the Applicant in clause 15 lapse, are not granted or are revoked; or
- (i) the Applicant becomes insolvent and cannot fulfil its obligations under the Consent.

9) Suspension and revocation – the Structure

Council may suspend or revoke the Consent immediately, with or without a Warning Notice, if, in Council's opinion, the Structure:

- (a) becomes unsafe; or



- (b) is likely to cause environmental damage; or
- (c) could harm any person or property.

10) Notice if the Consent is revoked or suspended

The Applicant may request Council to revoke the Consent, with such revocation to take effect 30 days after the date of the request.

Any request by the Applicant for Council to revoke the Consent is subject to the following conditions:

- (a) the Applicant cannot request Council to revoke the Consent if the Applicant is in breach of any of the conditions of the Consent;
- (b) while Council will consider any request to revoke the Consent, Council will not be bound to agree to revoke the Consent; and
- (c) Council may agree to any request to revoke the Consent subject to conditions imposed by Council.

11) Notice if the Consent is revoked or suspended

If Council revokes or suspends the Consent, Council will inform the Applicant by way of written notice.

12) Effect of revocation or suspension of the Consent

If the Applicant receives a notice that Council is revoking or suspending the Consent, the Applicant must, in accordance with the notice:

In the case of suspension of the Consent:

- (a) cease the Works (if the Works are still being carried out) and the Permitted Use of the Structure immediately.

In the case of revocation of the Consent:

- (b) cease the Works (if the Works are still being carried out) and the Permitted Use of the Structure immediately in the case of revocation; and either
- (c) remove the Structure immediately (where the removal of the Structure does not require the consent of any authority); or
- (d) immediately apply to the relevant authority for consent to remove the Structure.

If the Applicant does not comply with the terms of the notice, and remove or cease use of the Structure (as the case may be), Council may remove the Structure.

Removal of the Structure by Council does not prevent Council from taking legal action against the Applicant, including recovering any costs incurred by Council to remove the Structure.

13) No compensation if the Consent is revoked or suspended

Nothing in the Consent renders Council liable to pay any compensation to the Applicant in circumstances where Council suspends or revokes the Consent.



14) Statutory restrictions

The Consent is limited in its operation by the provisions of the Roads Act and any Regulations made under the Roads Act, and is granted subject to the provisions of the Roads Act.

15) Prior to carrying out the Works

The Applicant must, prior to carrying out the Works, obtain any necessary approvals from Council for the Works, the Structure and the Permitted Use under the *Environmental Planning and Assessment Act 1979* and the *Local Government Act 1993*;

The Applicant must comply with all conditions imposed by any approvals of Council, the RMS, the Minister administering the Roads Act or any other authority.

The Applicant is required to give at least 7 days notice to the occupiers of properties adjoining any part of the Public Road in which the Works are to be carried out, of the intention to carry out those Works.

The Applicant must give at least 48 hours written notice to Council's Representative listed at Item 9 at the address listed at Item 10 prior to commencing the Works.

The Applicant is required to deliver to Council's Representative the insurance policy referred to in clause 21 and the bank guarantee referred to in clause 22 prior to commencing the Works, as well as copies of any approvals that the Applicant is required to obtain in respect of the Works, the Structure or the Permitted Use.

16) Condition of Site

Council gives no warranty (either present or future) as to the suitability of the Public Road or the use to which the Public Road may be put. The Applicant is deemed to have sought the Consent with full knowledge of and subject to any prohibitions or restrictions on the use of the Public Road from time to time under or in pursuance of any law.

17) Carrying out the Works

The Applicant must carry out the Works:

- (a) in conformity with the description of the Works at Item 5;
- (b) in accordance with the approvals listed in clause 15;
- (c) to the reasonable satisfaction of Council's Representative;
- (d) as expeditiously as practicable in a proper and workmanlike manner;
- (e) proceed continuously with the Works until completion of the Works;
- (f) with due regard to the safety and rights of the public and for that purpose comply with the requirements of:
 - (1) Council's Representative;
 - (2) the WorkCover Authority of New South Wales;
 - (3) the Department of Industrial Relations and Employment;
 - (4) the Police Service of New South Wales; and
 - (5) any other authority;
- (g) in a manner that does not unreasonably interfere with the use of the Public Road or any other land by other persons while carrying out the Works;



- (h) in a manner that complies with Council's policies and procedures; and
- (i) between the hours of 7.00am and 6.00pm on Mondays to Fridays, between 8.00am and 4.00pm on Saturdays and at other times only if previously approved by Council's Representative in writing.

18) Amendments to the Works

If, in Council's opinion, it becomes necessary:

- (a) to relocate or remove any portion of the Structure due to:
 - (1) any work in, on or over the Public Road; or
 - (2) widening or reconstruction of the Public Road which Council or any other authority wishes to carry out; or
- (b) to carry out additional works to the Public Road or the Structure for the safety and protection of the public, the Applicant must, at its own cost:
- (c) relocate, carry out the removal or carry out any additional work; and
- (d) pay to Council any additional cost or expenditure incurred by Council by reason of the existence, relocation or removal of the Structure.

If no representative of the Applicant is present at the Works site, or if Council's Representative determines an event of emergency has occurred, Council's Representative can take any action to prevent loss of or damage to the whole or any part of the Structure, the Public Road or property adjacent to the Structure, or to prevent personal injury to any person.

In such circumstances, where Council's Representative reasonably determines that the Applicant would have been liable to take such action, the cost of Council's action must be paid by the Applicant to Council as a debt due to Council. Any such action taken by Council's Representative will not relieve the Applicant of any liability or obligation under the Consent.

19) Council's inspection

Council reserves the right to inspect the Public Road, the Structure and the Works at any time with reasonable notice and at any time in an emergency.

20) Charges

The Applicant is required to pay to Council an annual charge for the Consent in accordance with section 611 of the *Local Government Act 1993* which is set out at Item 11 (the Annual Charge).

The Annual Charge must be paid prior to use of the Structure being commenced. The Annual Charge is to be paid in the manner advised by Council's Representative, as amended from time to time.

Council may amend the amount of the Annual Charge at any time.

21) Insurance and Indemnities

The Applicant indemnifies Council and keeps Council indemnified from and against all actions, claims and demands if any arising out of the granting of the Consent or



anything done or purported to be done by the Applicant under the Consent or any damage to the Applicant's property in accordance with the Consent.

Council can pay, satisfy, defend, compromise or settle any claim arising out of the granting of the Consent or anything done or purported to be done by the Applicant under the Consent and any amount paid by Council in doing so is a debt due to Council by the Applicant and must be repaid on demand.

The Applicant indemnifies Council against any liability to pay taxes or charges payable now or in the future in respect of the Works, the Structure or the Consent.

The Applicant must obtain and keep current an insurance policy:

- (a) noting Council's interest as the appropriate roads authority of the Public Road and listing Council as co-insured; and
- (b) covering liability to the public for not less than the amount in Item 12 for each accident or event.

The insurance policy of the Applicant must be produced to Council's Representative prior to commencing the Works along with the receipt for the last premium. The Applicant must provide certificates of currency to Council on an annual basis while the Consent remains in force.

The Applicant must not void, reduce or cancel any insurance policy in respect of the Public Road, the Structure or the Works.

22) Bank Guarantee

Before commencing the Works, the Applicant must deliver to Council's Representative a bank guarantee to secure the satisfaction of the Applicant's obligations under the Consent (the Bank Guarantee).

The Bank Guarantee must:

- (a) be in a form acceptable to Council and for an amount not less than the amount specified in Item 13; and
- (b) be payable to Council at any time while the Consent is in force.

If the Applicant fails to satisfy any of its obligations under the Consent, or if Council incurs any expense under any term of the Consent, Council may call on the Bank Guarantee and remedy the Applicant's failure or reimburse Council for that expense without prejudice to any other right Council may have against the Applicant.

Council will return the Bank Guarantee, or any remainder, to the Applicant when the Applicant's obligations under the Consent have been complied with to the reasonable satisfaction of Council's Representative.

23) End of the Consent

When the Consent ends or is revoked, any part of the Structure remaining within the Public Road will be deemed to be an obstruction or encroachment under section 107 of the Roads Act.

The Applicant or any other person using or capable of using the Structure after the Consent ends will be deemed to be a person who causes an obstruction or encroachment on a public road for the purposes of section 107(1)(a) of the Roads Act.



When the Consent ends the Applicant must, in any manner directed by Council and as quickly as practicable, remove the Structure and make good any damage caused by the removal. The Applicant must also pay any outstanding fees and charges due to Council under the Consent.

If the Applicant does not remove the Structure or make good any damage caused by the removal at the expiration of the Consent, Council may undertake such actions on behalf of the Applicant and the costs incurred by Council in doing so will be a debt due from the Applicant to Council, payable on demand.

24) Resolution of disputes

Council will endeavour to resolve any disputes with the Applicant by discussing them with the Applicant. However, in the absence of agreement, Council's decision will be final. Nothing in this clause precludes the Applicant from taking legal action against Council in respect of Council's decision.

25) Notices

Any notice given under or in accordance with the Consent can be given in the manner provided in sections 254 and 255 of the Roads Act.

26) General

Nothing contained in the Consent:

- (a) prejudices or affects the rights of the public to pass along the Public Road;
- (b) authorises any nuisance or permanent obstruction of the Public Road;
- (c) confers on the Applicant any exclusive right or title to that part of the Structure within the boundaries of the Public Road; or
- (d) in any way restricts or limits the powers of Council in respect of the Public Road.

A certificate signed by Council's Representative as to the cost of any work carried out by Council or on Council's behalf will be final and conclusive evidence of that cost.

The Applicant must pay all reasonable legal costs incurred by Council in connection with the preparation of the Consent and with remedying any breach of the requirements of the Consent.

The Applicant must comply with all laws relating to the Works, the Structure and the Public Road.

Commencement of the Works constitutes acceptance of all conditions of the Consent.

A waiver or indulgence granted by Council in respect of any non-compliance by the Applicant with the terms of the Consent does not constitute a future or past waiver of similar non-compliance. A failure to act by Council in response to any non-compliance does not constitute a waiver of such conduct.

A reference to an Item is attached in Schedule 1.

