

PERMIT (SECTION 222)

WATTLE RANGE COUNCIL (ABN 48 797 441 024)
(Council)

[NAME OF APPLICANT] (ABN [Applicant's ABN])
(Applicant)

DATE

day of

20 .

PARTIES

WATTLE RANGE COUNCIL (ABN 48 797 441 024) of PO Box 27, Millicent SA 5280
(Council)

AND

[NAME OF APPLICANT] (ABN **[Applicant's ABN]**) of **[Applicant's address]** (Applicant)

BACKGROUND

- A. Council is a council constituted under the *Local Government Act 1999* (**the Act**) and it is entitled to exercise the powers conferred on it under the Act.
- B. Council is vested with the fee simple of the whole of the public roads within Council's area.
- C. The Applicant wishes to use the Road for the Business Purpose for the Permit Period.
- D. The Applicant is not permitted to use the Road for the Business Purpose without a permit from Council issued in accordance with the Act.
- E. Council has received the Application from the Applicant under Section 222 of the Act.
- F. Council has, if required, complied with the public consultation requirements of Sections 223(1) and 223(2) of the Act.
- G. Council has agreed to grant a permit to the Applicant to use the Road for the Business Purpose in accordance with the terms and conditions of this Agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the contrary intention appears or unless the context otherwise requires the following expressions have the following meanings:

- 1.1.1 **Act** means the *Local Government Act 1999* (SA);
- 1.1.2 **Applicant** means the party described in Item 1 and where the context permits includes employees, contractors, agents, authorised representative and other invitees;
- 1.1.3 **Application** means the application made by the Applicant for the granting of the Permit;
- 1.1.4 **Business Purpose** means the use described in Item 5;
- 1.1.5 **Commencement Date** means the date described in Item 6;

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- 1.1.6 **Council** means the Wattle Range Council and where the context permits includes its members, employees, contractors, agents, authorised representative and other invitees;
 - 1.1.7 **Fee** means the fee described in Item 3;
 - 1.1.8 **Legislation** includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law, including any by-laws issued by any local government body or authority;
 - 1.1.9 **Permit** means this permit granted by Council to the Applicant to use the Road for the Business Purpose in accordance with Section 222 of the Act;
 - 1.1.10 **Permit Period** means the period specified in Item 6 of the Schedule;
 - 1.1.11 **Plans** means the plans attached as approved or amended and approved by Council;
 - 1.1.12 **Road** means that the portion of public road described in Item 2 and where relevant includes any structures or improvements;
 - 1.1.13 **Schedule** means the Schedule attached forming part of this Permit detailing the Items;
 - 1.1.14 **Special Conditions** means the conditions detailed in Item 7;
 - 1.1.15 **Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation.

1.2 Interpretation

- 1.2.1 Unless the contrary intention appears:
- 1.2.2 a reference to an Item is a reference to an item in the Schedule;
- 1.2.3 a reference to a Schedule is a reference to a schedule forming part of this Agreement;
- 1.2.4 a reference to an Annexure is a reference to an annexure attached to this Agreement;
- 1.2.1 headings are for convenience only and do not affect interpretation;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 a reference to an individual or person includes a corporation, partnership, joint venture, authority, trust, state or government and vice versa;
- 1.2.4 a reference to any party in this Agreement, or any other document or arrangement referred to in this Agreement, includes that party's executors, administrators, substitutes, successors and permitted assignees;
- 1.2.5 a reference to any document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;

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- 1.2.6 a reference to any Legislation includes any statutory modification or re-enactment of it or any Legislation substituted for it, and all by-laws, regulations and rules issued under it;
 - 1.2.7 a reference in this Agreement to Council's approval or consent, is to Council's prior written approval or consent which may be granted or withheld in the absolute discretion of Council;
 - 1.2.8 "including" and similar expressions are not and must not be treated as words of limitation; and
 - 1.2.9 where the words 'not applicable' or 'nil' appear opposite any part of any Item of the Schedule each and every clause in this Agreement in which specific reference is made to such part if the relevant item in the Schedule shall so far as the context shall permit be null and void and of no effect;
 - 1.2.10 any Special Condition in the Schedule will apply to this Agreement and in the event of any inconsistency with the terms and conditions in the body of this Agreement and the Special Conditions, the Special Conditions will prevail;

1.3 Local Government Act

- 1.3.1 This Agreement shall be read and interpreted subject to the provisions of the Act and, to the extent to which there is any inconsistency with the provisions of the Act, those provisions will override the terms of this Agreement.
- 1.3.2 The terms of this Agreement are in addition to and do not derogate from the powers of the Council under the Act or any other Legislation.

2. GRANT OF PERMIT

In consideration of payment of the Fee, Council authorises and permits the Applicant, pursuant to Section 222 of the Act, to use the Road for the Business Purpose during the Permit Period.

3. APPLICANT'S COVENANTS

The Applicant expressly covenants and agrees with Council that during the Permit Period the Applicant shall comply with the covenants, terms and conditions of this Agreement as follows:

3.1 Fee

To pay to Council the Fee set out in Item 3 in the manner specified therein.

3.2 Additional Charges

To pay any taxes, rates, or charges levied by any government civic or municipal authority whether federal, state or local in respect of the Applicant's use of the Road or otherwise in connection with the Permit.

3.3 Permits, Certificates, Licences, Authorisations, etc

To provide to Council, prior to using the Road under the Permit, a copy of all permits, certificates and any other authorisations which may be required by

Council or some other governmental, civic, or municipal authority or otherwise to use the Road under the Permit.

3.4 Indemnity & Release

- 3.4.1 To indemnify Council from and against all actions, costs, claims and damages, which may be brought or claimed against Council arising out of or in relation to the granting of the Permit or the use of the Road for the Business Purpose, except where any action, cost claim or damage is caused by the negligence or default of Council.
- 3.4.2 Without limiting clause 3.4.1, the Applicant acknowledges and agrees that Council is in no way responsible or liable for any loss or damage caused to or by any Structure erected or installed in, on, across, under or over the Road and the Applicant releases Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the Structure or use of the Road for the Business Purpose.

3.5 Public Risk Insurance

- 3.5.1 To effect and maintain during the Permit Period a public risk insurance policy in the amount of Twenty Million Dollars (\$20,000,000.00) per claim or such other amount as Council may reasonably require from time to time and such policy must:
 - 3.5.1.1 be with an insurer and on terms approved by Council;
 - 3.5.1.2 cover events occurring during the policy's currency regardless of which claims are made; and
 - 3.5.1.3 note that despite any similar policies of Council, the Applicant's policy will be the primary policy.
- 3.5.2 The Applicant must not use the Road pursuant to the Permit until the Applicant has provided to Council a copy of the public risk insurance policy specified in clause 3.5.1.
- 3.5.3 Evidence of the public risk insurance policy specified in clause 3.5.1 must be provided to Council on each anniversary of the Commencement Date during the Permit Period.

3.6 Authorised Use

- 3.6.1 Not to undertake or permit any use of the Road for a business purpose (as defined by Section 222 of the Act) other than in accordance with the Permit.
- 3.6.2 Not to undertake or permit any alteration to the Road (as defined by Section 221 of the Act) other than in accordance with a separate written authorisation granted by Council.

3.7 Compliance with Statutory Requirements

At its own cost and expense to comply with all Statutory Requirements relating to the use of the Road under the Permit, including but not limited to the operation of the Business Purpose pursuant to the Permit.

3.8 Compliance with Direction of Government Department or Authority

- 3.8.1 To ensure that the use of the Road for the Business Purpose under the Permit by the Applicant and those permitted by the Applicant does not interfere with or cause damage to or affect in any way any adjoining property or any wire, post, cable, pipe or other property or infrastructure belonging to Council and/or a service provider or any other federal, state or local government department or authority or any other adjoining property owner.
- 3.8.2 If any damage specified in clause 3.8.1 does occur, without limiting the provisions contained in clause 3.4, the Applicant agrees to indemnify Council to the full extent permitted by law against any claim made against Council for such damage and the Applicant agrees to make good any such damage or to reimburse Council for any cost or expense it incurs in making good the damage.
- 3.8.3 To permit the Council or any officer or agent of the Council upon giving twenty-four (24) hours' notice (except in the case of an emergency where no notice shall be required) to enter into and upon the Road in order to view and examine the state and condition thereof and undertake any repairs.

3.9 Damage

- 3.9.1 The Applicant must, when using the Road pursuant to the Permit, take all reasonable precautions to avoid damage to the Road.
- 3.9.2 If the Applicant does cause any damage to the Road or any part of the Road, or any of Council's property as a result of the Applicant's use or misuse of the Road (whether under the Permit or otherwise), the Applicant must at its own cost and expense rectify the damage and reinstate the Road to the reasonable satisfaction of Council.

4. MUTUAL COVENANTS

4.1 Warranty

The Applicant acknowledges that Council does not warrant that the Road will for the duration of the Permit be structurally or otherwise suitable for the Business Purpose.

4.2 Agreement Not Transferable

This Agreement may not be assigned or otherwise transferred without written consent of Council.

4.3 Execution of Agreement

The Permit is not effective until the Applicant has received a copy of this Agreement signed by Council.

4.4 Contractual Rights Only

- 4.4.1 This Agreement does not confer on the Applicant any proprietary interest in the Road.

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- 4.4.2 This Agreement does not confer on the Applicant an exclusive right of occupation in relation to the Road in accordance with section 222(2) of the Act and nothing in this Permit entitles the Applicant to prevent the free use of the land by the public.

4.5 Termination of Permit

- 4.5.1 The Permit will immediately cancel on the earlier of:
- 4.5.1.1 the expiration of the Permit Period); and
 - 4.5.1.2 the termination of this Permit by Council as permitted under clause 4.7.

4.6 Consequences of Termination or Expiry

- 4.6.1 Before the expiration or earlier termination of the Permit and subject to the Applicant being granted a new permit pursuant to Section 222 of the Act, the Applicant must, at its own cost and expense, return the Road to its condition prior to the commencement of use for the Business Purpose unless otherwise agreed by the Council in writing.
- 4.6.2 If the Applicant fails to comply with clause 4.6.1 Council may undertake the work itself and any costs incurred by Council in doing so, may be recovered from the Applicant as a liquidated debt.

4.7 Breach

- 4.7.1 If the Applicant breaches a provision of the Permit, Council may give the Applicant a written notice in respect of the breach and the proposed termination of the Permit (**Notice**), which Notice must:
- 4.7.1.1 advise the Applicant that it is in breach of the Permit;
 - 4.7.1.2 include the grounds on which Council proposes to terminate the Permit; and
 - 4.7.1.3 allow the Applicant a reasonable time period within which it may give Council written representations on the proposed termination.
- 4.7.2 If Council receives written representations from the Applicant with respect to the proposed termination of the Permit, Council must consider all representations.
- 4.7.3 Council must, after having considered all representations from the Applicant confirm in writing to the Applicant that:
- 4.7.3.1 Council accepts the written representations made by the Applicant and that the Permit will not be terminated; or
 - 4.7.3.2 Council does not accept the written representations and that the Permit is terminated, effective immediately.
- 4.7.4 If Council serves a Notice on the Applicant, the time period specified in the Notice must be at least one month, unless Council determines that a shorter period should apply to protect the health or safety of the public or otherwise to protect the public interest.

4.8 Goods and Services Tax

4.8.1 For the purposes of this clause:

4.8.1.1 **the Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

4.8.1.2 **GST** has the same meaning as that term in Section 195-1 of the Act;

4.8.1.3 **Supply** means a taxable supply and has the same meaning as that term in the Act; and

4.8.1.4 **Tax Invoice** has the same meaning as that term in Section 195-1 of the Act.

4.8.2 All monies payable by the Applicant to Council pursuant to the Permit (**Payment**) do not include any GST.

4.8.3 If when making a Payment to Council, such Payment constitutes a Supply within the meaning of the Act, the Applicant shall also pay an amount on account of GST equal to the Payment multiplied by the current GST rate (**GST Amount**).

4.8.4 On or before receipt of the Payment and the GST Amount, Council will provide the Applicant with a Tax Invoice in a form compliant with the Act.

4.8.5 Clause 4.8.3 does not apply to the extent that the Fee is expressly stated to already include an amount on account of GST.

4.9 Costs

4.9.1 The Applicant is responsible for the costs incurred by Council in preparing this Agreement.

4.9.2 The Applicant is responsible for all costs incurred by Council as a consequence of any actual or threatened breach by the Applicant.

5. FEE REVIEW

5.1 The Fee will be reviewed and adjusted by Council effective from the dates specified in Item 4 of the Schedule (each called the Relevant Review Date), so that the Fee shall be re-calculated and adjusted from that date in accordance with the annual determination of Council under section 188 of the Act.

5.2 If there is any delay in ascertaining any adjustment of the Fee, the Applicant will continue to pay the Fee payable immediately before the Relevant Review Date and upon ascertainment of the Fee to apply as from the Relevant Review Date, any necessary adjustment will be made between the Applicant and Council and thereafter the Fee will be paid at the new rate.

5.3 The Fee may be reviewed at any time from a Relevant Review Date even if the review is instituted after the Relevant Review Date.

5.4 Nothing in the Agreement shall prevent the parties from negotiating and agreeing upon the Fee to apply from the Relevant Review Date without following the above procedures.

SCHEDULE

Item 1 Applicant	[Name of Applicant]
Item 2 Road	That part of [name of Road], [suburb/locality] edged red on the plan attached
Item 3 Permit Fee	[\$[fee] per annum (inclusive of GST) in accordance with Councils fees and charges schedule, subject to review, payable on the Commencement Date and each anniversary thereof throughout the Permit Period
Item 4 Permit Fee Review	Annually, on 1 July
Item 5 Business Purpose	[description of Business Purpose]
Item 6 Permit Period	[Between the hours of [insert] and [insert] on each and every [insert] for] a period of [insert] years from [insert date] (Commencement Date) to and including [insert date] (Expiry Date)
Item 7 Special Conditions	The following special conditions apply: Nil. [Will be specific to each application]

Declaration

I / We acknowledge [on behalf of the Applicant] that I / we have read and understand the Permit conditions and [on behalf of the Applicant] I / we agree to abide by the conditions of this Permit.

Name:

[Position:]

[Organisation:]

Signature:

[OR]

Executed by [NAME OF COMPANY]

pursuant to section 127 of the
Corporations Act 2001

.....
Signature of Director

.....
Signature of Director/Company Secretary
(Please delete as applicable)

.....
Name of Director (print)

.....
Name of Director/Company Secretary (print)

or

.....
Signature of Sole Director and Sole Company Secretary

.....
Name of Sole Director and Sole Company Secretary (print)

OFFICE USE ONLY

Signed for Wattle Range Council by its
authorised delegate in the presence of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness (print)

.....
Name of authorised delegate (print)

.....
Position of authorised delegate

Annexure A Plan

[Plan with red edging around the relevant part of the Road]

SAMPLE