

1. Introduction

- 1.1 The District Council of Mount Remarkable (Council) from time to time may be required to enter and occupy land for the purposes of preparing and taking stone, rubble, water and other materials (material) to carry out a function of Council.

2. Purpose

- 2.1 This policy aims to set out the requirements to establish agreements between Council and landowners for the purposes of entering and occupying land by either the Council or a Council contractor.
- 2.2 Pursuant to Section 294 of the Local Government Act 1999, Council has the power to enter and occupy land in connection with a function or responsibility of Council to:
- 2.2.1 Obtain earth, minerals or timber from land
 - 2.2.2 Deposit soil on land
 - 2.2.3 Construct temporary roads and structures on land
 - 2.2.4 Deposit or store materials on land
 - 2.2.5 Carry out any other incidental activity on land

3. Consent Form

- 3.1 A Consent Form to enter and occupy land for the purposes of carrying out a function of Council outlines legislative requirements that need to be addressed prior to occupation of the land. These issues include:
- 3.1.1 Amount of agreed 'material' to be taken/used
 - 3.1.2 Payment of amounts (if any) in accordance with rates set by Council resolution
 - 3.1.3 Period of access
 - 3.1.4 Land description
 - 3.1.5 Site responsibilities

4. Process

- 4.1 Council will obtain written agreement via a 'Consent Form - Enter & Occupy Land' (refer Appendix 1) with the land owner prior to accessing private property to ensure compliance with Section 294 of the *Local Government Act 1999*, and to provide a better understanding of Councils intentions.

5. Fees

- 5.1 The amount payable to the land owner shall be determined by Council, which will be commensurate with the amount of material utilised by Council.
- 5.2 Any remaining material shall be reverted to the property owner, unless otherwise negotiated between the landowner and Council when the consent form is completed.
- 5.3 All Landowners registered for GST (as advised in the completed Consent Form – Enter & Occupy Land) will received a Recipient Created Tax Invoice when payment is made.
- 5.4 All fees, unless otherwise negotiated at the time of consent, shall be paid within six (6) months of the completion of works, and removal of material.

6. Fencing and other Infrastructure

- 6.1 Any fencing or other infrastructure that is damaged during the course of entry and occupancy shall be the responsibility of the Council and any crop damage will be reasonably compensated by Council.

7. Rehabilitation

- 7.1 Council will rehabilitate a rubble pit that they create if the rubble pit is not to be utilised again within a 12 month period, unless written agreement from the owner is accepted.
- 7.2 Rehabilitation will include as a minimum:
 - 7.2.1 Overburden and excess stones pushed in to pit;
 - 7.2.2 General levelling and battering of edges.
- 7.3 Rehabilitation aims to give the appearance of a more natural depression in the ground, no revegetation of pits will be undertaken other than the natural revegetation that is likely to occur.
- 7.4 Rehabilitation should occur as soon as practicable upon completion of works and within 12 month of completion of works.

8. Refusal to Access

- 8.1 Should a property owner refuse to provide access to their property, the delegated officers shall make all reasonable attempts to establish an alternative supply within a reasonable vicinity of the proposed works.
- 8.2 If no supply of material is found within a reasonable vicinity of the proposed works, such works may be required to be re-scheduled at the discretion of the Director Infrastructure and Regulatory and a report shall be presented to Council.

9. Delegations

- 9.1 The Council hereby delegates the Chief Executive Officer to;
 - 9.1.1 Negotiate the terms and conditions of the consent form;
 - 9.1.2 Execute the consent form
- 9.2 In the absence of the Chief Executive Officer delegation shall extend to any person appointed to act in the position.

10. Document administration and control

Policy title:	Entry and Occupy Land Policy
Policy number:	04.52
Policy type:	Council / Governance
Responsible officer:	Director Infrastructure & Regulatory
First issued / adopted:	14 June 2016 reference 112-2016
Review period:	Reviewing within 12 months following the conclusion of a periodic election, inline with legislative changes, or by resolution of Council
Last reviewed:	18 May 2021, reference [103-2021] 18 April 2023 [070-2023]
Next review date:	By November 2027
Version:	Version 4
Date revoked:	n/a
Applicable legislation:	Local Government Act 1999
Related documents:	Consent Form – Enter and Occupy Land Fees and Charges
Public consultation required / undertaken:	No
Availability	<p>This Policy is available for inspection at the Council office and any person may obtain a copy of this Policy upon payment of the fee fixed by Council in accordance with Council's Fees and Charges adopted each financial year. It is also available on Council's website mtr.sa.gov.au.</p> <p>Any grievance in relation to this policy or its application should be forwarded in writing to the Chief Executive Officer of the Council.</p>
File reference:	W:\4. Policy Manuals\Current Policy Manual

CONSENT FORM – ENTER & OCCUPY LAND

[Pursuant to Section 294 of the Local Government Act 1999]

Agreement made this day of 2016
(date) (month)

Between

DISTRICT COUNCIL OF MOUNT REMARKABLE

of PO Box 94, Melrose in the State of South Australia ("the Council")

and

[INSERT NAME OF LANDOWNER]

[insert address of landowner] ("the Landowner")

Whereas Council wishes to enter on the Landowner's land situated at:

[insert address of land to be occupied]

for the purposes of preparing and taking stone, rubble, water or other material (the material) as described in the attached General Conditions of Agreement.

It is hereby agreed as follows:

1. That the Landowner agrees to providing Council _____ (material) up to the amount of _____ KL / M3 / Tonne / Other _____
2. At the sum/rate (the sum/rate) of \$ _____ per KL / M3 / Tonne / Other _____, and the Landowner grants Council the full right and authority to enter upon the land to excavate, mine, work, load and cart away or such other procedures as Council deems necessary to take and prepare the material and this is full and final payment.
3. The Agreement shall be for a period ("the period") of _____, between _____ and _____.
4. Council shall exercise all due skill in the performance of the Agreement.

Signed by the Property Owner:

Signed by or on behalf of the Council

.....
[name of owner]
Date:

.....
Chief Executive Officer
Date:

GENERAL CONDITIONS OF AGREEMENT

1. INTERPRETATION

“The Council” means the District Council of Mount Remarkable.

“Site” means the land and other places on, under, in or through which the works to be executed and any other lands or place provided by the Landowner for the purposes of the Agreement.

“Works” means all work necessary for the completion of the Agreement including any variations ordered or agreed by the Council.

“The Material” means Clay, Gravel, Sand, Shale, Limestone, Water or other material.

“Sum/Rate” means the rates set agreed in accordance with resolution of Council.

“The Period” as aligned in the agreement.

“The Landowner” shall be the undersigned of the Property Owner as per the agreement.

2. GENERAL OBLIGATIONS

2.1 Council Responsibility

The Council shall perform and complete the works and shall (subject to any condition elsewhere provided in the Agreement) provide all supervision, labour, materials, plant, transport and temporary works which may be necessary.

2.2 Site Responsibilities

The Council is responsible for the care of the works from the date of the Agreement excepting that which relates to the natural condition of the land or any condition imposed by the Landowner.

The Council shall provide, erect and maintain all barricades, guards, fencing, signs, lighting, temporary roadways and footpaths, necessary for the protection of the works, other property and for the safety and convenience of the public and employees of the Council in accordance with accepted Standards or Codes of Practice and shall remove them when no longer required.

The Council shall keep the site clean and tidy and regularly remove rubbish and surplus material. On completion of the works, the Council shall clear away and remove from the site all construction and surplus materials, rubbish and temporary works.

Reinstatement of the land will be subject to agreement between the Landowner and Council.

2.3 Urgent Protection

If urgent action is necessary to protect property, members of the public or any of the Works under the Agreement and the Council fails to take the necessary action then the Landowner may take such action as it sees fit. Where such action should have been taken at the Council's expense then any costs incurred by the Landowner will be a debt due to the Landowner by the Council.

3. STATUTORY OBLIGATIONS

3.1 General

The Council and the Landowner must comply with and communicate all notices required by any Act of Parliament, ordinances, regulations or by-laws relating to the Works.

3.2 Variances

If, in the opinion of the Council and the Landowner, the provisions of any document forming part of the Agreement are at variance with anything covered by this clause 3, then the Council and the Landowner shall give written communication specifying the requested departure from any such provisions which they consider necessary to comply with the legislation, notices, ordinances, by laws and the like.

4. SETTLEMENT OF DISPUTES

All disputes or differences between the Council and the Landowner arising out of the Agreement or concerning the performance or non-performance by either party of its obligations under the Agreement whether raised during the execution of the Agreement or after the completion of the Agreement shall be referred to an arbitrator who shall be either:

- mutually agreed upon by the parties in writing; or
- in the absence of that agreement, one of at least three persons, none of whom shall be an employee of the Council, of the Landowner, or have had any association with the work under the Agreement, whose names are submitted in writing by the Council for selection by the Landowner; or
- in the absence of that selection, by an arbitrator nominated by the State Chapter of the Institute of Arbiters Australia and appointed in accordance with the provisions of the laws of South Australia.

Enter and Occupy Land Policy Appendix 1

LANDOWNER FINANCIAL DETAILS

ABN: -- -- -- -- --

Trading Name: _____

Registered for GST: ☐ Yes ☐ No

A Recipient Created Tax Invoice (RCTI) will be provided if the Landowner is GST Registered.

If you would prefer any royalty payments to be paid via Electronic Funds Transfer (EFT), please complete the following:

BSB No.: -- -- - - --

Account No.: -- -- -- -- --

Account Name: _____