

Conditions to Close and/or Use a Public Road for a Community Event

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City of
Norwood
Payneham
& St Peters

BETWEEN The Corporation of the City of Norwood Payneham and St Peters of 175 The Parade Norwood SA 5067 (**Council**)

AND

The **Authorisation Holder** as described in Item 1 of the Schedule to the Application (the **Schedule**).

TERMS

1. DEFINITIONS

1.1 Definitions

In this Authorisation, except where contrary to context:

Act means the *Local Government Act 1999*;

Authorisation Holder means the party described in Item 1 of the schedule and where the context permits includes employees, contractors, agents, authorised representatives and other invitees;

Application means the application made by the Authorisation Holder for the granting of the Authorisation;

Authorisation means this authorisation granted by the Council to the Authorisation Holder for the erection, installation and maintenance of the Equipment brought onto, erected or installed or kept in, on, across, under or over the Road by force of Section 221, and where clause 2.2.2 applies, a permit granted by Council pursuant to Section 222 of the Act;

Council means the party described as the "Council" in this Authorisation and where the context permits, includes its members, employees, contractors, agents, authorised representative and other invitees;

Equipment means any and all structures, equipment or property brought onto, erected or installed or kept in, on, across, under or over the Road by the Authorisation Holder, including any such items described in Item 5 of the Schedule;

Event means the event described in Item 4 of the Schedule;

Plans means the plans (if any) attached to this Authorisation including as subsequently approved or amended and approved by the Council;

Road means that portion of public road described in Item 2 of the Schedule;

Special Conditions means the Special Conditions (if any) attached to this Permit.

Term means the period of the event and road closure which commences from the Event Start Date and Time as specified Item 4 of the Schedule and expires on the Event End Date and Time as specified Item 4 of the Schedule, and includes any period during which the Authorisation Holder remains in occupation of the Road (with or without Council permission).

2. GRANT OF AUTHORISATION AND PERMIT

2.1 Condition Precedent

- 2.1.1 This clause 2.1 only applies to this Authorisation if section 223 of the Act applies to any alteration or use contemplated by this Authorisation.
- 2.1.2 This Authorisation, is subject to and conditional upon the Council fully complying with its public consultation policy and the Council subsequently deciding to grant this Authorisation.
- 2.1.3 Council will notify the Authorisation Holder upon completion of consultation in accordance with its public consultation policy whether Council grants or refuses to grant this Authorisation.
- 2.1.4 If Council gives notice that it refuses to grant this Authorisation, the Authorisation does not take effect.
- 2.1.5 The Authorisation Holder acknowledges that it is not permitted to make any alteration including erecting or installing any Equipment or to use the Road for any purpose contemplated by this Authorisation until the condition precedent in clause 2.1.2 is complied with.

2.2 Grant of Rights

- 2.2.1 The Council authorises the Authorisation Holder, pursuant to and by force of section 221 of the Act and subject to this Authorisation to erect or install the Equipment and to maintain the Equipment on the Road for the Term.
- 2.2.2 To the extent that any use of the Road permitted by this Authorisation requires a permit under section 222 of the Act, the Council hereby grants a permit pursuant to section 222 of the Act to use the relevant portion of the Road for such use for the Term.
- 2.2.3 The terms and conditions of this Authorisation will apply equally to the permit granted pursuant to clause 2.2.2 subject to necessary variations notified in writing to the Authorisation Holder.
- 2.2.4 Notwithstanding anything else in this Authorisation, the Authorisation does not take effect until a copy of the Authorisation as signed by the Council has been provided to the Authorisation Holder.

2.3 Installation and Maintenance of Equipment

The Authorisation Holder must:

- 2.3.1 ensure that the Equipment is erected or installed, maintained and removed in accordance with:
 - 2.3.1.1 the Plans, subject to any variations, amendments or alterations to the Plans required by the Council;
 - 2.3.1.2 any development authorisation obtained by the Authorisation Holder in connection with the Event under the *Planning Development and Infrastructure Act 2016 (SA)*;
 - 2.3.1.3 in accordance with all relevant industry standards, Australian Standards or health and safety standards;
 - 2.3.1.4 with the exercise of reasonable skill, care and diligence;
 - 2.3.1.5 having first obtained (where required) and in compliance with any approval, consent, certificate, permit or licence from any statutory authority (including the Council) or utility suppliers;
 - 2.3.1.6 the provisions of the Authorisation; and
 - 2.3.1.7 any other reasonable direction of the Council.
- 2.3.2 The Authorisation Holder must remove the Equipment upon the expiration or earlier termination of this Authorisation, and any Equipment that is not removed from the Road may be removed by the Council and all costs

incurred by the Council in connection with such removal (including storage costs) are recoverable by the Council from the Authorisation Holder as a debt.

- 2.3.3 The Authorisation Holder must not undertake or permit any alteration to the Road other than in accordance with the Authorisation.

2.4 Visibility of Equipment when Remaining on Road Overnight

Where any Equipment is to remain erected or placed on the Road surface overnight, the Authorisation Holder must ensure that bunting and flashing lights or reflective chevrons are placed at each end of the Equipment at all times so that the Equipment is clearly visible.

2.5 Use of Road for Event

2.5.1 Permitted Use

The Authorisation Holder must use the Road strictly only for the Event.

2.5.2 Nuisance and Offensive Activities

The Authorisation Holder must not carry on any offensive or dangerous activities on or from the Road or create a nuisance or disturbance to Council, the public or other owners or occupied of nearby land and must take all reasonable steps to minimise noise, dust and vibration from the Road.

2.5.3 Notification of Event and Consent from Adjoining Owners

The Authorisation Holder must notify properties in the nearby vicinity of the proposed Road of the Event and the road closure at least fourteen (14) days prior to the Event.

2.5.4 Cleaning and Waste

2.5.4.1 The Authorisation Holder must keep the Road clean, tidy and free from rubbish, and must not cause any other area adjoining the Road to be left untidy or in an unclean state or condition.

2.5.4.2 All waste produced in connection with the Event, including (without limitation) fats, oil and charcoal, must be disposed off-site and must not be disposed on the Road.

2.5.5 Hazards

The Authorisation Holder must immediately notify the Council upon becoming aware of any hazards, risks and obligations relating to the Road.

2.5.6 Food Storage, Service and Disposal

2.5.6.1 The Authorisation Holder acknowledges and agrees to comply with all relevant legislative requirements in relation to the storage, service and disposal of food and beverages in connection with the Event, including under the *Food Act 2001* and any directions or guidelines issued by the Eastern Health Authority.

2.5.6.2 The Authorisation Holder acknowledges and agrees that Environmental Health Officers from the Eastern Health Authority may inspect the Road at any time for the purposes of ensuring compliance with all relevant legislative requirements relating to the storage, service and disposal of food and beverages, and agrees to comply with any reasonable directions of such Environmental Health Officers in relation to these matters.

2.5.7 Power and Electrical Appliances

2.5.7.1 It is the responsibility of the Authorisation Holder to arrange their own power supply at the Road for use in connection with the Event.

2.5.7.2 The Authorisation Holder will be responsible for the use and management of their power supply at the Road in all respects, and the Council will not be liable for any loss or damage suffered in connection with the use or management of this power supply by the Authorisation Holder.

2.5.7.3 The Authorisation Holder must ensure that all electrical appliances, equipment and cabling brought onto or in use at the Road is tested and tagged, and is placed, maintained and covered at the Area in accordance with relevant Australian Standards and work health and safety and legislative requirements, and the Authorisation Holder must provide the Council satisfactory evidence of compliance with the above obligations upon request.

2.5.8 **Alcohol and Gaming**

2.5.8.1 Unless the Authorisation Holder first obtains the written consent of the Council, the Authorisation Holder must not apply for:

- (i) a liquor licence under the *Liquor Licensing Act 1997*; or
- (ii) a gaming machine licence under the *Gaming Machines Act 1992*.

2.5.8.2 If the Authorisation Holder obtains any of the above licences, then it must comply with any licence terms and conditions and the relevant Act(s) at all times.

2.5.9 **Entertainment and Music**

The Authorisation Holder must obtain any required licences for the playing of live music or film at the Road as part of the Event, including from the Australasian Performing Right Association and the Phonographic Performance Company of Australia.

2.5.10 **Signs and Banners**

The Permit Holder must not place any signs, advertisements or banners at the Road except where prior Council approval has been obtained and in accordance with any statutory requirements. Approved signs, advertisements or banners must be removed upon the expiry or earlier determination of this Authorisation.

2.5.11 **Pegging and Moveable Structures**

The Authorisation Holder must ensure that all moveable structures are weighted in accordance with relevant industry standards, including as set out in the *Hire and Rental Industry Association (HRIA) Marquee Weighting Guide* (as amended from time to time), and otherwise in accordance with the Council's directions.

2.5.12 **Council Right to Enter**

The Council may enter the Road at any time without prior notice for any reason, and may close or restrict access to the Road in an emergency.

2.5.13 **Statutory Requirements**

The Authorisation Holder must comply with all applicable legislation, regulations, by-laws, codes of practice, guidelines and Council policies relating to the Event or the use of the Road, including any applicable industry or health and safety standards in relation to the Event.

2.5.14 **Declaration of an Emergency Health Event**

Without limiting clause 2.5.13 in any way, in conducting the Event under this Authorisation, the Authorisation Holder must ensure compliance at all times with:

- 2.5.14.1 all relevant legislative requirements and emergency management directions in place in relation to the declared Emergency Health Event (including as amended from time-to-time); and
- 2.5.14.2 all relevant directions, guidelines and codes of practice from any peak body related to the conduct of the Event with respect to the declared Emergency Health Event (including as amended from time-to-time).

2.6 Insurance

2.6.1 Authorisation Holder Must Insure

The Authorisation Holder must keep current at all times during the Term, and must ensure any of its contractors (including parties that supply and/or install equipment or infrastructure on the Road) also keep current:

2.6.1.1 public risk insurance for at least the amount in Item 7 of the Schedule (or any other amount the Council reasonably requires) for each claim; and

2.6.1.2 other insurances required by legislation or which the Council reasonably requires.

2.6.2 Requirements for Policies

Each policy the Authorisation Holder takes out under this clause 2.6 must:

2.6.2.1 be with an insurer and on terms approved by the Council;

2.6.2.2 be in the name of the Authorisation Holder and note the interest of the Council and any other person the Council requires;

2.6.2.3 cover events occurring during the policy's currency regardless of when claims are made; and

2.6.2.4 note that despite any similar policies of the Council, the Authorisation Holder's policies will be primary policies

2.6.3 Evidence of Insurance

2.6.3.1 The Authorisation Holder must give the Council certificates evidencing the currency of the policies the Authorisation Holder and any of its contractors or other parties have taken out under this clause 2.6.

2.6.3.2 The Authorisation Holder must not erect or install any Equipment or conduct the Event until the Authorisation Holder has provided to the Council a copy of the public risk insurance policies specified in clause 2.6.1.

2.7 Indemnity and Release

2.7.1 The Authorisation Holder occupies and uses the Road at the Authorisation Holder's risk and releases the Council from any liability to the fullest extent permitted by law.

2.7.2 The Authorisation Holder is liable for and indemnifies the Council against, and releases the Council from, all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly in connection with the granting of the Authorisation, the erection, installation, maintenance or removal of the Equipment, or the undertaking of the Event, except to the extent caused or contributed to by the negligence of the Council.

2.7.3 Each indemnity is independent from the Authorisation Holder's other obligations and continues during this Authorisation and after this Authorisation ends.

2.8 Damage

2.8.1 The Authorisation Holder must not permit, cause or contribute to damage to the Road or any road, footpath, Council owned or controlled land or property in the immediate vicinity of the Road in erecting, installing, maintaining or removing the Equipment or undertaking the Event.

2.8.2 If the Authorisation Holder causes any damage described in clause 2.8.1 or to the Road or any part of the Road, or any part of the Council's land or property, the Authorisation Holder must immediately notify the Council and at its own cost and expense promptly rectify the damage and reinstate the Road or the Council property to the satisfaction of the Council and in accordance with all directions and requirements of Council.

- 2.8.3 If the Authorisation Holder fails to promptly rectify and repair any such damage pursuant to clause 2.8.2, or alternatively if the Council elects in its discretion, the Council may undertake the rectification and repairs itself, without notice having been given to the Authorisation Holder and the Council shall be entitled to recover from the Authorisation Holder as a liquidated debt any costs incurred in doing so.

2.9 Break Clause

Notwithstanding the Term, the Authorisation Holder acknowledges and agrees that the Council may terminate this Authorisation by giving not less than fourteen (14) days written notice to the Authorisation Holder if the Council requires that this Authorisation is terminated for any reason in the Council's discretion including in connection with any proposal to do works to the Road.

3. RIGHTS AND OBLIGATIONS ON EXPIRY AND BREACH

3.1 Termination of Authorisation

The Authorisation will immediately cancel on the earlier of the expiration of the Term or the termination of the Authorisation by the Council as permitted under this Authorisation.

3.2 Handover of Road

3.2.1 Upon the expiration or earlier termination of the Authorisation, the Authorisation Holder must at its own cost and expense remove all Equipment and return the Road to its condition prior to the Event having been undertaken to the satisfaction of the Council and in accordance with all directions and requirements of the Council, including repairing any damage caused to the Road and areas in the vicinity of the Road in removing the Equipment.

3.2.2 If the Authorisation Holder fails to carry out the works required under clause 3.2.1, the Council may without notice undertake the work required itself and may recover any cost or expense incurred in connection with such works from the Authorisation Holder as a liquidated debt.

3.3 Council's Rights on Breach

3.3.1.1 If the Authorisation Holder is at any time in breach of any of its obligations under this Authorisation, the Council and anybody authorised by the Council for that purpose may:

- (i) cancel this Authorisation in accordance with section 225 of the Act;
- (ii) at any time thereafter come onto the Road without notice and do all things necessary to remedy that breach, and the Authorisation Holder will be liable to pay or reimburse the Council for all costs and expenses incurred in that regard which the Council may recover from the Authorisation Holder as a debt.

3.3.1.2 The Authorisation Holder must immediately notify the Council if it breaches any provision of this Authorisation.

4. GENERAL

4.1 Permits, Certificates, Licences, Authorisations

4.1.1 The Authorisation Holder must provide to the Council, prior to erecting or installing the Equipment or undertaking the Event, a copy of all required permits, certificates and any other authorisations which may be required by the Council or some other governmental, civic, or municipal authority or otherwise.

4.1.2 To avoid doubt, the grant of this Authorisation does not fetter or limit any other discretion, right or power the Council may have as an authority in connection with this Authorisation including under the *Road Traffic Act 1961* and the *Development Act 1993*.

4.2 **Ownership Of Equipment**

The Equipment remains the property of the Authorisation Holder for the Term.

4.3 **Abandoned Goods**

If the Authorisation Holder leaves any goods or equipment on the Road for a period of at least fourteen (14) days, except where authorised under this Authorisation, such goods will vest in the Council and the Council will be entitled to deal with and dispose of those goods at its discretion.

4.4 **Execution of Authorisation**

The Authorisation is not effective until the Authorisation Holder has received a copy of this Authorisation signed by the Council.

4.5 **Authorisation Not Transferable**

This Authorisation is not transferable.

4.6 **Contractual Rights Only**

The rights conferred by this Authorisation are conferred by force of the Act. This Authorisation does not confer on the Authorisation Holder any exclusive right, entitlement or proprietary interest in the Road.

4.7 **Special Conditions**

The Authorisation Holder acknowledges and agrees that the Special Conditions (if any) form part of this Authorisation and bind the Authorisation Holder, and to the extent there is any inconsistency between the Special Conditions and any other term of this Authorisation, the Special Conditions shall prevail.

4.8 **Entire Authorisation**

The Council and the Authorisation Holder acknowledge and agree that this Authorisation contains and represents the entire agreement reached between them with regard to the Road and the Event and that no promises, representations or undertakings, other than those contained in this Authorisation, were made or given or relied upon.

4.9 **Waiver**

4.9.1 Council can only waive any rights it has under this Authorisation expressly or accept any breach by written notice to the Authorisation Holder. No other conduct by Council will be deemed to constitute a waiver or acceptance.

4.9.2 If the Council waives any rights or accepts any breach by the Authorisation Holder, that waiver or acceptance cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Authorisation.

4.10 **Notice**

4.10.1 A notice given under this Authorisation must be in writing and may be given by post, by email, or by delivery:

4.10.1.1 to the Council at:

- (i) its office;
- (ii) the address or email address of the Council appearing in this Authorisation; or
- (iii) any other address or email address of which written notification has been given;

4.10.1.2 to the Authorisation Holder at:

- (i) its address or email address appearing in this Authorisation; or

(ii) any other address or email address of which written notification has been given.

- 4.10.2 Where more than one person comprises a party, notice to one of those persons is effective notice to all of those persons and to that party.
- 4.10.3 Posted notices will be taken to have been received two (2) business days after posting with postage prepaid.
- 4.10.4 Notices delivered by hand will be taken to have been received when delivered.
- 4.10.5 Notices sent by email will be taken to have been received four (4) hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.
- 4.10.6 However notices delivered by hand after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next business day at the place where it is received.
- 4.10.7 Notices will be regarded as effective if signed for and on behalf of a party by its lawyers or, if the party is a corporation, by a director or duly authorised officer of the corporation.

4.11 **Severance**

If any part of this Authorisation is found to be void or unenforceable, then that part will be severed from this Authorisation and the remainder will continue to apply.