POLICY 3.03
Transport
Rubble Pits Agreement to Enter & Occupy Land
Version: 4 | Next Review: August 2030

DISTRICT COUNCIL of TUMBY BAY

1. INTRODUCTION

Pursuant to section 294 of the *Local Government Act 1999* (the Act) the District Council of Tumby Bay (the Council) is empowered to enter and occupy land for purposes associated with road construction and maintenance.

These powers include the ability to:

- obtain soil, earth, minerals or other materials from the land,
- deposit soil or other materials on land,
- construct temporary access ways, roads, or structures,
- store plant, equipment and materials, and
- undertake any incidental or necessary activity on land.

In exercising these statutory powers, the Council is committed to acting in a manner that is lawful, transparent, fair and respectful of landowners' rights, and to minimising disruption and impact on private land.

This Policy establishes a consistent framework to guide Council officers in the appropriate use of these powers, including engagement with landowners and the formalisation of agreements for entry and occupation.

2. POLICY OBJECTIVE

The objective of this Policy is to:

- ensure Council's powers under section 294 of the Act are exercised in a consistent, accountable and lawful manner,
- provide a clear and transparent process for entering and occupying private land for rubble extraction and related purposes,
- ensure that landowners are appropriately informed, consulted, and where applicable, compensated,
- minimise environmental, agricultural, and operational impacts on private land,
- ensure all agreements are properly documented, authorised, and recorded, and
- support compliance with all relevant legislative, financial, and taxation obligations.

3. LEGISLATIVE REQUIREMENT

This Policy is principally governed by section 294 'Power to enter and occupy land' of the Act which:

- provides Council the authority to enter and occupy land for road-related purposes,
- allows for extraction of materials and undertaking of associated works,
- requires Council to pay compensation for any damage caused,

- generally requires Council to provide reasonable notice to the landowner, except where impracticable or in emergency situations, and
- requires Council to minimise damage where reasonably practicable and compensate for any loss or damage caused.

Council officers must have regard to all relevant legislation applicable to the circumstances of entry and occupation of land.

4. CONSENT FORM

The consent form to enter and occupy land for the purpose of obtaining rubble outlines legislative requirements that need to be addressed prior to occupation of the land. These issues include:

- expected period of occupation,
- payment amounts (if any) covering property rental, crop damage compensation, and material compensation,
- fencing requirements, and
- land description.

The Council will review the payment amounts annually as part of the annual budget process, and the consent form will be updated to reflect the payment amounts approved by Council.

5. PROCESS

Council officers will, wherever practicable, obtain written agreement via the consent form prior to accessing private property. This approach supports transparency and strengthens compliance with the intent of section 294 of the Act.

All items on the consent form must be completed prior to occupation of the land. A completed copy of the consent form will be supplied to the landowner, with a record maintained in the Council's Electronic Records Management System.

6. RECIPIENT CREATED TAX INVOICE

Council Officers must, at the same time as the consent form is being completed, request the landowner to complete and sign a Recipient Created Tax Invoice (RCTI) Agreement in accordance with the requirements of *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

A RCTI agreement need not be completed where the landowner is not registered or is not required to be registered for GST, in which case, the landowner should be required to sign the acknowledgement of GST Status which is also attached to this Policy.

7. DELEGATION

This delegation is made in accordance with section 44 of the Act.

The Council hereby delegates the following responsibilities to the General Manager Works & Infrastructure and the Works Supervisor to:

- negotiate terms and conditions of the consent form, and
- execute the consent form.

8. SUB DELEGATION

Delegation made to a specific position (including Chief Executive Officer) extends to any person appointed to act in the position.

In the absence of the Chief Executive Officer, delegation extends to the Deputy CEO.

9. POLICY REVIEW

This Policy will be reviewed every four (4) years. The Council has the right to review this policy at any time, if considered desirable.

10. AVAILABILITY OF THIS POLICY

This Policy will be available for inspection at the Council's Office during ordinary business hours and via the Council's website, www.tumbybay.sa.gov.au. Copies will also be provided to the public upon request and upon payment of a fee in accordance with the Council's Schedule of Fees and Charges.

11. FURTHER INFORMATION

File reference	R26/10739
Responsibility	General Manager Works & Infrastructure
Version	4
Effective date	11/08/2026
Last revised date	12/05/2020
Minutes reference	8c/82026
Next review date	August 2030
Applicable Legislation	*Local Government Act 1999* *Civil Liability Act 1936* *Real Property Act 1886* *Environment Protection Act 1993* *Native Vegetation Act 1991* *Work Health and Safety Act 2012* *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*
Related Policies	
Related Procedures & Documents	Rubble Pits – Consent Form to Enter & Occupy Land Recipient Created Tax Invoice Agreement Acknowledgement of GST Status Agreement

AUTHORITY:

Adopted by Council:	10/10/2011	{Motion 19c/102011}
Reviewed by Council:	10/11/2015	{Motion 7c/112015}
Amended by Council:	12/05/2020	{Motion 3c/52020}
Adopted by Council:	11/08/2026	{Motion 8c/82026}

SIGNED: ....
Responsible Officer

DISTRICT COUNCIL of TUMBY BAY

CONSENT FORM

RUBBLE PITS - TO ENTER & OCCUPY LAND

Applicant – Owner or Occupier

Name: _____

Postal Address: _____

Phone: _____ Email: _____

Bank Details Account Name: _____

BSB: _____ Account No:_____

Term of Consent

This consent is valid from ____/____/____ to ____/____/____

Payment

Compensation for materials taken

$0.20/tonne effective from 1 July 2026. This per tonne compensation is offered in lieu of rent or provision of fencing.

Quarterly Rent

$1.00 per annum payable on demand

Crop Damage

Council access to the land will be negotiated with the landowner to avoid damage to crops. In the event that Council access to land will result in crop damage, compensation shall be as negotiated between the landowner and the Council representative prior to access commencing.

Fencing required

Yes / No

The Land

Property Address Number: _____ Road Name: _____

Town: _____ Section: _____

Certificate of Title: _____

Location Plan

Per attached map (supplied by Council)

Extract from section 294 of the *Local Government Act 1999*:

294—Power to enter and occupy land in connection with an activity

(1) Subject to this section, an employee or contractor of a council may, insofar as may be reasonably necessary for carrying out a function or responsibility of the council—

(a) enter land at any reasonable time;

(b) occupy the land on behalf of the council;

(c) —

(i) obtain earth, minerals or timber from land;

(ii) deposit soil on land;

(iii) construct temporary roads and structures on land;

(iv) deposit or store materials on land;

(iva) conduct surveys, inspections, examinations and tests, and carry out work;

(v) carry out any other incidental activity on land.

(1a) Subject to subsection (1b), an owner or occupier of the land must be given at least 48 hours notice in writing of an intention to exercise a power under subsection (1)(b) or (c).

(1b) Notice need not be given under subsection (1a) if—

(a) action is required to be taken in an emergency or it is otherwise impracticable to give 48 hours notice in the circumstances of the particular case; or

(b) the occupation of the land, or any activities on the land—

(i) are not expected to extend beyond 24 hours; and

(ii) are not expected to cause any material nuisance or damage; or

(c) the whereabouts of an owner or occupier of land cannot be found after making reasonable inquiries.

(2) The council is, except in relation to an owner or occupier of the land, liable for any nuisance or damage caused while in occupation of land under this section.

(3) The council must—

(a) pay to the owner or occupier of the land rent on a quarterly or half-yearly basis, at a rate to be determined by agreement between the council and the owner or occupier or, in default of agreement, by the Supreme Court; and

(b) pay to the owner or occupier of the land within 1 month after occupying the land—reasonable compensation for damage caused to any crops on the land; and

(c) within 6 months of ceasing to occupy the land—

(i) remedy damage to land caused by the council while in occupation of the land (to such extent as this may be reasonably practicable); and

(ii) pay to the owner or occupier of the land reasonable compensation for any other loss or damage caused by the council, including the full value of any earth, minerals or resources taken from the land.

(4) Compensation payable by the council under this section may be recovered as a debt.

(5) The council must, at the request of an owner or occupier of the land, erect a fence of reasonable quality and design between the land and adjoining land.

(6) A council is not authorised under this section to enter or occupy—

(a) land that is within 500 metres of a house or dwelling; or

(b) a garden or a park; or

(c) a quarry, brickfield or other similar place from which materials are commonly obtained for commercial purposes; or

(d) land where a permit, claim, lease, licence, tenement or private mine exists under the *Mining Act 1971* or the *Opal Mining Act 1995*.

(7) A council does not require a mining tenement or other authorisation under the *Mining Act 1971* with respect to the exercise of powers under this section but, to the extent to which a council, other than an exempt council, recovers extractive minerals under this section—

(b) the provisions of the *Mining Act 1971* designated by subsection (7a) will apply to and in relation to the council as if, in recovering the extractive minerals, the council is—

(i) carrying out operations under that Act (and required to comply with the provisions of that Act); and

(ii) the holder of a mining tenement under that Act for the recovery of extractive minerals.

(7a) The following provisions of the *Mining Act 1971* are designated for the purposes of subsection (7)(b):

(a) sections 14B to 14F (inclusive);

(e) section 18;

(f) sections 76 to 77D (inclusive);

(g) section 89A;

(h) section 91;

(i) section 92.

(7b) In connection with subsections (7) and (7a)—

(a) to the extent that there is an inconsistency between section 7(2) of the *Mining Act 1971* and subsections (7) and (7a) of this section, those subsections will apply to the extent of the inconsistency (so as to allow the *Mining Act 1971* to regulate the operations of a council to the extent envisaged by those subsections); and

(8) In this section—

exempt council means, in relation to a financial year commencing on or after 1 July 2015, a council whose total annual revenue for the financial year immediately preceding the relevant financial year, as reported in its audited financial statements, does not exceed the prescribed amount;

extractive minerals means extractive minerals as defined by the *Mining Act 1971*;

minerals include stone, gravel, clay and sand;

work includes work associated with—

(a) the construction, maintenance, repair or replacement of infrastructure, equipment, connections, structures, works or other facilities (including dams or other structures or facilities associated with stormwater management or flood mitigation); or

(b) the provision of services or facilities that benefit the area of the relevant council; or

(c) the carrying out of any other function or responsibility of the relevant council.

The parties listed at Items 1 and 2 of the Consent Form acknowledge that they understand the conditions of entry and occupation by the Council and such consent will not be varied unless requested and agreed to in writing.

☐ Recipient Created Tax Invoice Completed (Tick if completed)

Signed for and on behalf of the District Council of Tumby Bay by:

Name: _____

Position: _____

Signature: _____

Signed for and on behalf of the Owner / Occupier by:

Name: _____

Position: _____

Signature: _____

DISTRICT COUNCIL of TUMBY BAY

Registered for GST

Recipient Created Tax Invoice ("RCTI") Agreement

Name: _____ ("the supplier")

ABN: _____

and the **District Council of Tumby Bay** ("the recipient") with ABN 22 393 356 827 both agree that in respect of the supply of rubble ("the supplies") made by the supplier to the recipient:

- The recipient can issue tax invoices in respect of the supplies,
- The supplier will not issue a tax invoice in respect of the supplies,
- The supplier acknowledges that it is registered for GST when it enters into this agreement and that it will notify the recipient if it ceases to be registered,
- The recipient acknowledges that it is registered for GST when it enters into this agreement and that it will notify the supplier if it ceases to be registered or if it ceases to satisfy any of the requirements of the determination, and
- The recipient will not issue a document that would otherwise be an RCTI, on or after the date when the recipient or the supplier has failed to comply with any of the requirements of the determination.

Signed:

Name: _____ Signature: _____

(for the supplier)

Title: _____ Date: _____

Signed for and on behalf of the District Council of Tumby Bay ("the recipient"):

Name: _____ Signature: _____

Title: _____ Date: _____

DISTRICT COUNCIL of TUMBY BAY

Not Registered for GST

Acknowledgement of GST Status Agreement

Name: _____ ("the supplier")

with ABN: _____

and the **District Council of Tumby Bay** ("the recipient") with ABN 22 393 356 827 both agree that in respect of the supply of rubble ("the supplies") made by the supplier to the recipient:

- The supplier acknowledges that it is not registered for GST when entering into this agreement and that it is not required to be registered and it will notify the recipient if it becomes registered or is required to be registered,
- The recipient can issue invoices in respect of the supplies, and
- The supplier will not issue an invoice in respect of the supplies

Signed:

Name: _____ Signature: _____

(for the supplier)

Title: _____ Date: _____

Signed for and on behalf of the District Council of Tumby Bay ("the recipient"):

Name: _____ Signature: _____

Title: _____ Date: _____