

## **Public Road: Authorisation and permit Sections 221 & 222, *Local Government Act 1999***

**DISTRICT COUNCIL OF TUMBY BAY**

**Grou Caravan Park Pty Ltd**

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**AGREEMENT FOR AUTHORISATION TO MAKE AN ALTERATION TO A PUBLIC ROAD  
AND PERMIT TO USE A PUBLIC ROAD FOR A BUSINESS PURPOSE**

**SECTIONS 221 & 222, LOCAL GOVERNMENT ACT 1999**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2023

**BETWEEN**

**DISTRICT COUNCIL OF TUMBY BAY ABN 22 393 356 827** of Corner Mortlock Street and West Terrace, Tumby Bay, SA 5605 (the **Council**)

**AND**

**Grou Caravan Park Pty Ltd ABN 88 629 368 659** of [47 Tumby Bay Terrace, Tumby Bay SA 5605] (the **Operator**)

**BACKGROUND**

- A. All public roads in the Council area are vested in the Council under the *Local Government Act 1999* (the **Act**).
- B. The Operator is the occupier of the land delineated in Annexure A and more commonly known as Tumby Bay Caravan Park.
- C. The Operator has requested the Council to grant an authorisation to make alterations to a portion of the public road known as Tumby Terrace, between Goode Avenue and McCallum Street (the **Authorisation Area**).
- D. The Authorisation Area is part of the road reserve of the public road known as Tumby Terrace (the **Road**).
- E. The Operator wishes to maintain existing improvements on a portion of the Road.
- F. The Operator has requested and the Council has agreed, subject to the general conditions and the Authorisation and Permit set out below in this Authorisation and Permit (or as may be included pursuant to clause 15.3), to grant the Operator:
  - (i) an authorisation to make and maintain alterations on the Road (the **Authorisation**); and
  - (ii) a permit for the Road to be used for a business purpose (the **Permit**).

**GENERAL CONDITIONS**

**1. AUTHORISATION**

- 1.1 The Authorisation authorises the Operator to maintain the alterations described in **Item 1** of Schedule 1 (the **Alterations**) to the Road, subject to these general conditions and the Special Conditions contained in Schedule 2 to this Authorisation and Permit.

- 1.2 The Authorisation applies only in relation to the portion of the Road described in **Item 2** of Schedule 1 (the **Authorisation Area**).
- 1.3 The Authorisation is granted by the Council acting under section 221 of the Act (and not in any other capacity) for the term set out in **Item 3** of Schedule 1.
- 1.4 The Authorisation is not transferrable and expires on the earlier of the date:
  - 1.4.1 specified in **Item 3** of Schedule 1; or
  - 1.4.2 it is surrendered by the Operator by written notice to the Council; or
  - 1.4.3 it is cancelled in accordance with this Authorisation and Permit; or
  - 1.4.4 the Permit is cancelled or surrendered or expires.
- 1.5 The Operator is not automatically entitled to a renewal of the Authorisation upon its expiry. The Operator may apply to the Council for a renewal of the Authorisation prior to its expiry, which application will be determined by the Council in its absolute discretion.

## 2. **PERMIT**

- 2.1 The Permit authorises the Road to be used for the business purpose described in **Item 4** of Schedule 1 (the **Permitted Use**).
- 2.2 The Permit applies only in relation to the Authorisation Area.
- 2.3 The Permit is granted by the Council acting under section 222 of the Act (and not in any other capacity) for the term set out in **Item 5** of Schedule 1.
- 2.4 The Permit is not transferrable and expires on the earlier of the date:
  - 2.4.1 specified in **Item 5** of Schedule 1; or
  - 2.4.2 it is surrendered by the Operator by written notice to the Council; or
  - 2.4.3 it is cancelled in accordance with this Authorisation and Permit; or
  - 2.4.4 the Authorisation is cancelled or surrendered or expires.
- 2.5 The Operator is not automatically entitled to a renewal of the Permit upon its expiry. The Operator may apply to the Council for a renewal of the Permit prior to its expiry, which application may be granted by the Council in its absolute discretion.

## 3. **FEE**

- 3.1 The Operator must pay the fee to the Council as specified in **Item 6** of Schedule 1 (the **Fee**) and in the manner as directed by the Council.

- 3.2 If the Authorisation or the Permit is surrendered or cancelled prior to its expiration or suspended in accordance with its terms, there will not be any adjustment, reduction or refund by the Council of the Fees paid by the Operator for that year.
- 3.3 The Fee is to be increased annually on the anniversary of the Commencement Date of the Authorisation or the Permit (the **Review Date**) by the amount (expressed as a percentage) by which the current CPI exceeds the Previous CPI.
- 3.4 For the purposes of this clause 3.4, the following definitions apply:
  - 3.4.1 **CPI** means the consumer price index published by the Australian Bureau of Statistics for All Groups (Adelaide);
  - 3.4.2 **Current CPI** means the CPI number for the quarter ending immediately before the relevant review date;
  - 3.4.3 **Previous CPI** means for the Review Date, the CPI number for the quarter ending immediately before the last Review Date (or if there has not been one, the Commencement Date of the Authorisation or the Permit).

#### 4. **ACCESS**

- 4.1 Nothing in the Authorisation or the Permit is intended to restrict or limit the Council's rights to access the Road at any time.
- 4.2 The Operator must not, at any time, restrict public access to or across the Road excluding the Authorisation Area.
- 4.3 The Council and any person authorised by the Council may, at all reasonable times and upon providing reasonable notice to the Operator (except in the case of emergency when notice is not required), enter upon the Authorisation Area to inspect the Alterations.

#### 5. **SITE CONTROL**

Whilst in occupation of the Authorisation Area, the Operator must:

- 5.1 take all reasonable measures to protect any utility services, adjacent properties, existing structures (including, as relevant, kerb, gutter, paving, manhole lid, irrigation system, drainage infrastructure) from damage;
- 5.2 keep the Authorisation Area reasonably clean, tidy and free of rubbish, including by removing solid waste and recyclables from the Authorisation Area and disposing of such waste and recyclables in a lawful and responsible manner;
- 5.3 not create or cause a nuisance or unreasonable disturbance (as determined by the Council) either for the Council or for the occupiers of adjoining lands.

**6. STANDARDS OF CARE**

The Operator must, at its cost and expense in all things, comply with:

- 6.1 all laws, regulations, codes of practice and guidelines that apply to the Permitted Use;
- 6.2 any reasonable directions as may be given by a Council employee in respect of the use, maintenance or upkeep of the Authorisation Area, the construction of the Alterations or the Operator's use of the Road; and
- 6.3 the exercise of reasonable care, skill and diligence.

**7. ALTERATIONS**

- 7.1 With the exception of the Alterations, the Operator must not make any other alteration to a public road (within the meaning of section 221(2) of the Act) within the Authorisation Area or otherwise to the Road without the prior written consent of the Council (which consent may be granted subject to any conditions the Council deems appropriate).
- 7.2 The Operator is solely responsible for the upkeep and maintenance of the Alterations and must maintain the Alterations:
  - 7.2.1 in good and substantial repair, order and condition at all times, safe and free from danger to any person on or using the Road (including the Authorisation Area);
  - 7.2.2 so they are not in a condition that detracts from the amenity of the area in which they are located; and
  - 7.2.3 in accordance with the reasonable directions of the Council (including its employees).
- 7.3 If, at any time during the term of this Authorisation and Permit the Council reasonably considers that material repairs or maintenance are required in relation to the Alterations and serves a notice on the Operator of the repair or maintenance works that the Operator is required to undertake in accordance with this clause 7 then:
  - 7.3.1 the Operator must undertake, to the Council's reasonable satisfaction, the repair or maintenance works as specified in the notice within the timeframe specified therein; and
  - 7.3.2 if the Operator fails to undertake the repair or maintenance works within the time stated in the notice, then the Council may undertake the works (including by entering onto the Authorisation Area and remaining there for the purpose of doing erecting or effecting any such required repairs); and
  - 7.3.3 the Operator must pay to the Council upon demand all reasonable costs and expenses incurred by the Council in carrying out maintenance and repairs under this subclause 7.3.

7.4 The Council reserves its rights to enter onto the Road and remain thereon as may be necessary for the purposes of the Council undertaking repair and maintenance works in accordance with clause 7.3.

**8. MAKE GOOD OBLIGATIONS**

8.1 The Operator must make good any damage that the Operator causes to the Road or to other Council property in connection with the Operator's use and occupation of the Authorisation Area.

8.2 If the Operator causes damage to the Road or to other Council property and the Council serves notice on the Operator requiring the Operator to undertake the rectification works specified in the notice, the Operator must undertake those works within the timeframe specified in the notice.

8.3 If the Operator fails to comply with the requirements of a notice served by the Council under clause 8.2, the Council may undertake the works required by the notice and recover the costs it incurs in doing so as a debt from the Operator.

**9. OWNERSHIP OF ALTERATIONS**

The Alterations are the property of and belong to the Operator pursuant to section 209 of the Act.

**10. INDEMNITY AND RELEASE**

10.1 As a continuing obligation and except to the extent caused by the Council's negligence, the Operator indemnifies and will keep indemnified the Council from and against all actions, costs, claims, damages, charges and expenses whatsoever that may be brought, made or claimed against or otherwise incurred by the Council arising out of or in connection with:

10.1.1 a breach of these general conditions or any Authorisation and Permit by the Operator;

10.1.2 the Operator's use and occupation of the Authorisation Area; and

10.1.3 the construction of the Alterations.

10.2 The indemnity under clause 10.1 is in addition to any statutory immunity in favour of the Council, including under section 221(5) of the Act.

10.3 The Operator releases the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Authorisation Area except to the extent that they are caused by the Council's negligence.

10.4 The Operator acknowledges and agrees that:

10.4.1 its use of the Authorisation Area is at the Operator's risk in all things; and

10.4.2 the Council does not warrant that the Authorisation Area is suitable

(structurally or otherwise) for the Alterations or for the Permitted Use.

**11. OPERATOR'S INSURANCE**

11.1 The Operator must at its own cost keep current during the term of the Authorisation and the Permit public liability insurance for the amount as described in **Item 7** of Schedule 1 for each claim, and which notes the Council's rights and interest as owner of the Road and the indemnities provided by the Operator in favour of the Council.

11.2 The public liability insurance will be in respect of injury, loss or damage occurring on the Authorisation Area and will carry an endorsement from the insurer that the insurer will inform the Council if the said insurance policy is allowed to lapse or is otherwise cancelled.

11.3 Prior to the commencement of the Authorisation and the Permit, and at any other time upon request by the Council, the Operator must provide the Council with certificates evidencing the currency of the policies required under this clause 11.

**12. CANCELLATION FOR BREACH**

The Council may cancel the Authorisation for any breach of these conditions pursuant to section 225 of the Act, by giving not less than one month notice in writing to the Operator (unless the Council determines that a shorter period should apply to protect the health or safety of the public, or otherwise to protect the public interest).

**13. CANCELLATION WHERE COUNCIL PROPOSES ROADWORKS**

The Council may cancel the Authorisation or Permit where the Council:

13.1 proposes to undertake roadworks on or to the Road; or

13.2 otherwise requires access to the Road in connection with exercising its functions, by providing not less than three months' notice in writing to the Operator.

**14. OBLIGATIONS ON EXPIRATION, SURRENDER OR CANCELLATION**

14.1 Unless the Council directs otherwise in writing, the Operator must reinstate to the Council's satisfaction, the Authorisation Area to at least the same condition it was in before the Alterations were made (including but not limited to by the Operator removing the Alterations), and the reinstatement works must be completed on or before the date that the Authorisation or Permit expires or is surrendered or cancelled.

14.2 The Operator is responsible for repairing, at its own cost, any damage caused in removing the Alterations.

14.3 If the Operator fails to comply with the Operator's obligations under this clause 14, the Council may undertake the works required and in this case, the Operator must pay to the Council upon demand, the reasonable costs and expenses incurred by the Council in undertaking the reinstatement and repair works.



**15. GENERAL**

- 15.1 The Council's decision to grant the Authorisation and the Permit does not preclude or pre-empt the exercise by the Council of any other regulatory function or power.
- 15.2 For the avoidance of doubt neither the Authorisation or the Permit confer upon the Operator any proprietary interest in the Road.
- 15.3 The Council may, by giving one (1) month's written notice to the Operator impose additional general and/or special conditions where it considers this is reasonably necessary for the proper management of the Road.
- 15.4 Each indemnity, obligation and other term capable of taking effect after the expiration or cancellation of the Permit or the Authorisation, remains in force after the expiration or cancellation of the Permit or the Authorisation.
- 15.5 To the extent that the Operator's use of the Authorisation Area under this Authorisation and Permit involves an activity that is regulated under a Council By-law this Authorisation and Permit operates as a grant of permission for that activity, pursuant to the Council's Permits and Penalties By-law.

**16. GOODS AND SERVICES TAX**

- 16.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 16.2 If a party makes a supply as required by the Authorisation or the Permit in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST payable by the supplier on the supply.
- 16.3 A party need not make a payment for a taxable supply under or in connection with the Authorisation or the Permit until it receives a tax invoice for the supply.

**17. SPECIAL CONDITIONS**

The Operator must comply with all special conditions contained in **Schedule 2** (if any) which special conditions prevail in the extent of any inconsistency with the general conditions herein.

**18. ACKNOWLEDGEMENTS**

The Operator acknowledges that under the Act it is an offence:

- 18.1 under section 217(2) for a person who owns a structure or equipment installed in, on, across, under or over a road to fail to comply with an order from the Council requiring the owner to carry out maintenance or repair, or requiring the owner to move the structure or equipment to allow the Council to carry out roadwork;
- 18.2 under section 221(1) for a person to make an alteration to a public road not authorised by the Council nor acting under some statutory authority;

- 18.3 under section 228(a) for a person authorised to carry out work on a road not to carry out the work as expeditiously as is practicable in the circumstances;
- 18.4 under section 228(b) for a person authorised to carry out work on a road not to take action that is reasonably practicable in the circumstances to minimise obstruction of the road and inconvenience to road users; and
- 18.5 under section 229 for a person authorised to carry out work on a road not to restore the road to at least the condition that existed immediately before the action was taken.

DRAFT

**EXECUTED as an AGREEMENT**

**The Common Seal of the District Council of Tumby Bay (ABN 22 393 356 827)** was affixed in accordance with the *Local Government Act 1999* in the presence of:

.....  
**Rebecca Hayes**  
Chief Executive Officer

.....  
**Geoff Churchett**  
Mayor

**Executed by Grou Caravan Park Pty Ltd (ABN 23 668 890 266)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

.....  
**Griffith Francis Loughnan**  
Director

.....  
**Louise Mary Loughnan**  
Director

SCHEDULE 1

<p><b>ITEM 1</b></p> <p>Alterations</p>	<p>The improvements constructed on the Authorisation Area, being as follows:</p> <ul style="list-style-type: none"> <li>• the kiosk; and</li> <li>• all fixtures and fittings related thereto, located within the Authorisation Area; and</li> <li>• other amenities associated with the Caravan Park operations.</li> </ul>
<p><b>ITEM 2</b></p> <p>Authorisation Area</p>	<p>The portion of the Road delineated in the plan contained in <b>Annexure A</b>.</p>
<p><b>ITEM 3</b></p> <p>Authorisation – Term &amp; and Expiry Date</p>	<p>Five (5) years commencing on [commencement date] and expiring on [expiry date].</p>
<p><b>ITEM 4</b></p> <p>Permitted Use</p>	<p>Caravan Park entry &amp; access, a kiosk, and other recreational purposes related to the Caravan Park.</p>
<p><b>ITEM 5</b></p> <p>Permit – Term &amp; Expiry Date</p>	<p>Five (5) years commencing on [commencement date] and expiring on [expiry date].</p>
<p><b>ITEM 6</b></p> <p>Fee</p>	<p><b>[\$TBC – to be determined by the Council in accordance with section 188 of the <i>Local Government Act 1999</i>]</b> per annum (plus GST), subject to CPI review annually in accordance with clause 3.4.</p>
<p><b>ITEM 7</b></p> <p>Public Liability Insurance</p>	<p>Coverage of at least twenty million dollars (\$20,000,000.00) per claim.</p>

## **SCHEDULE 2 - SPECIAL CONDITIONS**

### **1. INTERPRETATION**

#### **1.1 Introductory**

In this Authorisation and Permit, unless the contrary intention appears:

- 1.1.1 a reference to this Authorisation and Permit is a reference to this document;
- 1.1.2 words beginning with capital letters are defined in Special Condition 1.2;
- 1.1.3 a reference to a clause is a reference to a clause in this Authorisation and Permit, and a reference to a Special Condition is a reference to a Special Condition in this Schedule 2;
- 1.1.4 a reference to a Schedule is a reference to the schedules of this Authorisation and Permit; and
- 1.1.5 a reference to an Annexure is a reference to an annexure to this Authorisation and Permit.

#### **1.2 Defined Terms**

In this Authorisation and Permit:

**Authorisation Area** means the part of the Road, described in **Item 2** of Schedule 1;

**Agreed Consideration** means the Fee, Outgoings and all other consideration (whether in money or otherwise) to be paid or provided by the Operator for any Authorisation or Permit of the Authorisation Area and any goods, services or other things provided by the Council under this Authorisation and Permit (other than GST payable under clause 16);

**Commencement Date** means the date shown as the commencement date in **Item 4** and **Item 5** of **Schedule 1**;

**GST** has the same meaning as given to that term in the GST Legislation;

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* and any similar legislation;

**GST Rate** means 10% or such other percentage equal to the rate of GST imposed from time to time under GST Legislation;

**Improvements** means any alterations, additions or improvements to the Authorisation Area made by the Operator during the Term, whether or not such improvements were approved by the Council as required under this Authorisation and Permit;

**Legislation** means any relevant statute or act of Parliament (whether State or Federal) and any regulation or by-law including by-laws issued by any Council or Local Government body or authority;

**Operator's Equipment** means any and all fixtures and fittings and other equipment installed in or brought on to or kept in or on the Authorisation Area by the Operator;

**Road** means the road as described in paragraph D of the Background and includes any part of the road, including the road reserves;

**Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation;

**Term** means the Term identified in **Item 3** and **Item 5** of **Schedule 1** and any period during which the Operator holds over or remains in occupation of the Authorisation Area;

## 2. OUTGOINGS

### 2.1 Outgoings

The Operator will pay, on time and in full, all rates, taxes, assessments, levies and charges in relation to the Authorisation Area (including Council rates assessed by Council in its separate capacity as a relevant authority, but excluding state land tax) which are now, or may at some time during the term be charged, levied, assessed or payable by either the Council or any occupier of the Authorisation Area or Road.

### 2.2 Utilities

The Operator will pay all fees and charges for telephone, sewerage, gas, electricity and other consumable consumed on or from the Authorisation Area.

## 3. USE OF AUTHORISATION AREA

### 3.1 Permitted Use

3.1.1 The Operator agrees not to use or allow the Authorisation Area to be used for any purpose or activity other than that set out in **Item 4** of Schedule 1.

3.1.2 For the sake of clarity, the Operator agrees that it will ensure that at no time during the Term will it allow:

- (a) any caravan or other vehicle to park on the Authorisation Area (other than in the area specifically designated for the parking of vehicles);
- (b) any part of the Authorisation Area to be used for sleeping or accommodation (including camping).

3.1.3 In the event the Caravan Park is no longer used as a caravan park (or similar accommodation) or there is a substantial change in the use of the Caravan

Park (including a material reduction in the area used for caravan park purposes), the Council may cancel this Authorisation and Permit on not less than six (6) months' notice (at any given time).

- 3.1.4 If notice is served by the Council to the Operator pursuant to Special Condition 3.1.3, then this Authorisation and Permit will terminate on the expiry of that notice period, and unless otherwise agreed between the parties, the Operator must remove all the Operator Equipment or other items installed on the Authorisation Area (whether installed by the Operator or a previous occupier) and return the same to a condition as deemed appropriate by Council (acting reasonably).

## 3.2 Operation of Operator's business

- 3.2.1 The Operator must only use the Authorisation Area in accordance with generally accepted best practice for the Permitted Use.
- 3.2.2 The Operator must conduct its operations and the Permitted Use in a good, lawful and orderly manner and to a high standard.
- 3.2.3 The Operator must not carry on any activity or do anything or fail to do something which is or may become an offence under any act, regulation or by-law.

## 3.3 Alcohol and Gaming Machines

- 3.3.1 Unless the Operator first obtains the written consent of the Council, the Operator must not apply for:
- (a) a liquor licence under the *Liquor Licensing Act 1997*; or
  - (b) a gaming machine licence under the *Gaming Machines Act 1992*.
- 3.3.2 If the Operator obtains a licence (or licences) under Special Condition 3.3.1 above, the Operator must not do (or fail to do) or allow any of its employees, agent, contractors, licensees or invitees to do (or fail to do):
- (a) Anything that is in breach of the *Liquor Licensing Act 1997* and/or the *Gaming Machines Act 1992* (as the case may be) or of the conditions of the relevant licence; or
  - (b) Anything that may result in the relevant licence being revoked or suspended.

## 3.4 Signs

The Operator must not place any signs or advertisements on the outside of the Authorisation Area, or inside the Authorisation Area (if they can be seen from outside of the Authorisation Area), except a sign or signs advertising or promoting the name and nature of the business conducted on the Authorisation Area by the Operator and which:

- 3.4.1 are approved (in writing) by the Council; and
- 3.4.2 comply with any relevant Statutory Requirements.

**3.5 Dangerous equipment and installations**

The Operator will not install or bring onto the Authorisation Area except insofar as may reasonably be required in connection with the Permitted Use and with the consent of the Council:

- 3.5.1 any electrical, gas powered or other machinery or equipment which may pose a danger, risk or hazard to the Authorisation Area or any people;
- 3.5.2 any chemicals or other dangerous substances which by their nature, or their volume, may pose a danger, risk or hazard to the Authorisation Area or any people; or
- 3.5.3 any heavy equipment or items which may damage the Authorisation Area.

**3.6 Fire precautions**

The Operator must:

- 3.6.1 comply with all requirements and directives issued by the Council from time to time (if any) with regard to fire safety systems and procedures including fire evacuation drills and other procedures; and
- 3.6.2 comply with all Statutory Requirements relating to fire safety and procedures including any required structural works or modifications to any building or structure on the Authorisation Area which are required as a result of:
  - (a) the Operator's use or occupation of the Authorisation Area;
  - (b) the nature of the business or operations conducted on the Authorisation Area by the Operator; or
  - (c) any deliberate or negligent act or omission of the Operator.

**3.7 Notice of defect**

The Operator must:

- 3.7.1 give the Council prompt notice of any circumstance or event of which the Operator should reasonably be aware that might cause danger, risk or hazard to the Authorisation Area or to any person on the Authorisation Area; and
- 3.7.2 if required by the Council, promptly rectify any defect or want of repair to make the Authorisation Area safe from any danger, risk or hazard, at the Operator's own cost.



## 4. INSURANCE

### 4.1 Operator must insure

In addition to its obligations under clause 11 of the Authorisation and Permit, the Operator must also keep current during the Term, for the Authorisation Area (including any Improvements) and the Operator's Equipment:

- 4.1.1 all insurance in respect of the Operator's Equipment and any Improvements for their full replacement value;
- 4.1.2 insurance of the Authorisation Area and any Improvements against damage by fire, storm, tempest, earthquake, flood, explosion, lightning, malicious damage, removal of debris, architects and engineers' fees and other such risks as the Council thinks fit from time to time for the full reinstatement value; and
- 4.1.3 other insurances required by law or which the Council reasonably requires for at least the amounts the Council reasonably requires.

### 4.2 Evidence of Insurance

- 4.2.1 On or before the Commencement Date, the Operator must give the Council certificates evidencing the currency of the policies the Operator has taken out under this Special Condition 4.
- 4.2.2 During the Term the Operator must:
  - (a) pay each premium before it is due for payment;
  - (b) give the Council certificates of currency each year when the policies are renewed and at other times upon the Council's request;
  - (c) not allow any insurance policy to lapse or vary without the Council's consent; and
  - (d) notify the Council immediately if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy.

### 4.3 Insurance affected

The Operator must not do anything which will or may:

- 4.3.1 prejudice any insurance required under this Special Condition 4; or
- 4.3.2 increase the premium for any insurance required under this Special Condition 4.
- 4.3.3 If the Operator does anything (without the Council's consent) that increases the premium of any insurance the Council has in connection with the Premium, the Operator must pay the amount of that increase to the Council

on demand.

**5. REPAIR AND MAINTENANCE**

5.1 Without limiting the generality of this clause and to avoid doubt, this Special Condition 5 will also apply to any alterations undertaken under clause 7.

5.2 The Operator must, at all times during the Term, at the Operator's own expense, and without any notice or demand from the Council,

5.2.1 keep, maintain, repair and replace (as applicable) to the reasonable satisfaction of the Council the Authorisation Area, the Operator's Equipment and the Improvements such that they are in good repair, condition and working order (including such structural and capital maintenance, repair and replacement as is necessary from time to time);

5.2.2 without limiting Special Condition 5.2.1 above:

(a) keep, maintain, repair and replace plumbing and drainage on the Authorisation Area such that they are in good working order and be kept free from all blockages; and

(b) supply and replace, fit or install, and maintain any items which are reasonably necessary to maintain and preserve the condition of the Authorisation Area.

5.3 The Operator must, at its expense and cost in all things, and at all times during the Term:

5.3.1 keep the Authorisation Area free of vermin, insects and other pests; and

5.3.2 keep any vegetation or garden on the Road maintained in an attractive state.

**6. ASSIGNMENT**

The Operator must not assign the Operator's interest in the Authorisation Area or any part of it under this Authorisation and Permit without the consent of the Council, which consent may be withheld in the Council's absolute discretion.

**7. COUNCIL'S OBLIGATIONS AND RIGHTS**

**7.1 Emergencies**

In an emergency the Council may:

7.1.1 close any building on the Authorisation Area (or any part thereof); and/or

7.1.2 prevent the Operator from entering onto the Authorisation Area or any building or structure on the Authorisation for so long as the emergency circumstances persist.

**7.2 Right to rectify**

- 7.2.1 Subject to Special Condition 7.2.2, the Council may at the Operator's cost, do anything which the Operator should have done under this Authorisation and Permit but which the Operator has not done or which the Council reasonably considers the Operator has not done properly.
- 7.2.2 Prior to undertaking any works as permitted by Special Condition 7.2.1, the Council must first provide the Operator with a notice of defects or works required to be undertaken by the Operator, which notice must provide at least fourteen (14) days' notice for the Operator to rectify the defects or undertake the required works (unless in the case of an emergency where no notice will be required to be given by the Council to the Operator).
- 7.2.3 The Operator will not make any claim or commence or maintain any suit or action against the Council in consequence of such entry or in execution of any of the works contemplated by this Special Condition 7.2.

**7.3 Maintenance and repair**

The Operator acknowledges and agrees that the Council has no obligation to maintain or repair the Authorisation Area, the Operator's Equipment or any Improvements.

**8. RIGHTS AND OBLIGATIONS ON EXPIRY**

The obligations under this Special Condition clause are in addition to the obligations under clauses 8 and 9.

**8.1 Surrender and handover of possession**

Before this Authorisation and Permit comes to an end, the Operator will:

- 8.1.1 remove all of the Operator's Equipment and repair any damage caused by such removal;
- 8.1.2 if required by the Council, remove any Improvements and reinstate, to the Council's satisfaction, the Authorisation Area to the condition it was immediately prior to the Operator having commenced occupation; and
- 8.1.3 carry out and complete any repairs and maintenance which the Operator is obliged to carry out under this Authorisation and Permit,
- 8.1.4 such that the Authorisation Area and Improvements (if applicable) are handed over to the Council in good order and repair and working condition.
- 8.1.5 When this Authorisation and Permit comes to an end the Operator will:
  - (a) peacefully and quietly surrender and hand over vacant possession of the Authorisation Area in good repair and condition; and
  - (b) hand over to the Council all keys and other security devices for the

Authorisation Area which the Operator has in its possession or control.

- 8.1.6 If at the time that possession of the Authorisation Area is given back to the Council, the Operator has not complied with all or any of its obligations under this Special Condition 8.1, the Operator will not be relieved of its obligation to comply with those requirements, or to compensate the Council for failure to do so, by reason of the fact that the Operator has accepted or taken possession of the Authorisation Area.

## **8.2 Abandoned goods or Improvements**

When this Authorisation and Permit comes to an end, or within a reasonable time following expiration of this Authorisation and Permit, the Operator leaves any goods or the Operator's Equipment at the Authorisation Area, then the Council will be entitled to deal with and dispose of those items as the Council sees fit, including (but not limited to) selling those items with any profits from such sale to be retained by the Council.

## **9. DISPUTE RESOLUTION**

- 9.1 If any dispute or disagreement arises between the parties in connection with this Authorisation and Permit, the parties undertake to use all reasonable endeavours, in good faith, to settle the dispute or disagreement by negotiation between representatives of both parties.
- 9.2 In the event that negotiations do not resolve the dispute within thirty (30) days then a mediator agreeable to both parties may be engaged to seek a resolution. If the parties cannot agree upon a mediator, the mediator will be appointed by the President or Acting President of the Law Society of South Australia. The cost of the mediator will be borne equally by both parties.
- 9.3 Nothing in this Authorisation and Permit is intended to limit either party's right to seek a legal remedy for any dispute that arises.
- 9.4 The parties agree that matters arising out of any conflict must be kept confidential.

## **10. INDEMNITY**

### **10.1 Risk**

The Operator occupies and uses the Authorisation Area at the Operator's risk.

### **10.2 Indemnity**

In addition to the indemnities under clause 10 of the Authorisation and Permit, the Operator is liable for and indemnifies the Council against all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly in connection with:

- 10.2.1 any act or omission of the Operator;

- 10.2.2 the overflow, leakage or escape of water (including rainwater) or any other harmful agent into or from the Authorisation Area;
- 10.2.3 the negligent use, misuse, waster or abuse by the Operator of the water, gas, electricity, oil and other services and facilities of the Authorisation Area;
- 10.2.4 any fire on or from the Authorisation Area;
- 10.2.5 loss or damage to property or injury or death to any person caused or contributed to by the Operator, the use of the Authorisation Area by the Operator or otherwise relating to or occurring on the Authorisation Area;
- 10.2.6 a breach of this Authorisation and Permit by the Operator; or
- 10.2.7 the Operator's use or occupation of the Authorisation Area.

For the avoidance of doubt, in this Special Condition 10, the term "the Operator" includes the Operator's employees, servants, agents, customers, contractors, licensees, invitees, members and all other persons claiming through or under the Authorisation and Permit.

### **10.3 Release**

- 10.3.1 The Operator agrees to release the Council from all actions, liabilities, penalties, claims or demands for any damage, loss, injury or death occurring in the Authorisation Area except to the extent that they are caused by the Council's negligence.
- 10.3.2 The Operator agrees that the Council will have no responsibility or liability for any loss or damage to the Operator's fixtures, fittings or personal property.

### **10.4 Indemnities are independent**

Each indemnity is independent from the Operator's other obligations and continues during this Authorisation and Permit and after this Authorisation and Permit ends. The Council may enforce an indemnity before incurring expense.

### **10.5 Council's liability**

Despite anything else in the Authorisation and Permit, the Council will not be liable (except to the extent of any negligence of the Council) for any loss or damage, and the Operator has no right to terminate this Authorisation and Permit or reduce payments under this Authorisation and Permit, for any acts or omissions of other occupants of the Road including any members of the public.

## 11. POWER OF ATTORNEY

### 11.1 Appointment

If the Council becomes entitled to re-enter and take possession of the Authorisation Area after complying with any relevant statutory provision, the Operator irrevocably appoints the Council to be the attorney of the Operator to execute any documents and perform any acts the Council requires to give full effect to the power of re-entry under the *Real Property Act 1886*.

### 11.2 Ratification

The Council may do, execute and perform all things relating to the Authorisation Area as fully and effectually as the Operator could do. The Operator must ratify and confirm the appointment of and all actions by the Council under this clause.

## 12. COUNCIL'S DISCRETION

The Council enters into this Authorisation and Permit as a council acting under sections 7 and 36 of the *Local Government Act 1999* and not in any other capacity. This Authorisation and Permit does not preclude or pre-empt the exercise by the Council of any other regulatory function or power.

## 13. GENERAL

### 13.1 Costs

The Operator will bear:

- 13.1.1 its own legal costs;
- 13.1.2 all stamp duty costs; and
- 13.1.3 half of the Council's reasonable legal costs,

in connection with the negotiations for and the preparation of this Authorisation and Permit.

13.2 The Operator will pay all the Council's costs which result from any threatened or actual breach of this Authorisation and Permit by the Operator.

### 13.3 Waiver

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

### 13.4 Notice

13.4.1 Without excluding any other form of service, any notice required to be given or served will be sufficiently given or served as follows:

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- (a) in the case of the Operator, if left at the Authorisation Area, or if the Operator has vacated the Authorisation Area, then if posted by pre-paid post to the last known address of the Operator;
- (b) in the case of the Council, if posted by prepaid post to the Council at its principal place of business in South Australia (which is taken to be the address stated in this Authorisation and Permit unless the Operator is or ought to reasonably be aware that that is not the Council's principal place of business at the relevant time).

13.4.2 Notice served by prepaid post will be deemed to have been given or served three (3) business days after posting.

### **13.5 Conditional Authorisation and Permit**

This Authorisation and Permit is subject to the Operator obtaining at its own expense any necessary approvals or consents.

### **13.6 Ombudsman**

The Operator acknowledges that the *Ombudsman Act 1972* empowers the Ombudsman to investigate matters in the public interest. The Operator must ensure compliance with all obligations arising under that Act and all applicable Legislation.

### **13.7 Severance**

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

### **13.8 Entire Agreement**

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

ANNEXURE A - PLAN DELINEATING AUTHORISATION AREA

ArcGIS Web Map



17/06/2023, 10:06:20 am  
 TumbyBay2023.tif  
 Approximate area: 2,522 sqm  
 1:1,128  
 0 0.01 0.01 0.03 0.03 mi  
 0 0.01 0.03 0.05 km  
 Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, FourSquare, METIUNASA, USGS, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community  
 ArcGIS Web App Builder  
 Esri Community Maps Contributors, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, FourSquare, METIUNASA, USGS |

- Green: Band\_2
- Blue: Band\_3
- Red: Band\_1
- Property Information
- Roads Unformed (DIT)