

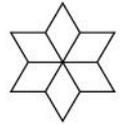
Authorisation to Landscape a Verge

Authorisation under section 221 / Licence under section 202 of the *Local Government Act 1999*.

175 The Parade, Norwood SA 5067
PO BOX 204, Kent Town SA 5071

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ABN 11 390 194 824



City of
**Norwood
Payneham
& St Peters**

Application Form

| SCHEDULE | |
|--|---|
| <p>ITEM 1 Applicant <i>in this Authorisation called "the Authorisation Holder"</i></p> | <p>Name of person / group / association:</p> <p>Postal address:</p> <p>Contact details:</p> <ul style="list-style-type: none"> • Name: • Email: • Phone: <p>Note: <i>if this is a group application, please ensure the 'head' association or corporation is listed as the applicant, and not individual members.</i></p> |
| <p>ITEM 2 Alteration</p> | <p>Please tick the appropriate box/es:</p> <p><input type="checkbox"/> Landscape verge in front of my property</p> <p><input type="checkbox"/> Landscape verge in another location</p> |
| | <p>Provide a brief description of the landscaping works (please refer to the Council's <i>Guidelines for Landscaping of Council Verges</i>):</p> <p>and otherwise in accordance with the attached Site Plan.</p> |
| <p>ITEM 3 Location</p> | <p>Identify the location where the proposed landscaping works will be carried out:</p> <p>Road name:</p> <p>Adjacent premises (street address/es):</p> |
| <p>ITEM 4 Term</p> | <p>A term of twenty one (21) years commencing on the date this Authorisation is granted (Commencement Date).</p> <p>Note: <i>you must notify the Council of completion of works within 12 months of the Commencement Date, or within 2 months of completion of Council works under the Capital Works Footpath Program, otherwise this Authorisation will lapse.</i></p> |

| | |
|---|---|
| <p>ITEM 5</p> <p>Public Liability Insurance</p> | <p><input type="checkbox"/> Individual applicant – landscape verge in front of property – not required¹</p> <p><input type="checkbox"/> Individual applicant – landscape verge in other location (for at least the amount of \$10,000,000.00) – required</p> <p><input type="checkbox"/> Group applicant – landscape verge in other location (for at least the amount of \$10,000,000.00) – required²</p> <p>Notes:</p> <p>¹ You will not be covered by the Council's insurance for third party damage or loss in connection with your verge garden. You may wish to extend your domestic insurance coverage to cover this area.</p> <p>² For groups established under the auspices of an incorporated association (eg a local residents' association), please ensure your group is covered by the head organisation's insurance policy.</p> |
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Please attach the following documents to your Application:

- Site Plan (provide below, or attach your own Plan)
- Public Liability Insurance – Certificate of Currency (if required)
- Notification & consent form (for adjacent property owners, or landlord consent)

Site Plan – Please outline the proposed landscaping works including the approximate size of verge / reserve area in square metres and the location of any driveways or property access points.

N
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By signing below, you acknowledge and agree to be bound by the terms and conditions of this Authorisation and the Council's Verge Landscaping and Maintenance Policy & Guidelines.

SIGNED by AUTHORISATION HOLDER

.....
Signature

.....

.....
Print Name of Authorised Signatory

.....
Date

This Authorisation is granted pursuant to and by force of section 221 of the Act and is **EXECUTED** by **THE CITY OF NORWOOD PAYNEHAM & ST PETERS** in accordance with section 44(1) of the *Local Government Act 1999* (SA) under delegated authority:

.....
Signed for the Council

.....
Name

.....
Title

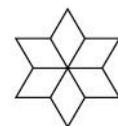
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Conditions

TERMS

1. DEFINITIONS

1.1 Definitions

In this Authorisation, except where contrary to context:

Act means the Local Government Act 1999;

Alteration means the alteration(s) to the Location described in Item 2;

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

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

Authorisation means this authorisation granted by the Council to the Authorisation Holder for the Alteration by force of Section 221, and where clause 2.1.1.2 applies, a licence granted by the Council to the Authorisation Holder under Section 202 of the Act.

Commencement Date means the date stated in Item 4.

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;

CWFC Program means the Council's Capital Works Footpath Construction and Reconstruction Program, or any other similar program, as implemented by the Council from time-to-time;

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;

Location means that portion of public road or reserve described in Item 3, and where relevant includes the Alteration and any Structure;

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

Policy means the Council's *Verge Landscaping and Maintenance Policy & Guidelines* and includes any such Council Policy as amended or replaced from time-to-time;

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

Structure means any structure, fixture, fitting or property erected and/or installed in, on, across, under or over the Location (and includes any tree or vegetation planted on the Location) forming part of the Alteration as permitted and authorised by this Authorisation in accordance with the Plans;

Term means the term of this Authorisation commencing on the Commencement Date as set out in Item 4, and includes any period during which the Authorisation Holder holds over or remains in occupation of the Location.

2. GRANT OF AUTHORISATION

2.1 Grant of Rights

2.1.1 The Council:

2.1.1.1 to the extent the Location is Council owned road and to the extent that this Permit authorises an alteration being made as defined in section 221 of the Act – grants to the Authorisation Holder an authorisation under section 221 of the Act to make and maintain the Alteration at the Location for the Term; and

2.1.1.2 to the extent that the Location is community land within the Council's area – approves and grants a licence to the Authorisation Holder under section 202 of the Act to make and maintain the Alteration at the Location for the Term.

2.1.2 The rights conferred by this Authorisation are (where relevant) conferred by force of the Act. This Permit does not confer upon the Authorisation Holder any exclusive right, entitlement or proprietary interest in the road or Council land comprising the Location.

2.1.3 No fee is payable for the Term in consideration for the Authorisation Holder being responsible for the Alteration and bearing its own maintenance costs.

2.1.4 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 *Development Act 1993*.

2.2 Alteration and Use of Location

2.2.1 The Authorisation Holder must ensure that the Alteration is carried out, maintained and removed in accordance with:

2.2.1.1 the Plans, subject to any variations, amendments or alterations to the Plans required by the Council;

2.2.1.2 the Council's Policy and all requirements set out therein;

2.2.1.3 any development authorisation obtained by the Authorisation Holder in connection with the Alteration under the *Development Act 1993* (SA);

2.2.1.4 in accordance with all relevant Australian Standards and construction or public health industry standards

2.2.1.5 with the exercise of reasonable skill, care and diligence

2.2.1.6 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

2.2.1.7 the provisions of the Authorisation; and

2.2.1.8 any other directions given or conditions imposed by the Council in connection with granting this Authorisation

2.2.2 The Authorisation Holder must ensure that:

2.2.2.1 the Alteration is carried out and written notice of completion is provided to the Council within twelve (12) months of the Commencement Date; or

2.2.2.2 the Alteration is carried out and written notice of completion is provided to the Council within two (2) months of the completion of Council works at the Location in connection with the Council's

Capital Works Footpath Construction and Reconstruction Program,
(where relevant).

- 2.2.3 The Authorisation Holder must not undertake or permit any alteration to the Location or any Structure other than in accordance with the Authorisation.
- 2.2.4 The Authorisation Holder must not offer to sell goods, solicit, attempt to attract trade or business, tout or spruik on the Location or any area owned or controlled by the Council surrounding the Location.
- 2.2.5 The Authorisation Holder must not place any signs or advertisements on the Location, unless approved by the Council.
- 2.2.6 The Authorisation Holder must comply with all reasonable directions given to the Authorisation Holder by any employee or officer of the Council in relation to this Authorisation.

2.3 **Maintenance and Repair**

- 2.3.1 The Authorisation Holder must, at its own cost and expense maintain the Alteration (including any Structure in, on, across, under or over the Location) and keep the Alteration in good, safe and proper repair and condition to the Council's satisfaction and in accordance with the Council's Policy
- 2.3.2 The Permit Holder must keep the Location clean, tidy and free from rubbish.
- 2.3.3 In carrying out and maintaining the Alteration, the Authorisation Holder must allow for the safe placement and collection of kerbside waste bins at the Location as provided in the Council's *By-Law No 6 Waste Management By-law 2018* (or such other By-Law as amended from time-to-time).

2.4 **Council Support and Incentives**

- 2.4.1 The Council may undertake works to the Location in connection with the grant of this Authorisation to the Authorisation Holder as part of the Council's Capital Works Footpath Construction and Reconstruction Program (CWFP) or in connection with other Council in-kind support or incentives provided for in the Policy and at the Council's discretion in all respects.
- 2.4.2 Such works may include (without limitation), the excavation of the verge and replacement of existing material with loam, or such other works specified in the Policy or at the Council's discretion in all respects.
- 2.4.3 Where the Council undertakes works as described in this clause 2.4, the Authorisation Holder remains responsible for undertaking all other works associated with the Alteration, including (without limitation) landscaping and ongoing maintenance, as required by the terms of this Authorisation.

2.5 **Inspection of Alteration**

The Authorisation Holder irrevocably authorises the Council at any time to inspect the Alteration and the Authorisation Holder must comply with all requests of the Council in relation to the Alteration or the Location (including the Authorisation Holder's use of the Location under the Authorisation and requests by the Council to maintain or repair the Alteration or Location as required under this Authorisation).

2.6 **Council's Right to Enter and Carry out Works**

- 2.6.1 The Council may enter and carry out works at the Location at any time and for any reason, including (without limitation) in connection with the maintenance, repair, replacement, removal or installation of Council infrastructure, equipment or vegetation at the Location or on the adjoining public road or footpath.
- 2.6.2 In undertaking the works described in clause 2.6.1, the Council will take reasonable steps to minimise interference and damage to the Alteration and will reinstate the Alteration to the condition it was in prior to the works being undertaken to the extent reasonably practicable and at the Council's discretion in all respects. No compensation will be provided to the

Authorisation Holder in relation to any alteration or damage caused to the Alteration as a result of the Council's works.

2.7 Insurance

2.7.1 Authorisation Holder Must Insure

If required by the Council, the Permit Holder must keep current at all times during the Term:

- 2.7.1.1 public risk insurance for at least the amount of \$10,000,000.00 (or any other amount the Council reasonably requires) for each claim; and
- 2.7.1.2 other insurances required by Legislation or which the Council reasonably requires.

2.7.2 Requirements for Policies

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

- 2.7.2.1 be with an insurer and on terms approved by the Council;
- 2.7.2.2 be in the name of the Authorisation Holder or note the name of the Authorisation Holder;
- 2.7.2.3 cover events occurring during the policy's currency regardless of when claims are made; and
- 2.7.2.4 note that despite any similar policies of the Council, the Authorisation Holder's policies will be primary policies

2.7.3 Evidence of Insurance

- 2.7.3.1 The Authorisation Holder must give the Council certificates evidencing the currency of the policies the Authorisation Holder has taken out under this clause 2.8.
- 2.7.3.2 During the Term of the Permit, the Permit Holder must keep each policy valid and enforceable at all times.
- 2.7.3.3 The Authorisation Holder must not carry out the Alteration until the Authorisation Holder has provided to the Council a copy of the public risk insurance policies specified in clause 2.7.1.

2.8 Indemnity and Release

- 2.8.1 The Authorisation Holder indemnifies the Council and keeps Council indemnified from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of this Authorisation or the undertaking or maintenance of the Alteration except where any action, cost claim or damage is caused by the negligence or default of the Council.
- 2.8.2 Without limiting clause 2.8.1, the Authorisation Holder agrees that the Council is not responsible or liable in any way or to any extent for any loss or damage caused to or by the Alteration or any Structure erected or installed in, on, across, under or over the Location and the Authorisation Holder releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the Alteration or Structure.
- 2.8.3 Each indemnity is independent from the Authorisation Holder's other obligations and continues during this Authorisation and after this Authorisation ends.

2.9 Damage

- 2.9.1 Without limiting clause 2.3, the Authorisation Holder when:
 - 2.9.1.1 undertaking the Alteration;
 - 2.9.1.2 maintaining the Alteration; and
 - 2.9.1.3 removing the Alteration;

must not interfere with or cause damage to or in affect in any way any Council owned road, land or property in the immediate vicinity of the Location or Alteration (including any wire, post, cable, pipe or other property or infrastructure belonging to the Council), or any wire, post, cable, pipe or other property or infrastructure belonging to a service provider or other statutory or other Authority, or any adjoining property.

2.9.2 If the Authorisation Holder causes any damage:

2.9.2.1 described in clause 2.9.1; or

2.9.2.2 to the Location or any part of the Location, 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 Location to the satisfaction of the Council and in accordance with all directions and requirements of Council.

2.9.3 If the Authorisation Holder fails to promptly rectify and repair any such damage pursuant to clause 2.9.2, 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.

2.10 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 Location.

3. RIGHTS AND OBLIGATIONS ON EXPIRY AND BREACH

3.1 Termination of Authorisation

This Authorisation will immediately cancel on the earlier of:

3.1.1 the expiration of the Term;

3.1.2 the expiration of:

3.1.2.1 twelve (12) months following the Commencement Date if the Alteration is not carried out in accordance with clause 2.2.2.1; or

3.1.2.2 two (2) months following the completion of Council works at the Location if in the Alteration is not carried out in accordance with clause 2.2.2.2 (where relevant);

3.1.3 in the case of an individual Applicant, the sale of the property adjoining the Location; or

3.1.4 the termination of the Authorisation by the Council as permitted under this Authorisation.

3.2 Handover of Location

3.2.1 Upon the expiration or earlier termination of the Authorisation the Authorisation Holder must at its own cost and expense remove the Alteration and return the Location to its condition prior to the Alteration having been made (including reinstatement of dolomite or quartzite dependent upon location) to the satisfaction of the Council and in accordance with all directions and requirements of the Council, including but not limited to removing the Structure (if any) and repairing any damage caused to the Location and areas in the vicinity of the Location in removing the Structure and the Alteration.

- 3.2.2 Without limiting clause 3.2.1, where the Authorisation terminates pursuant to clause 3.1.3, the Council will notify the new owner of the property adjoining the Location of the Alteration and request that the new owner enters into an Authorisation to maintain the Alteration in the Location.
- 3.2.3 If the new owner does not agree to enter into an Authorisation for the Alteration, the Authorisation Holder must comply with the reinstatement obligations set out in clause 3.2.1, or the Authorisation Holder may request that the Council removes the Alteration and returns the Location to its condition prior to the Alteration having been made (including reinstatement of dolomite or quartzite dependent upon location) to the satisfaction of the Council, including but not limited to removing the Structure (if any) and repairing any damage caused to the Location and areas in the vicinity of the Location in removing the Structure and the Alteration.

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) give written notice specifying the breach and requiring the Authorisation Holder to remedy the breach within a reasonable period of time, being at least **twenty-eight (28) days**, unless the Council determines that a shorter period should apply to protect the health or safety of the public;
 - (ii) if the Authorisation Holder fails to remedy the breach as required by the notice issued pursuant to clause 3.3.1.1(i), the Council may give up to two (2) additional written notices specifying the breach and requiring the Authorisation Holder to remedy the breach within a reasonable period of time, being at least twenty-eight (28) days on each occasion, unless the Council determines that a shorter period should apply to protect the health or safety of the public; and
 - (iii) at any time thereafter come onto the Location without notice and do all things necessary to remedy that breach; and
 - (iv) terminate this Authorisation by giving written notice to the Authorisation Holder which will be effective immediately unless the Council specifies otherwise in the notice.
- 3.3.1.2 The Authorisation Holder will be liable to pay or reimburse the Council for all reasonable costs and expenses incurred in connection with any action taken by the Council under clause 3.3.1.1, which the Council may recover from the Authorisation Holder as a debt due and payable on demand.
- 3.3.1.3 The Authorisation Holder must immediately notify the Council if it breaches any provision of this Authorisation.
- 3.3.1.4 This clause 3.3 does not limit or prevent the Council's powers under sections 224A and 225 of the Act.

4. GENERAL

4.1 Ownership Of Structure

The Alteration and the Structure (if any) remain the property of the Authorisation Holder for the Term.

4.2 Abandoned Goods

If the Authorisation Holder leaves any goods or equipment on the Location for a period of 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.

4.3 Execution of Authorisation

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

4.4 Authorisation Not Transferable

4.4.1 This Authorisation is not transferable.

4.4.2 The Authorisation Holder must, before entering into any binding contract or arrangement to sell, transfer, lease, or licence any property which relates to, benefits from or forms part of the Alteration (whether land or personal property and including the Alteration), give written notice to the Council that it intends to enter into such Contract or arrangement.

4.5 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.

4.6 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 Location and that no promises, representations or undertakings, other than those contained in this Authorisation, were made or given or relied upon.

4.7 Waiver

If the Council accepts or waives any breach, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach

4.8 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.