

SECTION 138 (ROAD OPENING PERMIT) APPLICATION

Under Section 138 of the Roads Act 1993

ATTACHMENT A – AGREEMENT FOR WATER PIPE LINE IN OR/AND UNDER A ROAD

THIS DEED made the _____ day of _____ two thousand and _____

BETWEEN _____

(Hereinafter called 'the Applicant' which expression unless the context otherwise requires shall when two (2) or more applicants are parties hereto mean the applicants jointly and each of them severally and shall be deemed to include their assigns and successors) of the first part, THE COUNCIL OF MURRUMBIDGEE (hereinafter called 'the Council') of the second part,

WHEREAS

- a) The applicant is the registered proprietor or proprietors of the land (hereinafter call 'the land') more particularly described in the First Schedule hereto;
- b) The land or part thereof has a frontage to (hereinafter called 'the Road') which is a road within an area controlled by the Council.

AND WHEREAS the applicant proposed to construct the work more particularly described in the Drawings attached hereto and marked with the letter 'A' (hereinafter called 'the work') in, on or under the Road with the consent of the Council conditionally on the observance by the applicant of the conditions and stipulations hereinafter contained NOW THIS DEED WITNESSETH as follows:

1. The applicant hereby covenants with the Council as follows:

- a) To obtain any necessary:
 - (i) Road Opening Permit; and
 - (ii) Consent from any Public Utility Authority having the right to lay pipes, mains, cables or installations in the road.
- b) To make good the damage to the road resulting from the construction of the work or to pay Council the actual cost of such making good.
- c) To construct the work at his own cost to the satisfaction of the Council in all respects in accordance with the said drawings and specifications and subject to approval thereto by the Council.
- d) To maintain, renew or repair the work at his own cost to the satisfaction of the Council in a proper and workmanlike manner as expeditiously as possible and in conformity with any requirements imposed thereon by any statute, regulation or ordinance or by any public, statutory or other authority.
- e) To observe and carry out all reasonable requirements of the Council in connection with the location, construction, renewal or repair of the work, which requirements shall be communicated to the applicant in writing specifying a reasonable time within which to comply with such requirements.
- f) If required by the Council in writing at his own expense to remove the work in so far as it encroaches upon the road and to make good all damage done to the road by such removal. Provided that in the event of failure by the applicant to remove the work after being so required by the Council, the applicant agrees that the Council may carry out the removal of the work in so far as it encroaches upon the road and make good all damage done to the road by such removal at the expense of the applicant.
- g) If by reason of any work which the Council desires to carry out, it shall be necessary in the opinion of the Council to relocate any portion of the work or carry out any alteration of or addition to the work for the safety and protection of the public, at his own cost to relocate or



to carry out such alteration or addition as shall be so necessary and to pay to the Council as the case may be any additional cost or expenditure caused to the Council by reason of the existence of the work.

- h) h) That no compensation will be payable to him by the Councilor either of them in respect of any loss, damage or expense sustained by him by reason of the exercise of any powers conferred on the Councilor either of them by or under any statute or by this Deed.

2. Nothing in this Deed contained shall be construed as:

- a) Conferring upon the applicant exclusive right or title to the sole use of that part of the work within the road boundary, or
- b) b) Authorising any nuisance to or permanent obstruction of the road or public places, or
- c) In any way restricting or limiting the powers of the Council in respect of the road and in particular the Council shall not be prevented by anything herein contained from altering the levels of or widening the road or altering the kerbs, gullies or drains thereof.

3. Any damage caused to:

- a) the property or any person, or
- b) any part of the road or public places, including the road / surfaces, footpaths, kerbing, guttering, drains, gullies or other constructions vested in or under the control of the Council, or
- c) any property of the Council by reason of any work done or purporting to be done by the applicant under this Deed shall be made good by the applicant at his cost, to the satisfaction of the Council, and if the applicant fails to do so, then the Council as the case may be may make good such damage and the cost incurred in so doing shall be paid by the applicant to the Council.

4.

- a) If there is any undue delay in the carrying out and completion of any work which the applicant is required to do or has commenced by virtue of this Deed, the Council may give written notice to the applicant stipulating a reasonable time within which to carry out and complete any such work, and if the applicant shall fail or neglect to carry out and complete such work within such reasonable time, the Council may do or finish the same as the case may require, and any costs incurred by the Council in so doing shall be paid by the applicant to the Council.
- b) If, however, the Council is of the opinion that any work should be carried out or completed as a matter of urgency, the Council may carry out repair or complete any such work at any time at their discretion upon giving such notice (if any) as is practicable in the circumstances and all such costs incurred by the Council in so doing shall be paid by the applicant to the Council.

5. Whenever the Council does any work under this Deed, the costs whereof are payable by the applicant, a Certificate of the Engineer for the Council shall be final and conclusive as to the cost of any such work.

6. If the applicant shall commit any breach of the covenants or conditions contained in this Deed and on his part to be observed and performed, it shall be lawful for the Council immediately thereupon to cancel the permission hereby granted by notice in writing to the applicant.

7. The applicant will at all times indemnify and keep indemnified the Council against all actions, suits, proceedings, losses, costs, damages, charges, claims and demands in any way arising out of or by reason of anything done or omitted to be done by the applicant in respect of the construction, renewal, repair and maintenance of the work, or of the existence or use thereof or by reason of the Council having entered into this Deed or having approved or directed or assented to anything done or purported to be done by the applicant under this Deed.



8. Any notice required to be given to or served upon any of the parties hereto shall be in writing and either delivered to or sent by prepaid post to the party concerned at the address hereinafter mentioned, and if sent by post shall be deemed to have been delivered on the day following the posting thereof. In the case of the Council, the address shall be its Town Hall, Council Chambers or place of business for the time being, and in the case of the applicant the address shall be his last known place of address.

9. Unless the Council otherwise expressly agrees, the applicant shall, where appropriate, obtain the consent of the owner of the land on the opposite side of the road (hereinafter called 'the neighbouring owner') and to which the works shall be constructed. The neighbouring owner shall so agree to these proposed works by executing this Deed. The neighbouring owner by so executing this deed shall be deemed to have consented to the carrying out of such work in full, and agrees to release the Council from all actions, suits, proceedings, losses, costs, damages, charges, claims and demands in any way arising out of or by reason of anything done or omitted to be done by the applicant in respect of the construction, renewal, repair and maintenance of the work or of the existence or use thereof or by reason of any flooding or erosion caused by such flooding or by any act or thing which may now or hereafter occur as a result of the construction, existence or use of the said works.

10. In the event of the land being sold, conveyed, transferred, mortgaged or otherwise alienated, the applicant will secure from the Purchaser, Conveyee, Transferee, Mortgagee or Alienee an Agreement with and in favour of the Council WHEREBY such Purchaser, Conveyee, Transferee, Mortgagee (but only upon exercising his powers of entering into possession under the relevant mortgage) or Alienee covenants with the Council to observe and perform the terms, conditions and provisions contained in this Deed as if he had been named therein instead of the applicant and such Agreement shall contain a further covenant by the Purchaser, Conveyee, Transferee, Mortgagee (but only upon his exercise of the power of sale contained in the relevant mortgage) or Alienee that he will procure a similar Deed of Covenant from any subsequent Purchaser, Conveyee, Transferee or Alienee of the land as the case may be AND the Council shall for their protection be at liberty to lodge a Caveat upon the Title to the land for the purpose of preventing the applicant from selling, conveying, transferring, mortgaging or otherwise dealing with the land except subject to the covenants and provisions hereunder contained PROVIDED ALWAYS that nothing contained in this Clause and nothing done by the parties hereto shall prejudice or affect the rights which the Council otherwise has or shall have under this Deed against the applicant.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first hereinbefore written.



APPROVAL TO CONSTRUCT WATER PIPELINE IN OR UNDER A ROAD

Description of Land:

Property Owner/s Name/s: _____

Portion No's: _____

Parish of: _____

County of : _____

Council of Murrumbidgee

Road: _____

Applicant

Witness

General Manager

Witness