

DISTRICT COUNCIL OF LOWER EYRE PENINSULA

Rubble Pits and Compensation Policy



“Working with our Rural & Coastal Communities”



PRM-POL-06–RUBBLE PITS AND COMPENSATION

Version No:	1.0
Issued:	July 2017
Next Review:	July 2019

Responsibility:	Works & Infrastructure
Minutes reference:	W236 W&I/75/17
Applicable Legislation	Local Government Act, 1999
Related Policies/Procedures/Codes:	FIN-SCH-01- Schedule of Fees & Charges
Review Frequency:	24 months

1. INTRODUCTION

The District Council of Lower Eyre Peninsula has a requirement to obtain rubble for road construction and maintenance works.

The policy applies to operational rubble pits being pits that have the capacity to produce rubble and are not constrained by Native Vegetation restrictions or other constraints that would prevent timely access to the rubble source.

2. OBJECTIVE

The objective of this policy is to:

- Reduce the net cost of road making activities to residents and rate payers by obtaining road making materials as close as possible to the road work site.
- Ensure that the process of sourcing road making material is undertaken in compliance with the Local Government Act 1999, and in a manner designed to reach amicable outcomes for both Council and the land owner.

Pursuant to Section 294 of the Local Government Act 1999, Council has the power to enter and occupy land in connection with road maintenance or road construction to:

- Obtain earth, minerals or timber from land;
- Deposit soil on land;
- Construct temporary roads and structure on land;
- Deposit or store materials on land;
- Carry out any other incidental activity on land.

This policy aims to set out guidelines and objectives for establishing agreements between Council and landowners for the purpose of obtaining rubble and to ensure proper consultation and agreement with the landowner for managing the material pit.



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3. SCOPE

This section outlines the steps involved in order to obtain access to rubble.

3.1 Consent Form

The "Consent Form" (Rubble Pit - Consent to Enter and Occupy Land) to enter and occupy land for the purpose of obtaining rubble outlines the legislative requirements of Section 294 of the Local Government Act 1999.

These issues include:

- Expected period of occupation
- Payment amounts (if any) covering material compensation etc.
- Reinstatement requirements (if any)
- Fencing requirements (if any)
- Land (Parcel) description

3.2 Process

Council officers will be required to obtain written agreements via the Consent Form with the land owner prior to accessing private property to ensure compliance with Section 294 of the Local Government Act 1999, and to provide clear understanding of Councils intentions.

All items on the consent form must be completed prior to occupation of the land.

3.3 Fees Payable

i. Material

The fees payable by Council for material are to be based on the current use of the land i.e. whether it is grazing land, cropping land or uncleared.

Fees payable shall be determined by Council as part of the annual budget process. Fees will be published in the Schedule of Fees and Charges which is available by contacting the Council Office on 08 8676 0400 or on the Council website www.lowereyrepeninsula.sa.gov.au.

The amount payable to the land owner shall be based on the amount of material extracted from the pit by Council.

Any remaining rubble within the pit shall remain the property of Council, unless otherwise negotiated between the landowner and Council when the extraction of material is completed.

ii. Rent

Rent will be either a once off payment based on Councils requirement for rubble and the expected life of the pit, or paid annually during the life of the pit.

The rental amount will be based on historical land use eg uncleared land, grazing land or cropped land.



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3. SCOPE cont'd:

3.4 Payment of Fees

All fees, unless otherwise negotiated at the time of consent, shall be paid within six (6) months of the completion of works and removal of rubble.

Council will issue the landowner with an 'Agreement to Issue a Recipient Created Tax Invoice' in relation to material or rent. Once this has been completed and returned to the Council office, payment will be made via EFT or Cheque. The Authorised Officer (refer section 5 of policy) must authorise the payment via a signed 'Rubble Royalty Payment Form'.

3.5 Fencing (and other Infrastructure)

Any fencing or other infrastructure which lies on the direct route from the rubble pit to the nearest entry point to the road reserve and which is damaged by Council workers or its Contractors during the course of raising, loading or carting, shall be the responsibility of the Council.

Council's authorised person must identify this infrastructure and list on the consent form where it is recognised that infrastructure will be damaged.

3.6 Rehabilitation

Reinstatement is to be negotiated with the landowner at the time of the Consent Form being signed. A landowner may either rehabilitation, no rehabilitation or for the pit to be transformed in to a water catchment area (i.e. dam).

Rehabilitation will include as a minimum:

- Overburden and excess stones pushed into pit;
- General levelling and battering of edges.

Rehabilitation aims to give the appearance of a more natural depression in the ground. No revegetation of pits will be undertaken by Council other than the natural revegetation that is likely to occur.

Rehabilitation should occur as soon as practicable upon closure of the pit within an agreed timeframe.



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4. REFUSAL OF ACCESS

Should a property owner refuse to provide access to their property, the Authorised officers shall make all reasonable attempts to establish an alternative supply within a reasonable vicinity of the proposed works.

If no supply of rubble is found within a reasonable vicinity of the proposed works, such works may be required to be rescheduled. This shall be at the discretion of the Works Manager and a report shall be presented to Council.

Council in accordance with Section 294 of the Local Government Act 1999 may elect to utilise its powers under this section to enter the land. This discretion will only be used at the direction of Council.

5 AUTHORISED OFFICERS

The Council hereby delegates the following staff to negotiate the terms and conditions of and execute the Consent Form:

- CEO
- Director of Works and Infrastructure
- Manager of Corporate Services
- Works Manager

In absence of the above mentioned officers, the delegation shall extend to any person appointed to act in that position.

6 REFERENCE TO OTHER DOCUMENTS AND FORMS

- Agreement to Issue a Recipient Created Tax Invoice
- Rubble Pit - Consent to Enter and Occupy Land Form
- Rubble Royalty Payment Form

7 RECORDS MANAGEMENT

Council shall keep records of the quantity of materials in cubic metres taken from the said land.

All records shall be kept and disposed of in accordance with Council's Records Management Policy and the General Deposal Schedule 20.

8 FURTHER INFORMATION

Further information regarding to this policy is available by contacting the Council office on 08 8676 0400.



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9 ACCESS TO THE POLICY

The policy is available for public inspection on Council's website at www.lowereyrepeninsula.sa.gov.au and from council's office at 32 Railway Terrace, Cummins SA 5631.

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

SIGNED:

CEO

Date: 21 / 07 / 2017

Mayor, DCLEP

Date: 21 / 07 / 2017



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CONSENT TO ENTER & OCCUPY

OWNER/OCCUPIER OF LAND

Name:

Phone:.....

Property Address:

Postal Address:

THE COUNCIL

DISTRICT COUNCIL OF LOWER EYRE PENINSULA, 32 Railway Terrace, CUMMINS SA 5631

TERM OF USE

Date from: To:.....

PAYMENT

Land Use Category	Rental per Annum GST Exclusive (exclusive use only)	Extractive Royalty Rate GST Exclusive	Area Occupied
Uncleared Land	\$40.00/ha	\$0.11/m ³	ha
Grazing Land	\$150.00/ha	\$0.20/m ³	ha
Cropped Land	\$350.00/ha	\$0.47/m ³	ha

IMPROVEMENTS

Fencing Yes / No

Access/Driveway Yes / No

Gate Yes / No

Other

REHABILITATION

Depression Yes / No

Dam Yes / No

Other



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LOCATION OF PIT

Parcel Description: Hundred:

In the Locality of

Road Name:

SITE MAP





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Extract from Section 294 of the Local Government Act 1999:

- 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 pay to the owner or occupier of the land-
 - (a) 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 Land and Valuation Court; and
 - (b) within one month after occupying the land-reasonable compensation for damage caused to any crops on the land; and
 - (c) within six months of ceasing to occupy 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.
- 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 450 metres of the curtilage of a house; 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.
- 8)..... In this section-

"minerals" include stone, gravel, clay and sand.

The parties listed on 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.

Signed for and on behalf of the District Council of Lower Eyre Peninsula by:

.....
 Name

 Position

 Signature

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

.....
 Name

 Signature



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Recipient Created Tax Invoice ('RCTI') Agreement

..... ('the supplier') with ABN.....

and the District Council of Lower Eyre Peninsula ('the recipient') with ABN 13 559 739 724 both agree that in respect of 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 and 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 for and on behalf of the **'the Supplier'**

Name:..... Signature:.....

Title: Date:

Signed for and on behalf of the District Council of Eyre Peninsula (**'the recipient'**):

Name:..... Signature:.....

Title:..... Date:



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Not Registered for GST - GST Agreement

..... ('the supplier') with ABN.....

and the District Council of Lower Eyre Peninsula ('the recipient') with ABN 13 559 739 724 both agree that in respect of 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 Lower Eyre Peninsula:

Name:..... Signature:.....

Title:..... Date: