

# S138 Road Opening/Activity Permit Application

This application becomes a permit made under Section 138 Roads Act 1993 (NSW) once signed by a Council authorised officer.

Muswellbrook Shire Council is the Road Authority for public roads within Muswellbrook Shire, with the exception of freeways and crown roads. To undertake work/activity on, or alongside, public roads an S138 permit must first be obtained. This advises Council of the planned work/activity and allows Council to assess the necessary implementation of standards relevant to the work/activity being proposed. These specific standards need to be identified and adhered to, ensuring Muswellbrook Shire roads are kept safe and well maintained.

Request, or download from [muswellbrook.nsw.gov.au/roads](http://muswellbrook.nsw.gov.au/roads), a copy of [S138 frequently asked questions](#) and S138 technical conditions for [roads](#) or [utilities](#).

Permit no. **Office use only**

## Applicant details

Applicant name

Address  Phone   
Email

## Location and specifications of proposed works (you are required to attach a plan)

DA/CDC number (if applicable)

Name and location of road to be affected

Details of work/activity to be carried out

Details of proposed restoration works  
*In the event you are not able to undertake restoration/works to the required standard yourself, you may seek a quote from Council's Works Department to schedule the works for you.*

Do you require Muswellbrook Shire Council to provide a quote for restoration works to pavement, seal, footpath or other?

Yes, please arrange for a quote  No thanks

## Duration of consent period

Commencement date  Completion date

## Declaration of Applicant<sup>1</sup> or Director<sup>2</sup>

<sup>1</sup>I/we, the applicant, apply to Muswellbrook Shire Council, as the roads authority for the road and/or road reserve, for consent to undertake the above mentioned works and/or activity in, on or over the specified road as shown in the attached plan.

<sup>2</sup> (If applicant is a Company under the Corporations Act 2001) Signed by the Applicant Pursuant to s127(1) of the Corporation's Act 2001. Also in understanding and acceptance of the conditions under which this consent is granted.

Signature of Applicant or Director  Signature of Director/Secretary

Print name  Print name

Date  Date

Approved on behalf of  
Muswellbrook Shire  
Council by its duly

Group Manager - Infrastructure &  
Operations, Kellie Scholes

Date

## Conditions

### 1. Manner of Work and/or Activity

- 1.1. The Work/Activity must be conducted according to the Plan and the Specifications.
- 1.2. The Applicant must complete any backfilling of trenching works in accordance with Council's Auspec #1 Specification 306 – "Road Openings and Restoration" – as stipulated in Technical conditions 1151 and/or 1152.
- 1.3. Where work/activity is undertaken in the CBD, the applicant must meet the Council's CBD specifications, at the applicant's expense.

### 2. Council Requirements

The Applicant must comply with all Council requirements in relation to the Work/Activity:

- a) Contained in this Permit and annexures;
  - b) Contained in any notice in writing concerning the Work/Activity given to the Applicant by the Council; and
  - c) Any direction given to the Applicant by the Council.
3. **Legislation** The Applicant must observe all requirements with respect to the Work/Activity imposed by any statute, regulation or ordinance or otherwise imposed by a statutory or other authority.
4. **Term** The Work/Activity must not be carried out at any time other than during the Consent Period.

5. **Proceed Continuously** The Applicant must carry out the Work as expeditiously and safely as practicable and proceed continuously until completion.

### 6. Layout of Work

- 6.1. All pipe work crossing the Road must be laid perpendicular to the direction of the Road unless otherwise consented to by Council and described in the Specifications or shown in the Plan.
- 6.2. The pavement surrounding any excavation of the Road must be neatly saw-cut prior to excavation.
- 6.3. The Applicant must ensure that any cut pavement maintains a neatly finished edge at all times.

### 7. Advise Council

- 7.1. The Applicant must give the Council a minimum of five working days notice prior to when the Work/Activity is to commence.
- 7.2. The Applicant must notify Council as soon as the Work is completed if completion occurs during Business Hours.
- 7.3. The Applicant must notify Council during the next Business Hours if the Work is completed outside of Business Hours.

8. **Expense** The Work is carried out at the Applicant's expense.

9. **Consent and Acknowledgement** This Permit must be signed for and on behalf of Council in order for consent to be granted; and must also be signed by the Applicant in acknowledgement of the conditions under which this consent is granted.

10. **Service Conduit** Any Service Conduit placed across the Road must have at least 400mm of fill cover in addition to the road pavement thickness.

11. **Footpaths** Where any footpath is disturbed it must be restored to the original condition by the Applicant at the Applicant's cost.

12. **Fee** The Permit Fee is to be paid for the issue of this Permit.

### 13. Restoration Fees

13.1. Where Council is required to undertake Restoration works, determination of the Restoration Fees is governed by Section 67 of the Local Government Act.

13.2. Where a Restoration Fee is applicable the Applicant must pay the Restoration Fee:

- a) As soon as the Work is completed if completion occurs during Business Hours; or
- b) During the next Business Hours if the Work is completed outside of Business Hours.

13.3. If disturbance to the Road exceeds that shown on the Specifications, the Applicant must pay the additional cost to Council for restoration.

14. **Indemnity** The Applicant indemnifies and holds Council harmless against all Claims by any person arising in connection with any acts or performance of an obligation under this Permit.

14.1. Specific Indemnities: - Without limiting clause 13.5 the Applicant indemnifies and holds Council harmless against any Claim arising directly or indirectly out of the following:

- a) The construction and installation of the Work;
- b) Conduct by the Applicant which amounts to a breach of any license, permit, approval or legislation;
- c) Council granting consent to the Applicant to carry out the Work;
- d) Failure to comply with any obligation of the Applicant under this permit.

14.2. Applicant to Maintain Insurance

- a) The Applicant must maintain a public liability insurance policy with an insurer approved by Council with a limit for any one event of not less than twenty million dollars (\$20,000,000).
- b) The Applicant must produce evidence of the currency and terms of insurance

as part of each permit application.

- c) The insurance must be on terms to the reasonable satisfaction of Council and name Council as an insured party

### 15. Traffic Management Plan

- 15.1. The Applicant must ensure that a Traffic Management Plan is in place whilst the Work is being carried out.
- 15.2. The appropriate traffic control measures must be established at the Applicant's cost.
- 15.3. The traffic control measures must be in accordance with the current RMS Guidelines "Traffic Control at Work Sites".
- 15.4. The Applicant must not interrupt or otherwise disturb the traffic flow on the Road without the written consent of Council.

### 16. Responsibility for Restoration works

- 16.1. Where the applicant is not able to meet the standards required, the applicant can either contract the services of another provider that can – or apply to Council's Works Department for a quote, and for the work to be undertaken by Council at the applicant's expense
- 16.2. Where council is required to undertake the restoration works, the Applicant is responsible for the Works until Council's road maintenance service provider completes the standard road pavement restoration. Where the applicant undertakes to do the restoration work themselves, then the applicant is responsible until Council agrees to the standard of that restoration work

### 17. Responsibility in the event of absence or emergency.

- 17.1. In the Applicant's absence from the site of the Work, or in the event of any emergency (for which the Council has sole right of decision), Council may take such action as it considers necessary to prevent:

- a) Loss of or damage to the whole or any part of the Work;
- b) Loss or damage to the Road or any property adjacent to the work; or
- c) To prevent personal injury to any person;

- 17.2. Any such action (under sub-clause 15.2) is at the Applicant's expense.

### 18. Safety

The Applicant must:

- 18.1. Carry out the Work with due regard to the safety and rights of the public;
- 18.2. In addition to clauses 0 and 3 comply with the requirements of the NSW Workcover Authority, the Department of Industrial Relations & Employment, and the Police Service of NSW.

### 19. Relocation

- 19.1. If it is necessary in the reasonable opinion of Council:

- a) To relocate or remove any portion of the Work; or
- b) Carry out any additional work for the safety and protection of the public, Applicant must relocate or carry out such removal or additional work as reasonably determined by the Council.

- 19.2. Any such relocation and/or additional work required to be carried out is at the Applicant's expense.

### 20. Public Risk

Nothing in this consent shall be deemed to:

- a) Prejudice or affect the rights of the public to free passage upon or along the Road;
- b) Authorise any nuisance to, or permanent obstruction of, the Road or public places;
- c) Confer upon the Applicant exclusive right or title to that part of the Work within the boundaries of the Road, or
- d) In any way restrict or limit the powers of the Authority and the Council in respect of the Road.

21. **Deemed Acknowledgement** Upon commencement by the Applicant of any part of the Work it shall be deemed that the Applicant has agreed with the Council to comply with the conditions of this consent.

22. **Conditions for moving or grazing stock on Council roads (this permit is not valid unless the applicant has approval from Local Land Services.)**

- a) That stock warning signs as described in the Local Land Act 2013 indicating the presence of stock on the road shall be prominently displayed 200 metres before and after the section of road being used;
- b) Stock signs must be displayed at all times when stock are on or adjacent to a roadway, and removed when stock are no longer present;
- c) That the distance over which stock are being grazed does not exceed 2kms at any one time;
- d) When stock are being moved along the road, warning signs shall be no further than 5kms apart;
- e) That at least one person shall be attending the stock at all times;
- f) That the stock may only be present on a public road during daylight hours.

## Recitals

- A. The Council is a public roads authority for the Road under s7(4)(b) of the Roads Act 1993 (NSW).
- B. The Council consents to the Applicant placing, installing or erecting the Work within or across the Road under the conditions contained in this Permit.
- C. The consent is granted under s138 of the Roads Act 1993.

## Definitions

“**Act**” means Roads Act 1993 (NSW)

“**Applicant**” means the signatory on the application being the individual(s) with the authority and the responsibility for the carrying out of the work;

“**Business Hours**” means the opening hours of Muswellbrook Shire Council Administration Centre;

“**Claims**” means any loss, damages, claims, demands, causes of action or suits of any kind;

“**Consent Period**” means \_\_\_\_\_  
\_\_\_\_\_ or as per the application;

“**Council**” means Muswellbrook Shire Council;

“**Council Officer**” means the Muswellbrook Shire Council’s nominated officer;

“**Permit Fee**” means the fee paid by the Applicant to Council for the administrative costs associated with the issue of the Permit and shown in the Specifications;

“**Pipe work**” means pipes, conduits, hoses, tubing, cables and wires;

“**Plan**” means the plan attached and marked Annexure “A”;

“**Restoration Fee**” means a fee paid to Council in consideration for the Council restoring the Road surface after completion of the Work;

“**Road**” means \_\_\_\_\_  
\_\_\_\_\_ including/not including the road reserve;

“**RMS**” means Roads and Maritime Services;

“**Service Conduit**” means conduits used to run service wires and cables underground;

“**Specifications**” means Council’s Technical Conditions 1151 and/or 1152, Council’s CBD Specifications, and any other specifications as issued in the permit consent notification.

“**Traffic Management Plan**” means the Traffic Management Plan (also referred to as Traffic Control Plan or TCP) as approved by Council; and

“**Work**” means the plan of works described in application, including any restoration whether by the applicant or Council, and special instructions  
\_\_\_\_\_  
\_\_\_\_\_

## Notes

An Application should be lodged for Consent to Carry out a Section 138 Roads Act Activity if the Applicant proposes to:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road being a main road, a state highway, a controlled access road or a secondary road.

**The applicant must lodge with the application the following:**

- A plan showing the exact location of the proposed Road Works
- Specifications of the proposed Road Works
- Evidence of suitable public liability insurance
- Traffic control plan
- The application fee of \$  (the current fee as set by Council)

Any permit issued will not be valid without the above information and the original application attached

## Payment methods

Charges apply for this application and can be viewed in the current Fees & Charges document published on Council's website.

Council will be in contact to discuss payment options. A merchant fee of 0.84% is charged on all credit card transactions.