

# Use of a Portion of a Road Reserve Application 22/23



(Applicable to addresses - Manly to Seaforth)

Sections 138 & 139 Roads Act, 1993  
ABN 57 284 295 198

If you need help lodging your form, contact us		
Email	council@northernbeaches.nsw.gov.au	
Phone	1300 434 434	
Customer Service Centres	Manly Town Hall, 1 Belgrave Street Manly NSW 2095	Dee Why Civic Centre, 725 Pittwater Road Dee Why NSW 2099
	Mona Vale 1 Park Street Mona Vale NSW 2103	Avalon 59A Old Barrenjoey Road Avalon Beach NSW 2107

Office use only	
Form ID	4047
TRIM Ref.	
Last updated	July 2022
Business unit	Property
Application no.	
Receipt No.	

Privacy Protection Notice	
Purpose of collection	For Council to provide services to the community
Intended recipients	Northern Beaches Council staff
Supply	If you choose not to supply your personal information, it may result in Council being unable to provide the services you seek
Access/Correction	Please contact Customer Service on 1300 434 434 to access or correct your personal information

## Part 1: Contact Details

Title	<input type="radio"/> Mr <input type="radio"/> Mrs <input type="radio"/> Ms <input type="radio"/> Other:		
First name			
Last name			
Company name (attach business card if relevant)			
Postal address			Postcode
Phone			Alternate
Mobile			Fax
Email			
Address of property adjoining the road			Postcode
Name of property owner(s)			
Phone		Alternate no.	
Postal address			Postcode
Purpose of consent (garage, driveway, enclosed garden area etc)			
Area to be occupied (square metres)			

**PLEASE COMPLETE PARTS 1 + 2**

## Part 2: Attachments to the form/applicant signature

A location plan is to be attached to this Application Form

The Plan is to show the side and front boundaries of your property, the area required for occupation and distance to kerb. Measurements are to be shown on the location plan for all the above matters.

Note: The occupied area must physically adjoin the property and should be within a prolongation of the side property boundaries.

- An application Fee applies (refer Council's Fees & Charges) and is to be attached to this Application Form.
- NB: Renewal Application - refer Council's Fees & Charges.

The Application Fee covers the cost of advertising and preparation of the consent document.

A Certificate of Currency for public liability insurance to the value of at least \$10 million is to be attached to the consent agreement upon execution. The Certificate of Currency must have noted on it that the occupied area is covered by the public liability policy. Alternatively, the Certificate of Currency must be accompanied with a letter of confirmation from the insurance company stating that the occupied area is covered by the public liability policy. The Certificate of Currency must be provided in each subsequent year on the anniversary of the policy being renewed. Failure to provide such documentation will result in the termination of the consent agreement.

The provision of any carparking requirements required as a condition of a Development Consent can not be met by the use a road reserve consent as such consents may be terminated at any time and for any reason.

I hereby apply under Sections 138 & 139 of the Roads Act, 1993 for consent to use a portion of road reserve fronting the property listed above for the purpose stated.

Signature		Date	
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## Part 3: Process involved in granting consent for use of a road reserve

- When the completed Application Form and Application Fee have been received:
- The proposal is advertised in the Manly Daily inviting comments – objections must be lodged in writing within one month of the publication of this notice.
- A notification letter is sent to your immediate neighbours and the relevant Precinct Committee for any comments – objections must be lodged in writing within one month of the notice being issued.
- The proposal is also referred to other Divisions of Council for comments.
- At the completion of the notification period the application is assessed further. If necessary, the proposal may have to be presented to Council, in the form of a report, for their approval/refusal.
- If approved, either under delegated authority or by resolution of Council, a consent document is drawn up and sent to the applicant with a covering advice.
- The process is ordinarily completed to approval stage within two to three months, depending on the advertising time limit, etc and whether any objections need to be addressed.

## Part 4: Road reserve leases/consents

Formula for determination of annual rental/ occupation payment (the "fee")	
Citation	
This policy may be cited as "road reserve leases/consents - formula for determination of annual rental/ occupation payment (the "fee") policy"	
Commencement	
Formula Adopted:	Ordinary Council Meeting 19 February 2007
Road Reserve Policy:	As adopted at the periodic review on 3 March 2014: <a href="http://www.manly.nsw.gov.au/council/policies-and-codes2/">http://www.manly.nsw.gov.au/council/policies-and-codes2/</a>
Policy objectives	
Application to Council to lease road reserve can be approved by Council as a Consent under Section 138 of the Roads Act 1993. Such applications do not require the consent of the Minister. Consents are issued on an ongoing basis, and Council may terminate the consent at any time and for any purpose. Council can only lease land to an adjoining property owner. This policy sets out the methodology that Council will adopt in calculating the annual charge for use of Council road reserves, as well as providing a mechanism for annual review of the charge.	

## Part 4: Road reserve leases/consents continued

Formula for determination of annual fee of use of council's road reserves			
<ol style="list-style-type: none"> <li>The formula for charging for Annual Fee for use of Council's Road Reserve to be based on the "Precinct Valuation";</li> <li>The "Precinct Valuation" is to be calculated based on the average value per square metre of the land valuations for all residential rated assessments within each Precinct;</li> <li>The basis for the Precinct Valuations will be the current July base date land valuations as provided by the NSW Valuer General;</li> <li>The formula for calculating the road reserve leases/consents annual fee adopted by Council on 20 July 1993, be amended as follows:</li> </ol>			
$(PV \times A \times L) + GST$			
Where:			
PV	=	Precinct valuation (average valuation per square metre for each Precinct determined as follows): $\frac{\text{Valuation of all residential rated property within the Precinct}}{\text{Total land area of all residential rated property within the Precinct}}$	
A	=	area of road reserve lease/consent	
L	=	land use according to the following table	
GST	=	Goods and Services Tax	
<ol style="list-style-type: none"> <li>The annual fee shall be varied on each anniversary of the commencement of the consent as follows:               <ol style="list-style-type: none"> <li>The percentage by which the Precinct Valuation shall be increased on each anniversary of the commencement of the Consent shall be the same percentage as the percentage increase in the Valuer General's valuation of the Precinct(s) where a general revaluation has occurred for the area;</li> <li>In the event that there is no variation in the Valuer General's valuation for the area, then the percentage by which the annual fee shall increase on that anniversary shall be the same percentage as the Consumer Price Index (all groups) Sydney current as at the review date has increased over and above the Consumer price Index figure current on the previous review date or the commencement of the Consent whichever last occurred.</li> </ol> </li> </ol>			
6. The following valuations to apply to each Precinct for 2022/2023:			
Precinct	Total area (square metres)	Total LV (base date July 2005)	Precinct valuation (per square metre)
Balgowlah	306,186	614,067,634	\$2,005.54
Balgowlah Heights	886,054	1,871,416,996	\$2,112.08
Clontarf	446,315	1,078,802,253	\$2,417.13
Fairlight	508,278	1,318,614,204	\$2,594.28
Fairy Bower	167,878	766,300,858	\$4,564.63
Ivanhoe Park	445,863	1,257,815,145	\$2,821.08
Little Manly	257,866	1,075,295,285	\$4,169.98
North Harbour	354,706	745,308,911	\$2,101.20
Ocean Beach	237,013	1,045,696,439	\$4,411.98
Seaforth	1,174,243	1,895,210,734	\$1,613.99
Seaforth North	432,420	551,949,036	\$1,276.42
The Corso	133,564	356,838,582	\$2,671.67

## Part 5: Northern Beaches Council - example of conditions

ROADS ACT 1993 (NSW) PART 9, DIVISION 3, SECTIONS 138 AND 139

INSTRUMENT OF CONSENT TO THE ERECTION OF A STRUCTURE AND/OR THE CARRYING OUT OF A WORK IN, ON OR OVER A PUBLIC ROAD

Northern Beaches Council, being the appropriate roads authority in respect of the public road known as ..... (the "public road"), and in pursuance of sections 138 and 139 of the Roads Act 1993 (NSW), grants consent to the person for the time being registered as the Registered Proprietor (the "Registered Proprietor") of the land described in the Schedule (the "subject property") in respect of:

- the erection of the structure described in the Schedule ("the structure")\* AND/OR
- the carrying out of the work described in the Schedule ("the work") in, on or over the public road \* (in either or both respects, "the improvements")

Such consent being granted SUBJECT TO THE FOLLOWING CONDITIONS:

1. THE Registered Proprietor of the subject property must ensure that, at all times, there is in effect and is maintained public liability insurance in respect of the property in a sum of not less than the amount specified in the Schedule in respect of any one claim and at all times otherwise sufficient to provide cover in respect of any and all liability to the public (including to Council) in respect of any real or personal property which is damaged and any person who is injured or killed in the event of any claim that may arise in relation to the improvements or the use of any part of the public road on which the improvements are situated. Such insurance must at all times be on the terms and conditions (including exclusions and excesses) reasonably required by Council. The Registered Proprietor of the subject property must produce evidence satisfactory to Council of the insurance required by this instrument each anniversary of the policy being renewed.
2. THIS consent shall be void and inoperative in the event that the Registered Proprietor of the subject property does not agree to be bound by all of the conditions on which this Consent is granted or in the event of any non-compliance with any such condition or any direction or notice given by the Council to the Registered Proprietor with respect to the maintenance or repair of or the carrying out of any work with respect to the improvements and, in the event that this Consent does become void and inoperative, the Registered Proprietor shall not be entitled to any compensation by reason of the same.
3. THE Registered Proprietor shall not erect within the public road any structure or work other than of the nature otherwise authorised.
4. THE Council shall have the right at any time and for any reason to terminate this Consent by notice in writing to the Registered Proprietor and the Registered Proprietor shall not be entitled to any compensation for termination of the consent.
5. THE Registered Proprietor shall pay an annual occupation payment under Section 139 of the Roads Act 1993 (NSW) consisting of an annual fee calculated in accordance with EITHER the formula set out below as otherwise varied on each anniversary of the commencement of the Consent in accordance with this condition OR such formula or basis of calculation as may be determined by Council as in force from time to time (in either case, in the absolute discretion of Council), such annual occupation payment being otherwise calculated, determined and varied as and when required in accordance with and pursuant to Council's adopted policy with respect to the Occupation of Council Road Reserve as in force from time to time.
  - a. Unless and until altered, varied or substituted by Council from time to time, the annual fee component of the annual occupation payment shall be calculated in accordance with the following formula:

$$AF = (PV \times A \times L) + GST$$

Where:

PV	=	Precinct Valuation (average valuation per square metre for each Precinct determined as follows):  $\frac{\text{Valuation of all residential rated property within the Precinct}}{\text{Total land area of all residential rated property within the Precinct}}$
A	=	area of road reserve lease/consent
L	=	land use according to the following table:
GST	=	Goods and Services Tax

Exclusive Use

Car Parking	(Carports/slabs/garage) 1% (or as otherwise determined as per Council's annual adopted fees & charges)
Gardens/landscaping	(Enclosed land) 1% (or as otherwise determined as per Council's annual adopted fees & charges)
Access use only	Elevated driveways/stairs/structures 0.5% (or as otherwise determined as per Council's annual adopted fees & charges)
Minimum charge	\$580 pa (GST inclusive and subject to CPI increases as below)

- b. Unless and until altered, varied or substituted by Council from time to time, the annual fee shall be varied on each anniversary of the commencement of the Consent as follows:
  - The percentages by which the Precinct Valuation shall be increased on each anniversary of the commencement of the Consent shall be the same percentage as the percentage increase in the Valuer General's valuation of the Precinct(s) where a general revaluation has occurred in the area;
  - In the event that there is no variation in the Valuer General's valuation for the area, then the percentage by which the annual fee shall increase on the anniversary shall be the same percentage as the Consumer Price Index (all Groups) Sydney current as at the review date has increased over and above the Consumer Price Index figure current on the previous review date or the commencement of the Consent whichever last occurred.
- c. The annual occupation payment must be paid to Council within 60 days of it first becoming due and payable.
- d. The Registered Proprietor shall pay all outgoings and the statutory, legal, survey and valuation expenses associated with the preparation of the Consent documents including the costs and disbursements in connection with this Consent.

## Part 5: Northern Beaches Council - example of conditions continued

6.	THE Council may at any time in its discretion give to the Registered Proprietor any direction or notice requiring the Registered Proprietor to carry out works by way of maintenance or repair or any other work with respect to the improvements where after the Registered Proprietor will promptly at its own cost and expense and in a proper and workmanlike manner carry out all repairs or works required by that direction or notice failing which Council may take such action as may be necessary to effect all of the same and may recover the costs of so doing from the Registered Proprietor in any court of competent jurisdiction.
7.	IN the event of this Consent becoming void and inoperative for any reason or being terminated for any reason the Council may give to the Registered Proprietor notice in writing requiring it to leave upon the public road any improvements which then stand upon the public road and in the event that such notice is given by the Council to the Registered Proprietor then the Registered Proprietor shall leave all improvements thereon and shall not be entitled to any compensation in respect of those improvements.
8.	EXCEPT as otherwise provided by this Consent, in the event that this Consent becomes void and inoperative for any reason or is terminated for any reason, the Registered Proprietor will (except where a notice is given pursuant to condition 7) promptly and at his own cost and expense and in a proper and workmanlike manner remove from the public road the improvements and will clear the land and reinstate the public road to its condition which existed prior to erection thereon of the improvements failing which Council may take such action as may be necessary to effect all of the same and may recover the costs of so doing from the Registered Proprietor in any court of competent jurisdiction.
9.	NO work of any kind shall be carried out by the Registered Proprietor upon the public road until the plans and specifications thereof have been submitted to and approved by the Council's Environmental Services Division.
10.	ANY necessary excavation to be carried out by the Registered Proprietor shall be carried out under the supervision of and to the satisfaction of the Council's Environmental Services Division and any alterations to services or utilities shall not be carried out or undertaken by the Registered Proprietor until permission has been obtained from the appropriate authorities.
11.	THE Registered Proprietor shall ensure that any improvements erected on the public road shall conform to any clearances requested by a public utility or any other authority having legal authority to carry out work in, on, over or under the public road, with respect to services located in, on, over or under or adjacent to the occupied area.
12.	THIS Consent shall be taken to have been terminated, with no compensation payable to the Registered Proprietor, in the event that the whole or any part of the improvements are destroyed, removed or otherwise adversely affected to a substantial degree by reason of the carrying out of any work by a public utility or any other authority having legal authority to carry out work in, on, over or under the public road.
13.	ANY alterations or restoration of the footpath and roadway necessitated by the work carried out by the Registered Proprietor upon the public road (whether or not necessitated by reason of some omission or neglect on the part of the registered proprietor) shall be carried out by the Council at the reasonable expense of the Registered Proprietor.
14.	IN any works carried out by the Registered Proprietor the line and level indicated by the Council's Environmental Services Division shall be adhered to.
15.	THE subject road shall not be used for any purpose other than as authorised by this Consent or as otherwise permitted by law.
16.	THE Registered Proprietor will at all times during the continuance of this Consent maintain the improvements in good order and condition and to the reasonable satisfaction of the Council.
17.	THE Registered Proprietor shall within 14 days of the date of transfer of the subject property advise Council in writing of the transfer.
18.	<ol style="list-style-type: none"> <li>a. In this clause "GST Legislation" means A New Tax System (Goods and Services Tax) 1999 of the Commonwealth of Australia and words and expressions in this clause have the same meaning as set out in the GST Legislation.</li> <li>b. Where any taxable supply is made by a party to this Agreement to the other and the consideration for such supply is not expressed to be inclusive of GST then the party to whom the taxable supply is provided must pay to the supplier of such supply in addition to any other consideration for such supply the amount of any GST payable by such supplier in relation to such supply. The supplier of such supply must provide a tax invoice to the recipient of such supply upon payment of any amount of GST provided for in this Clause or otherwise in this agreement.</li> </ol>

NOTE: A consent may not be given with respect to a classified road except with the concurrence of the RTA.

## The schedule

Subject property details		Consent no.	RR20.....
Property described as Lot.....DP ..... and known as.....NSW.			
Note: Where there is a change in the property description of the subject property, the changed property description shall be taken to be specified herein, and the consent shall continue to have full force and effect according to its tenure and shall apply to the subject land as described from time to time, unless sooner revoked or terminated.			
The improvements			
	Description	area totaling	square metres. (refer: attached plan)
Occupation payment			
\$.....	per annum and exclusive of GST (or as otherwise varied pursuant to Condition 5 of the Consent)		
Insurance:			
\$10,000,000 with Northern Beaches Council noted as an interested party on the policy.			
Date of commencement of consent:			

## Part 6: Roads Act 1993 (Part 9, Division 3, Sections 138 & 139)

<b>138</b>	<b>Works and structures:</b>
<p>1. A person must not:</p> <ol style="list-style-type: none"> <li>a. erect a structure or carry out a work in, on or over a public road, or</li> <li>b. dig up or disturb the surface of a public road, or</li> <li>c. remove or interfere with a structure, work or tree on a public road, or</li> <li>d. pump water into a public road from any land adjoining the road, or</li> <li>e. connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.</li> </ol> <p>Maximum penalty: 10 penalty units.</p> <p>2. A consent may not be given with respect to a classified road except with the concurrence of the RTA.</p> <p>3. If the applicant is a public authority, the roads authority and, in the case of a classified road, the RTA must consult with the applicant before deciding whether or not to grant consent or concurrence.</p> <p>4. This section applies to a roads authority and to any employee of a roads authority in the same ways as it applies to any other person.</p> <p>5. This section applies despite the provisions of any other Act or law to the contrary, but does not apply to anything done under the provisions of the Pipelines Act 1967 or under any other provision of an Act that expressly excludes the operation of this section.</p>	
<b>139</b>	<b>Nature of consent</b>
<p>1. A consent under this Division:</p> <ol style="list-style-type: none"> <li>a. may be granted on the roads authority's initiative or on the application of any person, and</li> <li>b. may be granted generally or for a particular case, and</li> <li>c. may relate to a specific structure, work or tree or to structures, works or trees of a specified class, and</li> <li>c1) in relation to integrated development within the meaning of section 91 of the Environmental Planning and Assessment Act 1979, is subject to Division 5 of Part 4 of that Act, and</li> <li>d. may be granted on such conditions as the appropriate roads authority thinks fit.</li> </ol> <p>2. In particular, a consent under this Division with respect to the construction of a utility service in, on or over a public road may require the service to be located:</p> <ol style="list-style-type: none"> <li>a. in such position as may be indicated in that regard in a plan of subdivision or other plan registered in the office of the Registrar – General with respect to the road, or</li> <li>b. in such other position as the roads authority may direct.</li> </ol> <p>3. In particular, a consent under this Division with respect to the erection of a structure may be granted subject to a condition that permits or prohibits the use of the structure for a specified purpose or purposes.</p> <p>3.</p>	

Office use only			
Application fee paid (GST included)	\$	Receipt no:	
Customer Service Officer		Date	
Job no: 4002 1001 4576 (GST Inclusive)		Account code: PropLandDealAppGST	