By-law made under the Local Government Act 1999

PERMITS AND PENALTIES BY-LAW 2020

By-law No. 1 of 2020

To provide for a permit system, set penalties for breaches of by-laws, provide for certain matters pertaining to liability and evidence, set regulatory requirements, clarify the construction of Council's by-laws and for related purposes.

Part 1 – Preliminary

1. **Short Title**

This by-law may be cited as the *Permits and Penalties By-law 2020*.

2. **Commencement**

This by-law will come into operation four months after the day on which it is published in the *Gazette* in accordance with Section 249(5) of the *Local Government Act 1999*.

3. **Definitions**

3.1 In any by-law of the Council, unless the contrary intention is clearly indicated:

3.1.1 **authorised person** means a person appointed as an authorised person pursuant to Section 260 of the *Local Government Act 1999*;

3.1.2 **Council** means the Yorke Peninsula Council;

3.1.3 **drive** a vehicle means to be in control of the steering, movement or propulsion of the vehicle;

3.1.4 **driver** of a vehicle means the person driving the vehicle;

3.1.5 **motor vehicle** has the same meaning as in the *Road Traffic Act 1961*;

3.1.6 **person** includes a natural person, a body corporate or incorporated association;

3.1.7 **road** has the same meaning as in the *Local Government Act 1999*;

3.1.8 **vehicle** has the same meaning as in the *Road Traffic Act 1961* and the *Australian Road Rules 1999* and includes a motor vehicle.

3.2 In this by-law:

3.2.1 **owner** has the same meaning as in the *Road Traffic Act 1961*;

3.2.2 **prescribed offence** means an offence against a by-law of the Council relating to the driving, parking or standing of vehicles.

4. Construction

Every by-law of the Council shall be subject to any Act of Parliament and Regulations made thereunder.

Part 2 – Permits

5. Council May Grant Permits

If any by-law of the Council states that a person needs a 'permit' or 'permission' to do a specified thing, then the following provisions apply:

5.1 The permit must be in writing.

5.2 A person may apply for permission by:

5.2.1 making a written application for permission to the Council or its duly authorised agent;

5.2.2 making application by way of a website established by the Council for the purpose of issuing a permit of a particular kind;

5.2.3 obtaining a permit from a permit vending-machine installed and maintained by the Council that has been designated by the Council for the purposes of issuing a permit of a particular kind.

5.3 The Council may:

5.3.1 provide that the permit applies for a particular term;

5.3.2 attach conditions to the permit the Council considers appropriate;

5.3.3 change or revoke a condition, by notice in writing; or

5.3.4 add new conditions, by notice in writing.

5.4 A person who holds a permit must comply with every condition attached to it. Failure to do so constitutes a breach of this by-law.

5.5 The Council may revoke a permit, by notice in writing, if:

5.5.1 the holder of the permit fails to comply with a condition attached to it; or

5.5.2 the permit is of a continuing nature, and the Council has reasonable grounds for revoking it.

5.6 The Council may, by resolution, fix, vary or revoke fees or charges for the granting of a permit to do a specified thing.

5.7 A person who applies for permission by way of subparagraph 5.2.2 or 5.2.3 is taken to have been granted permission when the following steps have been completed:

5.7.1 the person pays the permit fee (if any) by (as the case may be):

5.7.1.1 inserting sufficient coins or notes into the permit vending-machine;

5.7.1.2 credit or debit card; or

5.7.1.3 such other method of payment that may be approved by the Council by resolution;

5.7.2 the person receives a notice identifying itself as a permit from the Council to undertake the activity specified in the permit.

Part 3 – Enforcement

6. Penalties

6.1 A person who contravenes, or fails to comply with any by-law of the Council is guilty of an offence and is liable to a maximum penalty, being the maximum penalty referred to in the *Local Government Act 1999*, which may be fixed for offences against a by-law.

6.2 A person who is convicted of an offence against any by-law of the Council in respect of a continuing act or omission is liable, in addition to the penalty otherwise applicable, to a further penalty, being the maximum penalty referred to in the *Local Government Act 1999* which may be fixed for offences of a continuing nature against a by-law.

7. Liability of Vehicles Owners and Expiation of Certain Offences

7.1 Without derogating from the liability of any other person, but subject to this paragraph, if a vehicle is involved in a prescribed offence, the owner of the vehicle is guilty of an offence and liable to the same penalty as is prescribed for the principal offence and the expiation fee that is fixed for the principal offence applies in relation to an offence against this paragraph.

7.2 The owner and driver of a vehicle are not both liable through the operation of this paragraph to be convicted of an offence arising out of the same circumstances, and consequently conviction of the owner exonerates the driver and conversely conviction of the driver exonerates the owner.

7.3 An expiation notice or expiation reminder notice given under the *Expiation of Offences Act 1996* to the owner of a vehicle for an alleged prescribed offence involving the vehicle must be accompanied by a notice inviting the owner, if they were not the driver at the time of the alleged prescribed offence, to provide the Council or officer specified in the notice, within the period specified in the notice, with a statutory declaration:

7.3.1 setting out the name and address of the driver; or

7.3.2 if they had transferred ownership of the vehicle to another prior to the time of the alleged offence and has complied with the *Motor Vehicles Act 1959* in respect of the transfer - setting out details of the transfer (including the name and address of the transferee).

7.4 Before proceedings are commenced against the owner of a vehicle for an offence against this section involving the vehicle, the Informant must send the owner a notice:

7.4.1 setting out particulars of the alleged prescribed offence; and

7.4.2 inviting the owner, if he or she was not the driver at the time of the alleged prescribed offence, to provide the Informant, within 21 days of the date of the notice, with a statutory declaration setting out the matters referred to in subparagraph 7.3.

7.5 Subparagraph 7.4 does not apply to:

7.5.1 proceedings commenced where an owner has elected under the *Expiation of Offences Act 1996* to be prosecuted for the offence; or

7.5.2 proceedings commenced against an owner of a vehicle who has been named in a statutory declaration under this section as the driver of the vehicle.

7.6 Subject to subparagraph 7.7, in proceedings against the owner of a vehicle for an offence against this paragraph, it is a defence to prove:

7.6.1 that, in consequence of some unlawful act, the vehicle was not in the possession or control of the owner at the time of the alleged prescribed offence; or

7.6.2 that the owner provided the Informant with a statutory declaration in accordance with an invitation under this paragraph.

7.7 The defence in paragraph 7.6.2 does not apply if it is proved that the owner made the declaration knowing it to be false in a material particular.

7.8 If:

7.8.1 an expiation notice is given to a person named as the alleged driver in a statutory declaration under this paragraph; or

7.8.2 proceedings are commenced against a person named as the alleged driver in such a statutory declaration,

the notice or summons, as the case may be, must be accompanied by a notice setting out particulars of the statutory declaration that named the person as the alleged driver.

7.9 The particulars of the statutory declaration provided to the person named as the alleged driver must not include the address of the person who provided the statutory declaration.

8. **Evidence**

In proceedings for a prescribed offence, an allegation in an Information that:

8.1 a specified place was a road or local government land; or

8.2 a specified vehicle was driven, parked or left standing in a specified place; or

8.3 a specified vehicle was parked or left standing for the purposes of soliciting business from a person or offering or exposing goods for sale; or

8.4 a specified place was not formed or otherwise set aside by the Council for the purposes of the driving, parking or standing of vehicles; or

8.5 a specified person was an authorised person; or

8.6 a specified provision was a condition of a specified permit granted under paragraph 5 of this by-law; or

8.7 a specified person was the owner or driver of a specified vehicle; or

8.8 a person named in a statutory declaration under paragraph 7 of this by-law for the prescribed offence to which the declaration relates was the driver of the vehicle at the time at which the alleged offence was committed; or

8.9 an owner or driver of a vehicle for a prescribed offence was given notice under paragraph 7 of this by-law on a specified day,

is proof of the matters so alleged in the absence of proof to the contrary.

Part 4 – Miscellaneous

9. **Revocation**

Council's *By-law No. 1 – Permits and Penalties*, published in the *Gazette* on 19 December 2013, is revoked on the day on which this by-law comes into operation.

The foregoing by-law was duly made and passed at a meeting of the Yorke Peninsula Council held on the 29th day of July 2020 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.

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Mr Andrew Cameron
Chief Executive Officer

SECTION 249 LOCAL GOVERNMENT ACT 1999

CERTIFICATE OF VALIDITY

I, Paul St Leger Kelly of 431 King William Street, Adelaide SA 5000, being a legal practitioner within the meaning of the *Legal Practitioners Act 1981*, declare that I have examined the following by-law which Yorke Peninsula Council intends to make, being *Permits and Penalties By-law 2020* and do certify that in my opinion:

(a) the said Council has power to make the by-law by virtue of the following statutory provisions:

Local Government Act 1999, Sections 246(1), 246(2), 246(3)(f), 246(3)(g) and 246(3)(h);

Acts Interpretation Act 1915, Section 39;

(b) the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 26th day of June 2020.

Paul St Leger Kelly, Legal Practitioner