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Permit Number: 59/2022/BOAT

06 September 2022

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## RIVER TORRENS ACTIVITY PERMIT

Issued pursuant to Section 202 of the Local Government Act 1999

Permit Number	59/2022/BOAT
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### Schedule

Date of Permit	25-Aug-2022
Permit Holder	DRAGONBOAT SA 1 Jenkins Street PORT ADELAIDE SA 5015
Permit Areas	Park 26: Elder Park/Tantanya Wama
Permitted Use	RIVER TORRENS ACTIVITY LICENCE
Details of Permitted Use	Weir to Festival Centre Sept 2022- August 2023 No set time or day - ad hoc throughout the year
Special Conditions	Applications for use to be communicated throughout the year by Permit Holder.

**This Permit is issued by the City of Adelaide and incorporates the Permit Conditions on the following pages (which form part of this Permit).**

Issued by:

A blue ink signature of Ray Scheuboeck.

Ray Scheuboeck  
**Team Leader - Community Lifestyle**



# **PERMIT CONDITIONS FOR RIVER TORRENS ACTIVITY PERMIT**

**Issued pursuant to Section 202 of the Local Government Act 1999**

## **1.0 DEFINED TERMS AND INTERPRETATION**

### **1.1 Defined terms:** In this permit:

**Banks** means those part of the Park Lands adjacent to the River;

**Boat** means any device (including canoe, rowing boat, power boat and paddle boat) used or capable of being used to propel persons on the surface of the River;

**Claim** includes any action, proceeding, right, claim or demand whether present or future, certain or contingent, due or may become due, known or unknown and including all costs and expenses (including legal expenses);

**Contamination** means the presence of a substance (solid, liquid or gel) at a level above the level at which the substance is normally present in the same locality and that presents a risk of harm to human health or the environment, or results in a non-compliance with or breach of any law relating to the environment (and “contaminant”, “contaminated” and “contaminate” have a corresponding meaning);

**GST** has the same meaning as given to that term in *A New Tax System (goods and Services Tax) Act 1999* (Cth) or any ancillary or similar legislation;

**Permit Fee** means the amount described in this permit (and as reviewed each year);

**Loss** means any loss, damage, death or injury;

**Park Lands** means the Adelaide Park Lands as defined in the *Adelaide Park Lands Act (SA) 2005*;

**Permit Areas** means those parts of the Banks and the River described in this permit;

**Permitted Use** means the use described this permit;

**River** means that part of the River Torrens under the care, control and management of the Council by virtue of the *Local Government (Implementation) Act 1999* (SA);

**Special Conditions** means any special conditions (if any) detailed in this permit;

**Statutory Authorities** means any government or semi government authorities (including the Council in its separate capacity as local government authority) or other authorities created by or under Legislation;

**Statutory Requirements** means all relevant and applicable legislation and all lawful conditions, requirements, policies, notices, rules, by-laws and directives issued or applicable under any such legislation or by any Statutory Authorities;

**Structure** means any object, building, fixture and fitting and includes any jetty and landing stage;

**Term** means the term described in this permit and any period during which the Permit Holder continues to use the Permit Areas with the Council’s consent;

**Times of Use** means the days and hours of operation of use specified in this permit.

### **1.2 Interpretation:** Unless the contrary intention appears:

1.2.1 headings are for convenience only and do not affect interpretation;

1.2.2 the singular includes the plural and vice-versa;

1.2.3 a reference to an individual or person include a corporation, partnership, joint venture, authority, trust, state or government and vice versa;

1.2.4 a reference to any party in this Permit, or any other document or arrangement referred to in this Permit, includes that party’s executors, administrators, substitutes, successors and assigns;

1.2.5 a reference to any Legislation includes any statutory modification, re-enactment or any Legislation substituted for it, and all by-laws, regulations and rules issued under it;

- 1.2.6 unless otherwise provided in this Permit, a reference in this Permit to the Council's approval or consent, is to the Council's prior written approval or consent which may be granted or withheld in the absolute discretion of the Council; and
- 1.2.7 "including" and similar expressions are not and must not be treated as words of limitation.

## **2.0 GRANT OF PERMIT**

- 2.1 River and Licensed Area: The Council grants the Permit Holder a permit to use the Permit Areas during the Term as provided in this permit.
- 2.2 Ancillary rights: The grant of permit includes all ancillary rights of access and egress (in common with other persons) subject to this permit.

## **3.0 PERMIT FEE**

- 3.1 Payment: The Permit Holder must pay the Permit Fee by an annual instalment in advance on the Commencement Date.
- 3.2 Review of fee: The Permit Fee is reviewed annually by the Council as part of the review of the Council's schedule of fees and charges.

## **4.0 USE**

- 4.1 Permitted Use: The Permit Holder must not use or permit the Permit Areas to be used other than for the Permitted Use.
- 4.2 Times of Use: The Permit Holder may only use the Permit Areas during the Times of Use.
- 4.3 Rules and directions: The Permit Holder must comply with all rules, directions, policies, and guidelines (from time to time) of the Council in respect to the use of the Permit Areas (being part of the Park Lands).
- 4.4 Statutory requirements: The Permit Holder must comply with all Statutory Requirements regarding the use of the Permit Areas.
- 4.5 No signs: The Permit Holder must not place any signs or advertisements in, on or to the Permit Areas or on any Boats without the consent of Council.
- 4.6 Keep clean: The Permit Holder must not allow any rubbish to be left or deposited in or on the Permit Areas and keep the Permit Areas in a clean and tidy state and condition.
- 4.7 No Warranty: The Council makes no warranty or representation regarding the suitability of the Permit Areas for the Permitted Use or any other purpose.

## **5.0 INSURANCE**

- 5.1 Lessee to insure: The Permit Holder must keep current during the Term public risk insurance to cover "marine" risks for at least \$20,000,000.00 (or any other amount the Council reasonably requires) for each claim to cover the use of the Permit Areas (including any Structures).
- 5.2 Requirements for policy: The policy the Permit Holder takes out must:
- 5.2.1 be with an insurer and on terms (including value of policy) approved by the Council;
- 5.2.2 be in the name of the Permit Holder and note the Council's interest; and
- 5.2.3 cover events occurring during the policy's currency regardless of when claims are made.
- 5.3 Evidence of insurance: The Permit Holder must give the Council copies of certificates evidencing the currency of the policy the Permit Holder has taken out under clause 5.1 before the Commencement Date.

## **6.0 ASSIGNMENT AND SUBLETTING**

- 6.1 Consent required: The Permit Holder must not assign, transfer, sublicense or otherwise deal with the Permit Holder's rights under this Permit (including allowing any person to use the Boats of the Permit Holder) without the consent of the Council.
- 6.2 No release: Where the Council grants consent to a request the Permit Holder will not be released or discharged from the current and future obligations and liabilities under this permit.

## **7.0 IMPROVEMENTS**

- 7.1 No installation: The Permit Holder must not erect, fix or place any Structures in, on or under any part of the Permit Areas without the consent of Council.

- 7.2 Maintenance: The Permit Holder must at its cost maintain all Structures in, on or under any part of the Licensed Area in good and safe condition.
- 7.3 Inspection: The Council may inspect any Structures at any time without notice and may require the Permit Holder to do works required under this permit.
- 7.4 Ownership: Any Structure erected, fixed, or placed on the Permit Areas by or on behalf of the Permit Holder will, unless otherwise agreed, remain the property of the Council and must not be removed from the Permit Areas without the consent of the Council.

## **8.0 BOATS**

### **8.1 Use and security:**

The Permit Holder must:

- 8.1.1 only launch and remove Boats from those locations of the Permit Areas nominated or directed by Council; and
- 8.1.2 ensure when not in use that all Boats secured and rendered unusable to prevent authorised use.

### **8.2 Boat safety:** The Permit Holder must comply with:

- 8.2.1 all reasonable requirements of the Council relating to Boat safety systems and procedures (including use of approved lights in low visibility conditions); and
- 8.2.2 all Statutory Requirements in relation to Boats and water safety.

### **8.3 Maximum persons:** The Permit Holder must ensure every Boat (other than canoes, racing shell and kayaks) state in a conspicuous place the maximum number of persons to be carried and must ensure that number is not exceeded.

### **8.4 Certification:** Without limiting clause 8.2, the Permit Holder must ensure:

- 8.4.1 all commercial Boats are inspected annually and certified by a suitably qualified marine inspector as fit for purpose; and
- 8.4.2 a copy of the inspection certification is provided to Council on request.

## **9.0 ENVIRONMENT**

### **9.1 Safety and pollution of River:** The Permit Holder accepts that the River may be Contaminated.

### **9.2 Environmental obligations:**

- 9.2.1 The Permit Holder must not do anything that causes or is likely to cause Contamination to the Permit Areas.
- 9.2.2 Without limiting clause 4.4, the Permit Holder must comply with any Statutory Requirement in relation to Contamination in connection with the Permitted Use and the Permit Holder must perform at its cost any environmental remediation works required as a result of a breach by the Permit Holder of this clause 9.2.

## **10.0 NATURE OF RIGHTS**

### **10.1 No tenancy or estate:** The rights granted by the Permit in these Terms and Conditions do not create in or confer upon the Permit Holder any tenancy or any estate or interest in the Permit Areas or any rights of exclusive use or occupation and the Council may from time to time exercise all rights which may include the right to use, possess and enjoy of the whole or any part of the Permit Areas

### **10.2 Revocation or temporary suspension:**

- 10.2.1 The Council may, at their discretion, revoke or suspend this permit.
- 10.2.2 Upon revocation or suspension of the permit, the Permit Holder may not make any Claim for any Loss or interruption arising from any such revocation or suspension.

### **10.3 Events:**

- 10.3.1 The Council may (in accordance with its events management policies and as amended from time to time) grant approval to others to hold events on or near the Permit Areas on terms determined by the Council.
- 10.3.2 The Permit Holder may not make any Claim for any Loss or interruption arising from any such approval or being required to relocate to an alternate licensed area for the duration of the event.

## **11.0 END OF PERMIT**

- 11.1 **Expiry:** This permit comes to an end at midnight on the last day of the Term unless it is terminated earlier by the Council or the Permit Holder under this permit.
- 11.2 **Yield up:** Unless otherwise agreed, the Permit Holder must at the expiry of this permit yield up the Permit Area in good repair and condition including (if required by Council), removing any Structures to Council's satisfaction.

## **12.0 BREACH**

- 12.1 **Payment obligations:** The Permit Holder must make payments due under this Permit to the Council (or as Council directs):
  - 12.1.1 without demand (unless otherwise provided); and
  - 12.1.2 without set-off, counter-claim, withholding or deduction.
- 12.2 **Council's right on breach:** If the Permit Holder breaches any provision of this permit and fails to remedy the breach within a reasonable time after being requested in writing to do so, the Council may terminate this Permit by notice in writing to the Permit Holder.
- 12.3 **Right to rectify:** The Council may at the Permit Holder's cost do anything which the Permit Holder should have done under this Permit but which the Permit Holder has not done or which the Council reasonably considers the Permit Holder has not done properly.
- 12.4 **Rights of Council not limited:** A power or right of the Council under this permit or at law resulting from a breach or repudiation of this permit by the Permit Holder, or the exercise of such power or right, does not limit the Council's powers or rights.

## **13.0 INDEMNITY AND RELEASE**

- 13.1 **Risk:** The Permit Holder uses the Permit Areas at the Permit Holder's risk.
- 13.2 **Indemnity:** The Permit Holder is liable for and must indemnify the Council against all Claims for any Loss incurred or suffered directly or indirectly by the Council arising from the Permit Holder's use of the Permit Areas including in connection with:
  - 13.2.1 any neglect or default of the Permit Holder; or
  - 13.2.2 loss or damage to property or injury or death to any person caused by the Permit Holder, the use of the Permit Areas by the Permit Holder or otherwise relating to the Licensed Area.
- 13.3 **Release:** The Permit Holder releases the Council from all Claims for any Loss in connection with the use of the Permit Areas except to the extent caused by the Council's negligence.

## **14.0 GOODS AND SERVICES TAX**

- 14.1 **GST exclusive:** All amounts under this permit are exclusive of GST and the Permit Holder must pay GST in addition to the Permit Fee (and any other consideration payable under this permit).
- 14.2 **Tax invoice:** The Council will provide a tax invoice to the Permit Holder for the amount of the GST.

## **15.0 GENERAL**

- 15.1 **Costs:** The Permit Holder must pay or reimburse to the Council on demand all legal and other costs incurred by the Council in consequence of any actual or threatened breach by the Permit Holder or in exercising or enforcing (or attempting to do so) any rights or remedies of the Council hereunder or at law or otherwise arising in consequence of any actual or threatened breach by the Permit Holder.
- 15.2 **Notice:** A notice, demand, consent, approval or communication under this Permit must be in writing and may be hand delivered or sent by pre-paid post, facsimile or by email to the Permit Holder.
- 15.3 **Special conditions:** Any Special Conditions will apply to this permit and in the event of any inconsistency with the general terms of this permit, then those Special Conditions will prevail.