

Casual Hire Permit

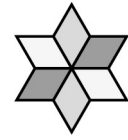
Parks & Reserves

Under sections 200 / 202 / 221 / 222 of the
Local Government Act 1999.

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City of
**Norwood
Payneham
& St Peters**

Conditions

BETWEEN The Corporation of the City of Norwood Payneham and St Peters of 175 The Parade Norwood SA 5067 (**Council**)

AND

The **Permit Holder** as described in Item 1 of the Schedule.

TERMS

1. INTERPRETATION

In this Permit, the terms stated below have the following meaning:

Act means the *Local Government Act 1999*.

Mobile Food Vendor Permit applies when this Permit is granted in relation to a 'Mobile Food Vendor Business' as defined in the Act.

2. GRANT OF PERMIT

- 2.1 The Council grants, and the Permit Holder accepts, a non-exclusive and revocable licence of the Area for the Term and during the Times of Use as set out in this Permit.
- 2.2 The Council:
 - 2.2.1 to the extent that the Area is community land within the Council's area – approves and grants a licence to the Permit Holder under section 200 and section 202 of the Act to use the Area for the Permitted Use; and
 - 2.2.2 to the extent the Area is Council owned road – grants a permit to the Permit Holder under section 222 of the Act to use the Area for the Permitted Use; and
 - 2.2.3 to the extent the Area is Council owned road and to the extent that this Permit authorises an alteration being made as defined in section 221 of the Act – grants an authorisation to the Permit Holder under section 221 of the Act.
- 2.3 The rights conferred by this Permit shall rest in contract only and shall not create or confer upon the Permit Holder any tenancy, estate or interest in or over the Area or Land.
- 2.4 The Permit Holder agrees and acknowledges that this Permit does not give the Permit Holder any exclusive right to use or occupy the Area and that the Council may licence or hire the Area or the Land to other parties at any time within or outside of the Times of Use, and that the Permit Holder must share any public facilities at the Land, including (without limitation) public playgrounds and barbecues.
- 2.5 The Permit Holder acknowledges and agrees that references to the 'Permit Holder' in this Permit means the party listed in Item 1 and where the context permits, includes their employees, contractors, agents, authorised representatives and other invitees, and that all such persons are bound by the terms and conditions of this Permit.

3. PAYMENT OF FEE

The Permit Holder must pay to the Council the Fee set out in Item 8 in the manner and at the times directed by the Council acting reasonably, and in any case, not more than fourteen (14) days from the Start Date.

4. TERM NOT TO EXCEED 6 MONTHS

The parties agree that notwithstanding any other provision of this Permit, the Term will not in any circumstance be for a period in excess of six (6) months from the Start Date. Any statement that the Term is in excess of 6 months will be read down so that the Term expires six (6) months from the Start Date.

5. USE OF PREMISES

5.1 Permitted Use

The Permit Holder must use the Area strictly only for the Permitted Use.

5.2 Times of Use

The Permit Holder is only entitled to use the Area for the Permitted Use and access the Reserve for the Permitted Use during the Times of Use.

5.3 Nuisance and Offensive Activities

5.3.1 Notwithstanding clause 5.1, the Permit Holder must not carry on any offensive or dangerous activities on or from the Area or create a nuisance or disturbance to Council, the public or other owners or occupiers of nearby land and must take all reasonable steps to minimise noise, dust and vibration from the Area.

5.3.2 The Permit Holder must ensure that all entertainment provided at the Area under this Permit involving sound and lighting complies with relevant Environment Protection Authority noise level standards.

5.4 Notification of Event

Where the Permitted Use comprises an Event (as specified in Item 6), the Permit Holder must notify adjacent property owners to the Area and emergency services of the Event at least fourteen (14) days prior to the Start Date (unless otherwise specified by the Council), and must provide a copy of the written notice to the Council for approval at least one (1) month prior to the Event.

5.5 Cleaning

5.5.1 The Permit Holder must keep the Area clean, tidy and free from rubbish, and must not cause any other area of the Reserve to be left untidy or in an unclean state or condition.

5.5.2 All waste produced on the Area in connection with the Permitted Use, including (without limitation) fats, oil and charcoal, must be disposed off-site and must not be disposed on the Reserve.

5.6 Hazards

The Permit Holder must immediately notify the Council upon becoming aware of any hazards, risks and obligations relating to the Area.

5.7 Food Storage, Service and Disposal

5.7.1 The Permit Holder acknowledges and agrees to comply (and to ensure compliance by any mobile food vendor listed in Item 6) with all relevant legislative requirements in relation to the storage, service and disposal of food and beverages in connection with the Permitted Use, including under the *Food Act 2001* and any directions or guidelines issued by the Eastern Health Authority.

5.7.2 The Permit Holder acknowledges and agrees that Environmental Health Officers from the Eastern Health Authority may inspect the Area at any time for the purposes of ensuring compliance with all relevant legislative requirements relating to the storage, service and disposal of food and beverages, and agrees to comply with any reasonable directions of such Environmental Health Officers in relation to these matters.

5.8 Power and Electrical Appliances

5.8.1 Unless otherwise arranged with the Council, it is the responsibility of the Permit Holder to arrange their own power supply at the Area for use in connection with the Permitted Use.

5.8.2 The Permit Holder will be responsible for the use and management of their power supply at the Area in all respects, and the Council will not be liable for any loss or damage suffered in connection with the use or management of this power supply by the Permit Holder.

5.8.3 The Permit Holder must ensure that all electrical appliances, equipment and cabling brought onto or in use at the Area is tested and tagged, and is placed, maintained and covered at the Area in accordance with relevant Australian Standards and work health and safety and legislative requirements, and the Permit Holder must provide the Council satisfactory evidence of compliance with the above obligations upon request.

5.9 Alcohol and Gaming

5.9.1 Unless the Permit Holder first obtains the written consent of the Council, the Permit Holder must not apply for:

- (a) a liquor licence under the *Liquor Licensing Act 1997*; or
- (b) a gaming machine licence under the *Gaming Machines Act 1992*.

5.9.2 If the Permit Holder obtains any of the above licences, then it must comply with any licence terms and conditions and the relevant Act(s) at all times.

5.10 Entertainment and Music

The Permit Holder must obtain any required licences for the playing of live music or film at the Area as part of the Permitted Use, including from the Australasian Performing Right Association and the Phonographic Performance Company of Australia

5.11 Smoking Prohibited

The Permit Holder acknowledges and agrees that smoking is prohibited in the Area and on the Reserve at all times in accordance with the Council's Smoke-Free Policy.

5.12 Vehicles

The Permit Holder must not cause or permit vehicles to be driven onto or parked on the Area or the Reserve, unless prior approval has been obtained from the Council.

5.13 Signs and Banners

The Permit Holder must not place any signs, advertisements or banners at the Area except where prior Council approval has been obtained and in accordance with any statutory requirements. Approved signs, advertisements or banners must be removed within five (5) days of the expiry or earlier determination of this Permit.

5.14 Pegging and Moveable Structures

The Permit Holder must not cause or permit pegs to be placed in the ground at the Area and must ensure that all moveable structures are weighted in accordance with relevant industry standards, including as set out in the *Hire and Rental Industry Association (HRIA) Marquee Weighting Guide* (as amended from time to time), and otherwise to Council specifications.

5.15 Keys

5.15.1 Any keys issued by the Council to the Permit Holder for the purpose of conducting the Permitted Use at the Area will remain the property of the Council and must be returned to the Council upon the expiry or earlier determination of this Permit, unless otherwise agreed.

5.15.2 A refundable bond of Fifty Dollars (\$50.00) (GST inclusive) will be charged by the Council for each key issued ('Key Bond').

5.15.3 The Council will refund the Key Bond upon return to the Council of all keys given to the Permit Holder by the Council, in the same condition supplied to the Permit Holder prior to commencement of this Permit.

5.15.4 The Key Bond is appropriated absolutely to the Council in the event that the Permit Holder fails to return the Keys in accordance with clause 5.15.3.

5.15.5 Where the Permit Holder requests additional or replacement keys for the Reserve, the Council may recover:

(a) if additional keys are requested – the costs of issuing such keys from the Permit Holder as a debt due and payable;

(b) if replacement keys are requested – the difference between the amount of the Key Bond forfeited to the Council and the actual cost of replacing the keys.

5.16 Council Right to Enter

The Council may enter the Area at any time without prior notice for any reason, and may close or restrict access to the Area in an emergency.

5.17 Council Directions

The Permit Holder must comply with all reasonable directions given to the Permit Holder by any employee or officer of the Council in relation to this Permit or the Permitted Use.

5.18 Statutory Requirements

The Permit Holder must comply with all applicable legislation, regulations, by-laws, codes of practice, guidelines and Council policies relating to the Permitted Use or the Area, including any applicable industry or health and safety standards in relation to the Permitted Use.

5.19 COVID-19 Requirements

Without limiting clause 5.18 in any way, in conducting the Permit Use under this Permit, the Permit Holder must ensure compliance at all times (including by all persons attending the Area in connection with the Permitted Use) with:

5.19.1 all relevant legislative requirements and emergency management directions in place in relation to the COVID-19 Pandemic (including as amended from time-to-time); and

5.19.2 all relevant directions, guidelines and codes of practice from any peak body related to the Permitted Use with respect to the COVID-19 Pandemic (including as amended from time-to-time).

6. INSURANCE

- 6.1 The Permit Holder must keep current during the Term, and must ensure that any of its contractors (including parties that supply and/or install equipment or infrastructure on the Area, and any mobile food vendor listed in Item 6) also keep current:
- 6.1.1 public risk insurance for at least the amount in Item 9 (or any other amount the Council reasonably requires) for each claim; and
 - 6.1.2 other insurances required by any Statutory Requirement or which the Council reasonably requires.
- 6.2 The Permit Holder must, prior to the Start Date and otherwise upon demand, give the Council certificates evidencing the currency of the policies the Permit Holder or other parties have taken out in accordance with clause 6.1.

7. INDEMNITY AND RELEASE

- 7.1 The Permit Holder occupies and uses the Area at the Permit Holder's risk and releases the Council from any liability to the fullest extent permitted by law.
- 7.2 The Permit Holder is liable for and indemnifies the Council against, and releases the Council from, all actions, liabilities, penalties, claims or demands for any loss, damage, injury or death incurred or suffered directly or indirectly in connection with the granting of the Permit or the undertaking of the Permitted Use, including in relation to the service of food or beverages by any mobile food vendor listed in Item 6, except to the extent caused or contributed to by the negligence or default of the Council.

8. DAMAGE

- 8.1 The Permit Holder must not permit, cause or contribute to damage to the Area, Land, or any road, footpath, Council owned or controlled land or property in the immediate vicinity of the Area, or any of the Council's Equipment or Services, in carrying out the Permitted Use or otherwise in connection with this Permit.
- 8.2 If the Permit Holder causes any damage described in clause 8.1, or to the Land or any part of the Land, or to any part of the Council's property, the Permit Holder must immediately notify the Council and at its own cost and expense promptly rectify the damage and reinstate the Land or property to the satisfaction of the Council and in accordance with all directions and requirements of the Council.
- 8.3 If the Permit Holder fails to promptly rectify and repair any such damage pursuant to clause 8.2, or alternatively if the Council elects in its discretion, the Council may undertake the rectification and repairs itself, without notice having been given to the Permit Holder and the Council shall be entitled to recover from the Permit Holder as a liquidated debt any costs incurred in doing so.

9. PERMIT HOLDER'S EQUIPMENT, MAINTENANCE AND REMOVAL

- 9.1 The Permit Holder must first obtain the Council's prior written approval for any Permit Holder's Equipment as set out in Item 7 or which is otherwise to be installed in or brought on to the Area by the Permit Holder or its contractors under this Permit.
- 9.2 The Permit Holder must, at its own cost and expense during the Term, keep, maintain, repair and replace the Permit Holder's Equipment in good, safe and proper repair and condition and in accordance with any applicable industry or health and safety standards, and otherwise to the Council's satisfaction and in accordance with all directions and requirements of the Council.
- 9.3 The Permit Holder must remove any Permit Holder's Equipment installed in or brought on to the Area upon the expiration or earlier determination of this Permit, and any Permit Holder's Equipment that is not removed from the Area may be removed by the Council and all costs incurred by Council in connection with such removal (including storage costs) are recoverable by the Council from the Permit Holder as a debt.

10. TERMINATION AND EXPIRY OF PERMIT

10.1 Termination of Permit

This Permit will immediately cancel on the earlier of the expiration of the Term, or the termination of the Permit by the Council as permitted under this Permit.

10.2 Handover of Area

10.2.1 Before this Permit comes to an end, the Permit Holder will cease using the Area for the Permitted Use and at its own cost and return the Area to its condition prior to the granting of the Permit to the satisfaction of the Council and in accordance with all directions and requirements of the Council, including but not limited to removing all of the Permit Holder's Equipment and repairing any damage caused to the Area and areas in the vicinity of the Area in such removal.

10.2.2 If the Permit Holder fails to carry out the works required under clause 10.2.1, the Council may without notice undertake the work required itself and may recover any cost or expense incurred in connection with such works from the Permit Holder as a liquidated debt.

11. BREAK CLAUSE

Notwithstanding the Term, the Permit Holder acknowledges and agrees that the Council may cancel this Permit at any time by giving written notice to the Permit Holder for any reason in the Council's discretion, including (without limitation) as a result of concerns regarding the safety or condition of the Area, or forecast weather conditions, and that if the Council exercises the right to cancel the Permit pursuant to this clause 9, the Council will refund the full amount of the Permit Fee to the Permit Holder, unless any risk in connection the safety or condition of the Room was caused or contributed to by the Permit Holder's act, omission, negligence or default, in which case, the Council is not required to refund or repay any amount.

12. BREACH OR CANCELLATION OF PERMIT

12.1 If the Permit Holder is at any time in breach of any of its obligations under this Permit, the Council and anybody authorised by the Council for that purpose may:

12.1.1 give notice specifying the breach and requiring the Permit Holder to remedy the breach within a reasonable period of time, being at least fourteen (14) days, unless the Council determines that a shorter period should apply to protect the health or safety of the public, and if the Permit Holder fails to remedy the breach to the reasonable satisfaction of the Council the Council may cancel the Permit by giving written notice to the Permit Holder, the Permit to be terminated with immediate effect on and from the date of such notice; and

12.1.2 at any time thereafter come onto the Area without notice and do all things necessary to remedy that breach,

and the Permit Holder will be liable to pay or reimburse the Council for all costs and expenses incurred in that regard which the Council may recover from the Permit Holder as a debt.

12.2 The Permit Holder must immediately notify the Council if it breaches any provision of this Permit.

12.3 This clause 12 does not limit or prevent Council's powers under sections 224A and 225 of the Act.

12.4 The Permit Holder acknowledges that if it repudiates this Permit by cancelling or breaking the Permit (or attempting to do so) less than fourteen (14) days prior to the Start Date, the Council may accept that repudiation and the Permit Holder agrees that

the loss suffered by the Council will include, without limitation, the Permit Fee, and that the Council may retain the Permit Fee in full upon such repudiation.

13. GENERAL

13.1 Permits, Certificates, Licences, Authorisations

The Permit Holder must provide to the Council prior to the Start Date, and otherwise upon request, a copy of all permits, certificates and any other authorisations which may be required by the Council or some other governmental, civic, or municipal authority or otherwise to undertake the Permitted Use.

13.2 Permit Holder's Equipment

For the avoidance of doubt, any reference to the Permit Holder's Equipment in this Permit includes any item listed in Item 7 or any other equipment, material or structure which is otherwise installed in or brought on to the Area by the Permit Holder or its contractors.

13.3 Retail and Commercial Leases Act

If the Retail and Commercial Leases Act 1995 (the Act) applies to this Licence, then this Licence shall be read and interpreted subject to the provisions of the Act and, to the extent there is any inconsistency between them, the provisions of the Act prevail.

13.4 Transfer or Subletting

Subject to the Retail and Commercial Leases Act 1995, the Permit Holder must not assign or transfer this Permit, or sublicense or otherwise part with possession of the Area, without the Council's prior written consent.

13.5 Execution of Permit

This Permit is not effective until the Permit Holder has received a copy of the Permit signed by the Council.

13.6 Waiver

If the Council accepts or waives any breach by the Permit Holder, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Permit.

13.7 Notice

13.7.1 A notice given under this Permit must be in writing and may be given by post, by email, or by delivery to:

- (a) the Council at its office, the address or email address of the Council appearing in this Authorisation, or any other address or email address of which written notification has been given;
- (b) the Permit Holder at its address or email address appearing in this Permit, or any other address or email address of which written notification has been given.

13.7.2 Posted notices will be taken to have been received two (2) Business Days after posting with postage prepaid.

13.7.3 Notices delivered by hand will be taken to have been received when delivered.

13.7.4 Notices sent by email will be taken to have been received four (4) hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

13.7.5 However, notices delivered by hand after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next Business Day at the place where it is received.

13.8 **Severance**

If any part of this Permit is found to be invalid or void or unenforceable, then that part will be severed from this Permit and the remainder of this Permit will continue to apply.

13.9 **Special Conditions**

The Permit Holder acknowledges and agrees that the Special Conditions (if any) form part of this Permit, and to the extent there is any inconsistency between the Special Conditions and any other term of this Permit, the Special Conditions shall prevail.

13.10 **Entire Agreement**

The Council and the Permit Holder acknowledge and agree that this Permit contains and represents the entire agreement reached between them with regard to the Area and that no promises, representations or undertakings, other than those contained in this Permit, were made or given or relied upon.