



**DISTRICT COUNCIL OF FRANKLIN HARBOUR**

**PERMITS AND PENALTIES BY-LAW 2021**

**By-law No. 1 of 2021**

A By-law to create a permit system for Council By-laws, to fix maximum and continuing penalties for offences, and for the construction of Council By-laws.

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## PART 1 – PRELIMINARY

### 1. Title

This By-law may be cited as the *Permits and Penalties By-law 2021* and is By-law No. 1 of the District Council of Franklin Harbour.

### 2. Authorising law

This By-law is made under section 246 of the Act.

### 3. Purpose

The objectives of this By-law are to provide for the good rule and government of the Council area, and for the convenience, comfort and safety of its community by:

- 3.1. creating a permit system for Council By-laws;
- 3.2. providing for the enforcement of breaches of Council By-laws and fixing penalties; and
- 3.3. clarifying the construction of Council By-laws.

### 4. Commencement, Revocation and Expiry

4.1. The following By-Laws previously made by the Council are revoked from the day on which this By-Law comes into operation<sup>1</sup>:

4.1.1 By-Law No. 1 Permits & Penalties 2010

4.2. This By-law will expire on 1 January 2029.<sup>3</sup>

#### Note-

1. Generally, a By-Law comes into operation 4 months after the day on which it is gazetted: section 249(5) of the Act.
2. Section 253 of the Act provides that the revocation of a By-Law by another By-Law that contains substantially the same provisions, does not affect certain resolutions such as those applying a By-Law to a part or parts of the Council area.
3. Pursuant to section 251 of the Act, a By-law will expire on 1 January following the seventh anniversary of the gazettal of the By-law.

### 5. Application

5.1. This By-law applies throughout the Council area.

### 6. Interpretation

In this By-law, unless the contrary intention appears;

- 6.1. **Act** means the *Local Government Act 1999*;
- 6.2. **Council** means District Council of Franklin Harbour;
- 6.3. **person** includes a body corporate.

**Note-**

Section 14 of the *Interpretation Act 1915* provides that an expression used in this By-law has, unless the contrary intention appears, the same meaning as in the Act.

**7. Construction of By-laws generally**

- 7.1. Every By-law of the Council is subject to any Act of Parliament and Regulations made thereunder.
- 7.2. In any By-law of the Council, unless the contrary intention appears **permission** means permission of the Council, granted in writing prior to the act, event or activity to which it relates.

**PART 2 – PERMITS AND PENALTIES****8. Permits**

- 8.1. Where a By-law requires that permission be obtained any person seeking the grant of permission must submit a written application to the Council, accompanied by the fee (if any) prescribed by the Council.
- 8.2. The Council may attach such conditions as it thinks fit to a grant of permission and may vary or revoke such conditions or impose new conditions by notice in writing to the person granted permission.
- 8.3. A person granted permission must comply with every such condition.
- 8.4. The Council may suspend or revoke a grant of permission at any time by notice in writing to the person granted permission.

**9. Offences and penalties**

- 9.1. A person who commits a breach of 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 Act that may be fixed by a By-law for any breach of a By-law.
- 9.2. A person who commits a breach of a By-law of the Council of a continuing nature is guilty of an offence and, in addition to any other penalty that may be imposed, is liable to a further penalty for every day on which the offence continues, such penalty being the maximum amount referred to in the Act that may be fixed by a By-law for a breach of a By-law of a continuing nature.

**Note-**

The maximum penalty for a breach of a By-law is currently \$750.00, and the maximum penalty for every day in which a breach of a continuing nature continues is currently \$50.00 – see section 246(3)(g) of the Act.

This By-law was duly made and passed at a meeting of the District Council of Franklin Harbour held on the 9<sup>th</sup> February 2022 by an absolute majority of the members for the time being constituting the Council, there being at least two thirds of the members present.



.....  
**Shane Gill**  
**Chief Executive Officer**

**CERTIFICATE OF VALIDITY**  
**UNDER SECTION 249(4) OF THE LOCAL GOVERNMENT ACT 1999**

I, PETER AUSTIN WHATSON, of Whatson Legal, Level 5, 170 North Terrace, Adelaide South Australia, being a legal practitioner within the meaning of the Legal Practitioners Act 1981, declare that I have examined the following by-law:

**THE DISTRICT COUNCIL OF FRANKLIN HARBOUR**

**PERMITS AND PENALTIES BY-LAW 2021**

**By-law No. 1 of 2021**

A By-law to create a permit system for Council By-laws, to fix maximum and continuing penalties for offences, and for the construction of Council By-laws.

and do certify that in my opinion the District Council of Franklin Harbour has power to make the by-law virtue of the following statutory provisions:

*Local Government Act 1999*, sections 238, 246(1)(a), 246(3)(a), 246(3)(c) and 246(3)(e)

and the by-law is not in conflict with the *Local Government Act 1999*.

DATED the 11<sup>th</sup> day of October 2021



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Peter Austin Whatson, Legal Practitioner