



Local Port of Portland Bay

BERTHING AND MOORING PERMIT CONDITIONS

Glenelg Shire Council

Background

- A. We have been appointed to manage the Port by the Governor in Council under Section 44A of the Act.
- B. Under section 44A(3)(h) of the Act, Our functions include allocating and managing moorings and berths at the Port.
- C. Under regulation 12 of the Regulations, We have set aside the Designated Areas.
- D. Pursuant to regulation 17(2)(a) of the Regulations, We have permitted You to moor or berth a Vessel at the Site, on the terms set out in this Permit.

Terms and Conditions

1. Interpretation

In this Authorisation:

Act means the *Port Management Act 1995*.

Authorised Hours means the times during which You may berth or moor the Authorised Vessel at the Site set out at Item 9, as varied by Us from time to time.

Authorised Vessel means the vessel that We have permitted authorised You to moor or berth at the Site, as specified in Item 10.

Claim means all actions, claims, demands, losses, damages, liability, costs and expenses whatsoever (including indirect and consequential losses).

Commencement Date means the date set out in Item 5.

Debt Collection Procedure means the procedures prepared and followed by Council, as amended from time to time, in relation to its recovery of outstanding monies.

Designated Area means the specific area at the Port set aside by Us for berthing or mooring of Vessels pursuant to regulation 12 of the Regulations as defined in Attachment 1 to this Permit.

End Date means the date specified in Item 17 as the date on which this Permit expires.

Incident means an event occurring within the Port that causes, or has the potential to cause, personal injury, property damage or environmental damage.

Item means an item of the Schedule.

Long Term Berthing and Mooring Permits are those with a Term exceeding three (3) months.

Major Works includes hot works, grinding, substantial repair, substantial maintenance, installation, modification, refurbishment or construction works to any Vessel, equipment or fixture, but excludes the minor repairs specified in clause 2(d) below and other minor maintenance works that do not cause discharge or deposit of any materials or waste on land or into Port waters.

Permit means this permit to berth or moor the Authorised Vessel at the Site obtained by You under these Permit Conditions.

Permit Bond means the amount (if any) specified in Item 8 paid by You as security against loss or damage incurred by Us in connection with a breach of this Permit. Council retains the right to secure a Bond in case it may be required from You.

Permit Conditions means the terms and conditions applicable to mooring and berthing of Vessels within the Designated Area, set out in this Permit.

Permit Fee means the sum paid by You as consideration for permission to berth or moor a Vessel in the Designated Area as set out in Item 7.

Port means the port waters and infrastructure described at Item 4.

Regulations means the *Port Management (Local Ports) Regulations 2015*.

Schedule means Schedule 1 to this Permit.

Seaworthy means able to undertake a voyage under its own means, unless undertaking authorised short term minor works.

Site means the area at the Port where the Authorised Vessel may be berthed or moored and includes Our fixtures, fittings and equipment located in that area, as described in Item 3, but specifically excludes any part of the wharf or jetty structure and other structures external to the Site.

Special Conditions means the additional conditions set out at Item 13.

Substitute Vessel means a Vessel other than the Authorised Vessel, for which an application is made under clause 6(b) of these Permit Conditions.

Term means the duration of Your tenure over the Site as described in Item 6, which expires on the End Date.

Vessel has the meaning given to that term in the *Marine Safety Act 2010* and includes any recreational, trading, hire and drive, fishing or government vessel and any watercraft.

We means the entity appointed to manage the Port by the Governor in Council, named at Item 1, and 'Our' and 'Us' have corresponding meanings.

You means the entity, named at Item 2, authorised to berth or moor an Authorised Vessel at the Site under these Permit Conditions and 'Your' has a corresponding meaning.

2. Extent of Your Rights

- (a) We authorise You to berth or moor the Authorised Vessel at the Site from the Commencement Date for the Term, subject to compliance with these Permit Conditions and any additional conditions specified by Us from time to time.
- (b) Any activity that is authorised under these Permit Conditions is authorised for the purposes of regulation 17 of the Regulations.
- (c) This Permit is a contractual right to berth or moor the Authorised Vessel at the Site and to occupy the Site (on a non-exclusive basis) for that purpose. You obtain no proprietary interest or right of possession (exclusive or otherwise) in the Site under this Permit.
- (d) Subject to compliance with the balance of these Permit Conditions, You may carry out the following incidental activities at the Site in connection with the Authorised Vessel:
 - (i) works required to maintain the Vessel in good repair that are not Major Works.
- (e) Without limiting the effect of regulations 20 and 21 of the Regulations, We reserve the right to suspend, vary or cancel this Permit at any time if We consider that, for reasons of safety, security or the proper management of the Port, it is necessary to do so.
- (f) During the Term, without needing to give any prior notice to You, We may access the Site to do any works or things required:
 - (i) by law;
 - (ii) to ensure that Your obligations are performed or carried out;
 - (iii) to ensure the safety of persons or prevent or minimise damage to property; or
 - (iv) because of an emergency,and in doing so, We will use best endeavours to ensure that these actions do not unreasonably impede use of the Site by You or performance of Your obligations.
- (g) You acknowledge that this Permit:
 - (i) applies for the Term only; and
 - (ii) does not confer upon You any right or expectation of renewal of tenure at the Site,

irrespective of whether any other approvals that You have obtained for the Authorised Vessel or the Site extend beyond the Term.

3. Documentary and Informational Requirements

- (a) You must provide details of the current registration or survey certificate for the Authorised Vessel to Us if We request this information, to facilitate completion and updating of Item 10 as required.
- (b) Where relevant, this Permit is of no effect until clause 3(a) has been complied with to Our reasonable satisfaction.
- (c) You must give Us written notice within 7 days of any change in Your contact details or the registration or identification mark/s for the Authorised Vessel.

4. Your rights and obligations

- (a) You may berth or moor the Authorised Vessel at the Site during the Authorised Hours.
- (b) When an Authorised Vessel is berthed or moored at the Site, You must ensure that its registration number and/or identification marks are clearly displayed at all times.
- (c) You must ensure that the Authorised Vessel is maintained in good order, repair and seaworthy condition at all times to Our reasonable satisfaction.
- (d) You must not cause or permit the transfer of fuel from the Site, a jetty or any other part of the Port to the Authorised Vessel in an unsafe manner. Fuel transfers using equipment larger than 20 litre containers require Our prior consent, which may be granted or withheld in Our absolute discretion. Permits for fuel transfer will be issued annually.

5. Vessel and General Compliance Requirements

- (a) You must ensure that berthing or mooring of the Authorised Vessel:
 - (i) is conducted in a competent manner that complies with:
 - (A) all applicable laws;
 - (B) any Marina Terms & Conditions, policies, plans and procedures developed by Us regarding berthing or mooring of Vessels and notified to You from time to time; and
 - (C) Our 'Safety and Environment Management Plan' prepared under Part 6A of the Act;
 - (ii) does not cause a nuisance or damage to any person or property;
 - (iii) does not cause danger, offence or annoyance to other persons; and
 - (iv) does not cause a navigation hazard or hazard to the environment.
- (b) Without limiting the effect of clause 5(a), You must comply with:

- (i) the Act and the Regulations;
- (ii) the *Marine Safety Act 2010*;
- (iii) the *Occupational Health and Safety Act 2004* and the regulations made under that Act;
- (iv) laws, regulations, codes and instruments relating to the:
 - (A) protection of the environment, including but not limited to the *Pollution of Waters by Oil and Noxious Substances Act 1986* and the *Environment Protection Act 1970*; and
 - (B) handling, storage, discharge and carriage of dangerous goods, oils, gasses, chemicals and refuse.
- (c) You must obtain any additional licence, registration or permit required for the use, berthing or mooring of the Authorised Vessel at the Site prior to the Commencement Date.
- (d) You must ensure that the Authorised Vessel (when in the Port) and the Site are:
 - (i) kept clean and tidy to Our reasonable satisfaction at all times; and
 - (ii) kept secure and in seaworthy condition when not in use.
- (e) Without limiting the generality of clause 5(d)(i) above:
 - (i) if at any time during the Term the Site or the Vessel is not maintained to a reasonable standard of cleanliness, We may require You to thoroughly clean the Site and/or Vessel to our reasonable satisfaction; and
 - (ii) You must ensure that any sewerage, waste oil, garbage or general waste accumulated through use or maintenance of the Authorised Vessel is disposed of in an appropriate manner, to Our reasonable satisfaction.
- (f) If You use, hire or borrow any plant or equipment from Us in connection with an Authorised Vessel or the Site, You must use that plant or equipment safely and as required by the manufacturer's instructions and Our reasonable directions.
- (g) You must not make any structural or other alterations to any fixtures, improvements or fittings at the Site without Our prior written consent, which may be granted or withheld in Our absolute discretion.
- (h) You must comply with any:
 - (i) reasonable directions given by Us for the safety, security or proper management of the Port;
 - (ii) reasonable direction from a harbour master engaged by Us; and

- (iii) direction given by any government or regulatory agency in relation to the Authorised Vessel.
- (i) Without derogating from any existing obligation that You may have to notify Transport Safety Victoria, Victoria Police or any other emergency services or law enforcement body, You must give Us prompt written notice of:
 - (i) any damage to the Authorised Vessel, another Vessel, the Site, mooring tackle, buoys or any other part of the Port; and/or
 - (ii) the occurrence of an Incident at the Port, as soon as is reasonably practicable after becoming aware of the relevant event.
- (j) You must refrain from using, or permitting the use of, the Authorised Vessel for resident accommodation for periods of 7 nights or more when the Authorised Vessel is moored or berthed at the Site or otherwise in the Port, unless You have obtained Our prior consent, which may be granted or withheld in Our absolute discretion.
- (k) You acknowledge that the Authorised Vessel is moored or berthed at the Site at Your risk.

6. **Assignments, Sub-licensing, Substitution and Extended Vacancies**

- (a) Subject to clause 6(b) below, this Permit is personal to You and You must not:
 - (i) assign the benefit of this Permit;
 - (iii) sub-licence Your right to occupy the Site to another person or Vessel; or
 - (iv) allow another Vessel to occupy the Site.
- (b) If You dispose of the Authorised Vessel during the Term, You may apply to Us for permission to berth or moor a Substitute Vessel at the Site (**Substitution Application**). We may grant or refuse a Substitution Application in Our absolute discretion.
- (c) You must lodge the information required under clause 3(a) for the Substitute Vessel with the Substitution Application.
- (d) Excluding swing moorings, if the Site is to be unoccupied by You for a period of 21 days or more, You must give Us the number of days' notice specified in Item 14, telling us for how long the Site will be unoccupied and on what date you will return, following which We may:
 - (i) continue to collect fees payable in respect of Your occupation of the Site; and
 - (ii) temporarily reallocate the Site to another Vessel; and

- (iii) retain as Our absolute property any monies We receive from a third party occupant of the Site during Your absence, without being under any obligation to:
 - (A) account to You for these monies; or
 - (B) refund any part of the Permit Fee paid in advance by You.
- (e) If We temporarily reallocate the Site and You return to the Site before the date You originally specified, You will find alternative accommodation for the Authorised Vessel until that date, or until the Vessel to which the Site has been temporarily reallocated vacates it, whichever is earlier.
- (f) We will endeavour to find alternative accommodation for the Authorised Vessel but cannot guarantee that this will always be possible.

7. Reinstatement Obligations

- (a) On or before the expiration or earlier determination of the Term, You must, to Our satisfaction:
 - (i) remove from the Site any remaining rubbish, litter, mooring tackle or other materials brought onto the Site during the Term;
 - (ii) reinstate any damage to improvements, fixtures, fittings or equipment at the Site arising out of Your use; and
 - (iii) return the Site to Us in the condition that it was in on the Commencement Date, unless We direct You to leave behind any improvements or modifications that You have constructed.
- (b) If You breach clause 7(a), We may do all things required to rectify the breach, including disposing of any items left behind by You as Our absolute property, without being required to account to You for any proceeds of sale.
- (c) We may deduct any expenses incurred under clause 7(b) from the Permit Bond (if applied) and, if these funds are insufficient, recover the residue from You as a debt payable on demand.

8. Payments

- (a) You must pay:
 - (i) the first instalment of the Permit Fee and the Permit Bond (if applied) to Us in the manner, and on or before the date, specified in Item 7; or the beginning date on the Itinerant (casual) Berth Permit Application.
 - (ii) any subsequent instalments of the Permit Fee to Us at the times and in the manner specified in Item 7;
 - (iii) interest on any overdue monies at the rate prescribed under section 2 of the *Penalty Interest Rates Act 1983*;

- (iv) any fee or charge payable for remaining at the Site after the expiry or earlier determination of the Term without Our permission;
- (v) any costs or expenses arising out of damage to the Site or any plant or equipment at the Site during the Term, excluding fair wear or tear;
- (vi) any fee or charge payable to relocate an Authorised Vessel or Substitute Vessel from the Site to another location under clause 11, if We reasonably consider the relocation necessary; and
- (iv) any penalty or fine payable due to Your breach of any Act, regulation or other instrument relating to the Site or the Port during the Term.

9. Consequences of Failure to Pay

- (a) If monies payable by You are overdue and You have paid a Permit Bond, We may apply the Permit Bond towards the outstanding monies.
- (b) Without limiting the effect of clause 9(a), if outstanding monies payable by You remain unpaid for a period of days in excess of that specified in Item 16, without further notice to You, We may:
 - (i) terminate this Permit;
 - (ii) detain and/or impound the Authorised Vessel; and/or
 - (iii) detain and/or impound any fixtures, gear, catch and any other things on or in the Authorised Vessel; and/or
 - (iv) take any other steps specified in Our Debt Collection Policy as notified to You from time to time.
- (c) You will:
 - (i) remain liable for the whole outstanding sum until that sum is paid in full; and
 - (ii) reimburse Us for all legal costs (on a full indemnity basis) and other expenses incurred by Us in recovering an outstanding sum, including impoundment-related expenses.
- (d) We may board the Authorised Vessel to enforce Our rights under this clause 9 and must not be obstructed or hindered from this endeavour by You or any other person.
- (e) If We detain or impound the Authorised Vessel or other item of property under this clause 9 and the outstanding sum remains unpaid, after a reasonable time, being not less than 28 days, and without further notice to You, We:
 - (i) may sell the Authorised Vessel or other thing/s; and

- (ii) will apply the proceeds of sale in the following order of preference:
 - (A) firstly, in payment of Our expenses relating to detaining or impounding the Authorised Vessel or other things, the sale of the Authorised Vessel or other things and the enforcement of this Permit; and
 - (B) secondly, towards payment of the outstanding sum; and
 - (C) any remaining proceeds of sale will be returned to You.
- (f) Any Vessel or other item of property detained or impounded by Us under these Permit Conditions remains at Your risk.
- (g) Our rights under this clause 9 are supplementary to Our common law rights, including any right of lien over the Authorised Vessel.
- (h) The process followed by Us under this clause 9 will be as set out in Our Debt Collection Procedure, provided always that, in the event of any inconsistency, the terms of this Permit will prevail.

10. Cancellation of Long Term Berths

- (a) 21 days' notice of cancellation of Long Term Berthing and Mooring Permits must be received in writing, sent by post or email, to Us.
- (b) A cancellation fee of 25% of the total refundable fees will be imposed.
- (c) Refunds, less the cancellation fee, will be processed within 21 days of cancellation via Our accounts payable system, and be paid within 14 days.

11. Major/ High Risk Works

- (a) You must not carry out Major/ High Risk Works at the Site without Our prior written consent, which may be granted or withheld in Our absolute discretion. Any approval given by Us may include a direction requiring the Major Works to be carried out at a designated location.
 - (i) Works classified as Major/ High Risk works is Sandblasting, Crane activities, Diving, Forklift movements etc.
- (b) A person engaged by You to perform Major/ High Risk Works at the Site or on a Vessel at the Port must hold any qualifications required by law to perform the work.
- (c) Save for clause 2(d) above, this Permit does not entitle You to perform activities on adjacent areas of the wharf or at the Port. Any such activities may require separate permission from Us or another applicable land manager.

12. Relocation

- (a) Where We need the Site for another purpose, We may require You to relocate to an alternative berth or mooring at the Port nominated by Us (**Alternative Space**) after giving You no less than the amount of notice specified in Item 15 (if any).
- (b) An Alternative Space nominated by Us must, as far as possible, be:
 - (i) suitable for the dimensions of the Authorised Vessel and offer similar convenience of access; and
 - (ii) located as near as possible to the Site.
- (c) You will occupy the Alternative Space on the same terms as this Permit for the balance of the Term then remaining, subject to any refunds (if applicable) for the Alternative Space.

13. Mooring Line and Tackle Maintenance and other Requirements

- (a) Before a swing mooring is laid, Council must conduct an inspection of the mooring tackle.
- (b) You must:
 - (i) ensure that all mooring lines and tackle are:
 - (A) diligently inspected by a maintenance contractor authorised under the Regulations as often as required by law and due prudence and, in any event, no less frequently than once every 12 months; and
 - (B) maintained in good order and repair at all times to Our reasonable satisfaction; and
 - (ii) provide a copy of the maintenance contractor's inspection report to Us upon request.
- (c) You must ensure that:
 - (i) mooring tackle used on a swing mooring Site:
 - (A) complies with any specification notified to You by Us; and
 - (B) is maintained in sound and serviceable condition at all times during the Term;
 - (ii) mooring tackle is inspected bi-annually by an inspector approved by Us, who provides a signed declaration confirming the sound and serviceable condition of the mooring tackle to You (**Inspector's Declaration**);

- (iii) the Inspector's Declaration is provided to Us within 7 days of the inspection; and
 - (iv) the mooring buoy is fitted with the Site identification number.
- (d) Mooring tackle remains Your property.
- (e) Mooring tackle must be removed from the Site upon the expiry or earlier determination of the Term, unless We waive this requirement and allocate the Site to any purchaser of the mooring tackle.
- (f) The sale or purchase of mooring tackle does not imply authorisation from Us to use the Site for mooring purposes.

14. Insurance

- (a) You must maintain the insurance coverage set out at Item 11 during the Term for the Site and the Authorised Vessel.
- (b) You must not do or permit anything to be done which may invalidate any insurance, make any insurance void or voidable or increase Our rate of premium of any insurance or increase any other person's rate.

15. Claims and Your Reimbursement Obligation

- (a) To the extent permitted by law, You indemnify Us and agree to keep Us indemnified against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) which We suffer or incur or for which We are or may be or become liable concerning:
 - (i) the breach of any terms of this Permit by You or Your invitees or agents;
 - (ii) the breach of any statutory duty or licence, registration or authorisation requirements by You or Your invitees or agents;
 - (iii) the use of the Site by You or Your invitees or agents, Your property or other infrastructure or any other area used by You or Your invitees or agents in connections with this Permit;
 - (iv) loss, damage or injury to property or persons or death of any person caused or contributed to by Your act, omission, default or negligence or that of Your invitees or agents; or
 - (v) subject to clause 9(f) of this Permit, any damage to the Authorised Vessel or any other thing detained or impounded under clause 9 of this Permit,
 - (vi) except to the extent caused or contributed to by Our negligence.
- (b) This indemnity is a continuing obligation, separate and independent from Your other obligations, and survives expiry or termination of this Permit.

16. Your Warranties

- (a) You warrant and represent, on a continuing basis, that:
 - (i) You have full authority or power to hold and give effect to this Permit; or the the Itinerant (casual) Berth Permit Application.
 - (ii) You hold all additional licences, registrations, permits, consents and authorisations required under any law to operate the Authorised Vessel;
 - (iii) all information, representations, warranties and undertakings made or given by You in connection with this Permit are true, complete and accurate in all respects; and
 - (iv) if You do not own the Authorised Vessel, You have full authority to bind the owner of the Authorised Vessel to these Permit Conditions.

17. Suitability of Site and Release

- (a) You:
 - (i) acknowledge that We give no warranty that the Site is suitable for use by the Authorised Vessel or any other Vessel;
 - (ii) warrant and represent that You have relied on Your own inquiries regarding suitability of the Site when seeking this Permit.
- (b) You use the Site at Your own risk and release Us from all liability for any Claims incurred by You or persons claiming through You in connection with:
 - (i) refusal of permission to berth or moor a Vessel in a Designated Area;
 - (ii) any decision not to renew a permit to berth or moor a Vessel in a Designated Area;
 - (iii) variation or cancellation of this Permit under clauses 2(e) above or 18 below;
 - (iv) any failure by a previous occupant or other person to vacate the Site prior to the Commencement Date;
 - (v) declining a Vessel permission to enter or use the Site or the Port where use or entry is refused due to a breach of clause 3; or
 - (vi) any circumstance or event beyond Our control.
- (c) If this Permit attracts the operation of any provisions of the *Competition and Consumer Act 2010 (Cth)*, the *Australian Consumer Law*, the *Goods Act 1958* or any similar legislation of any other State or Territory, any liability imposed on Us will be limited to the fullest extent permissible by law.

18. Revocation or Variation of Permit for Breach

- (a) Without limiting clause 2(e), We may, in accordance with the process prescribed by regulation 21 of the Regulations, cancel, vary, or vary the conditions of, this Permit.
- (b) Despite clause 18(a), We may immediately suspend this Permit in accordance with regulation 20 of the Regulations.

19. Utilities and Service Charges

- (a) We do not warrant that water, electricity and other utilities (**Utilities**):
 - (i) will be available at the Site; or
 - (ii) where made available through a third party supplier, will be available on a continuous or uninterrupted basis during the Term.
- (b) The Utilities that You may be able to obtain from a third party supplier for the Site are specified at Item 12.
- (c) Where Utilities are supplied to the Site and the Site is:
 - (i) separately metered for Utilities, You must pay the applicable service charges by the due date; or
 - (ii) not separately metered for Utilities, You must pay Your share of the Utilities as determined in Our discretion, acting reasonably.

20. Deemed Acceptance of Permit Conditions

This Permit will be given to You personally or by registered post, or in the case of an Itinerant (casual) Berth Permit Application, can be viewed online at the site nominated on the application.

- (a) You will then be deemed to have accepted the Permit Conditions under this Permit upon the earlier of the following events:
 - (i) signing of the Berthing and Mooring Permit; or the Itinerant (casual) Berth Permit Application
 - (ii) payment to Us of the first instalment of a Permit Fee (and the Permit Bond if applied); or
 - (iii) commencement of berthing or mooring of the Authorised Vessel at the Site, unless, after receiving this Permit and before undertaking one of the events listed above You have, within 14 days of commencement of mooring or berthing, given Us written notice of Your desire to have the Permit Conditions amended.
- (b) If you serve a request for amendment to the Permit Conditions on Us within time under clause 20(a) above, We:
 - (i) will determine Your request within 14 days of receiving it;

- (ii) may accept or reject any amendments requested in Our absolute discretion; and
 - (iii) may require You to cease occupying the Site until any negotiations regarding the terms of the Permit have been resolved to Our satisfaction.
- 21. The Port Manager will pass on any costs associated with keeping both the vessel and Council's facility safe in an emergency such as (Fire) releasing mooring lines and/or responding to marine pollution incidents or sinking vessels.
 - (a) A port manager may immediately remove a thing from a port if—
 - (i) is causing an impediment to the operations of the port; or
 - (ii) is causing an environmental hazard to the port; or
 - (iii) is a risk to the safety or security of the port or port operations; or
 - (iv) is a danger to public health.

Miscellaneous

- (a) The Special Conditions form part of this Permit and override any inconsistent provisions from the body of this Permit to the extent of any inconsistency.
- (b) Any concerns or Claims held by You in connection with this Permit must be discussed with Us in good faith in the first instance, rather than being immediately brought in a court of competent jurisdiction.
- (c) This Permit is governed by the laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of its courts.
- (d) In this Permit, a reference to any law or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) You can only supplement and/or alter this Permit with Our prior written agreement, which may be granted or withheld in Our absolute discretion.
- (f) This Permit constitutes the whole agreement between the parties regarding its subject matter and overrides any previous contracts or agreements regarding the Site.

Attachment 1 Map of Local Port of Portland Bay



