

**2019 PORT OF WARRNAMBOOL AUTHORITY
BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL**

I _____ of _____
(address)

_____, apply for a *Berth Permit/Mooring Licence for the vessel described below.

I understand and agree to abide by the Marine Safety Victoria Port Regulations and any conditions applicable to this Berth Permit/Mooring Licence and am aware that the permit/licence conveys no automatic right of renewal.

DESCRIPTION OF VESSEL AND BERTH/MOORING

BERTH MOORING SITE NO. (Refer attachment #1) _____

NAME OF VESSEL _____

REGISTRATION NO. _____

COLOUR _____

PROPULSION _____

LENGTH _____

BREADTH _____

DRAUGHT _____

GROSS TUNNAGE _____

CONSTRUCTION _____

DETAILS OF SWING MOORING

ANCHOR TYPE _____ ANCHOR WEIGHT _____

CHAIN LENGTH _____ CHAIN SIZE (S) _____

DESCRIPTION OF INTENDED USE

Provide justification for allocation of a mooring, including any planned periods of non-occupancy

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

If no *berth/ mooring site is currently available, please place my name on a waiting list (tick)

Note: An application fee of \$80 is required to be accompanied with the completed form prior to 30 April in order to be considered. Application may be lodged at, or received via registered post to:

MAIL: Warrnambool City Council, PO Box 198, Warrnambool 3280
IN PERSON: Warrnambool City Council, 25 Liebig Street, Warrnambool 3280

The licence is only valid following:

1. Receipt of payment 2, which will be invoiced following review of the application;
2. Evidence of current registration;
3. Evidence of current survey for registered charter vessels;
4. Evidence of a minimum \$10,000,000 public liability insurance.

A summary of fees and charges are below:

Mooring Fees

User Fees & Charges	2019/20
Berth permit or mooring licence - Application fee	\$80.00
Boat less than 10m pa	\$265.00
Boat 10.1m to 15m pa	\$335.00
Boat 15.1 – 20m pa	\$385.00
Boat 20.1 – 25m pa	\$475.00
Jetty Fees – pa: Permit for breakwater and Hopkins River	\$220.00
Mooring inspection fee	\$180.00
Mooring infrastructure hire	\$90.00

Date: _____ **Contact Phone No.** _____ **Email** _____

Name: _____

Signature: _____

Office use only

Mooring #: _____	Signature: _____	Date: _____
-------------------------	-------------------------	--------------------

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

PERMIT CONDITIONS – BERTHS AND SWING MOORINGS

SUBJECT TO ANY SPECIAL CONDITIONS, THE FOLLOWING PERMIT CONDITIONS APPLY

1 Interpretation

1.1 In this Permit

'Authorised vessel'

means a vessel for which Warrnambool City Council (WCC) has given authorisation to the Permit Holder to moor or berth at a Site.

'Permit Bond'

means any amount required to be paid as security against loss or damage incurred by WCC in connection with the berthing or mooring of a vessel on mooring sites.

'Permit Fee'

means any sum required to be paid as consideration for authorisation of berthing or mooring of a vessel in a prohibited, regulated or restricted area.

'Permit Holder'

means the person, named on the permit, whom WCC authorises under this permit to berth or moor an Authorised Vessel at a site.

'Regulations'

means the Port Services (Local Ports) Regulations 2004.

'Site'

means the area or part of an area of mooring sites in which a vessel is to be berthed or moored, and includes fixtures, improvements, fittings and equipment of WCC located in that area.

'Substitute Vessel'

means a vessel other than the Authorised Vessel for which an application is made under sections 5.2 or 5.4.

'Vessel'

has the same meaning as in the Marine Act 1988, and includes any recreational, trading, hire and drive, fishing or government vessel and any watercraft.

'Berth'

A site to moor a vessel on the marina (otherwise known as a Marina Mooring)

'Mooring'

A site for a vessel to swing on a fixed anchorage (otherwise known as a Swing Mooring)

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

2 Effect of permit

- 2.1 By issuing this permit Warrnambool City Council (WCC) authorises the Permit Holder to berth or moor the Authorised Vessel at the Site, subject to these terms and conditions and any additional conditions specified by WCC,
- 2.2 Any activity that is authorised under this permit is authorised for the purposes of regulation 212 of the Regulations.
- 2.3 The rights granted by this permit are a mere permit to berth or moor a Vessel at the Site and to occupy (on a non-exclusive basis) the Site for that purpose. The Permit Holder obtains no proprietary interest or right of possession (exclusive or otherwise) in the Site.
- 2.4 WCC reserves the right to suspend, vary or cancel this permit at any time if it considers that for reasons of safety, security or the proper management of the port, it necessary to do so.
- 2.5 At any time during the currency of this permit WCC may do any works or things at or on any part of a Site that it is required to do;
 - 2.5.1 by law;
 - 2.5.2 to ensure the Permit Holder's obligations are performed or carried out;
 - 2.5.3 to ensure the safety of persons or prevent or minimise damage to property; or
 - 2.5.4 because of an emergency.

In the event, WCC will do its best to ensure that no such works or things shall impede or obstruct the use of the Site by the Permit Holder or the performance of the Permit Holder's obligations.
- 2.6 The Permit Holder breaches this permit if the Permit Holder fails to fulfil any of the Permit Holder's obligations as and when required, or if no time is prescribed, within a reasonable time.

3 Permit Holder to provide documents and information

- 3.1 Prior to the issue or renewal of a permit, and/or upon request by WCC, the Permit Holder must provide to WCC a copy of the current registration of survey certificate for the authorised vessel.
- 3.2 The permit is of no effect until the requirement in clause 3.1 has been complied with to the reasonable satisfaction of WCC.
- 3.3 The Permit Holder must advise WCC, in writing, within 14 days of any change in:
 - 3.3.1 contact details for the Permit Holder, or
 - 3.3.2 registration or identification mark/s for the Authorised Vessel.

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

- 3.4 The Permit Holder shall at all times during the agreed Permit Period be the holder of a current Public Liability Policy of Insurance in respect of the activities specified herein in the name of the Permit Holder providing coverage for a minimum of \$10,000,000.00 (ten million dollars). The Public Liability Policy Shall be affected with an insurer approved by WCC.
- 3.5 The permit holder shall provide WCC with a copy of a "Certificate of Currency" annually following renew of the of the permit holders Public Liability Insurance to Council.
- 4 Permit Holder's rights and obligations
- 4.1 The Permit Holder may berth or moor the Authorised Vessel at the Site at any time in which the permit is valid and in force.
- 4.2 When an Authorised Vessel is berthed or moored at a Site, the Permit Holder must ensure that the registration number and/or identification marks are clearly displayed on the Authorised Vessel.
- 4.3 The Permit Holder must ensure that the Authorised Vessel and all associated mooring lines and tackle are inspected frequently and maintained in a seaworthy condition at all times.
- 4.4 This permit does not authorise the Permit Holder to fuel a Vessel at a Site. The Permit Holder must not transfer or permit or cause the transfer of fuel from the Site, a jetty or any port land to a Vessel without the prior written approval of WCC.
- 4.5 If a Site is to be unoccupied for an extended period, the Permit Holder must advise WCC of that vacancy. WCC may reallocate the Site to another vessel during the period of absence. WCC is entitled to retain in full any monies it receives as a result of the reallocation, and is under no obligation to refund or provide monies to the Permit Holder.
- 4.6 The Permit Holder must ensure that the berthing or mooring of the Authorised Vessel:
- 4.6.1 is conducted in a competent manner, without negligence;
 - 4.6.2 does not cause nuisance or damage to any person or property;
 - 4.6.3 does not cause danger, offence or annoyance to other persons,
 - 4.6.4 does not cause a navigation hazard or hazard to the environment
 - 4.6.5 does not cause risk to the health or safety to any person: as far as practicable;
- 4.7 The Permit Holder must ensure that the Site is kept clean and tidy at all times.
- 4.8 The Permit Holder must not make any structural or other alterations to any fixtures, improvements or fittings at the Site without the prior written approval of WCC.
- 4.9 The Permit Holder must comply with:
- 4.9.1 any direction given by WCC for the purposes of ensuring the safety, security or proper management of mooring sites;
 - 4.9.2 any direction of a harbour master engaged by WCC; and

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

4.9.3 any direction given by any government or regulatory agency in relation to the vessel.

4.10 Whenever the Permit Holder is carrying out an activity or exercising a right under this permit, the Permit Holder must have a copy of this permit in their possession, available for inspection on request by WCC or member of the police force.

5 Transfer of the permit

5.1 Subject to conditions 5.2 to 5.6, the Permit Holder must not assign or purport to assign this permit

5.1.1 to another person; or

5.1.2 for the purpose of berthing or mooring a vessel other than the Authorised Vessel at the Site.

Sale or disposal of the Authorised Vessel

5.2 If the Permit Holder sells or disposes of the Authorised Vessel prior to the expiry of this permit, the Permit Holder may apply to WCC to berth or moor Substitute Vessel at the Site. WCC may, at its sole discretion, decide whether or not a Substitute Vessel is suitable for berthing or mooring at the Site.

5.3 In making an application under condition 5.2, the Permit Holder's obligations to provide documents and information set out in condition 3 apply.

Sub-letting

5.4 At any time during the currency of the permit, the Permit Holder may make an application to WCC to sublet the Site to another person for the purpose of berthing or mooring a Substitute Vessel at the Site, for a period of up to 3 months.

5.5 WCC may at its sole discretion decide whether or not to approve an application made under condition 5.4. In assessing an application under condition 5.4, WCC will consider:-

5.5.1 the suitability of the Substitute Vessel for the site;

5.5.2 whether any similar applications have previously been granted or made for the Site during the currency of the permit and

5.5.3 whether the sub-lessee accept the application of these conditions to the sub-lease.

5.6 In making an application under condition 5.4, the Permit Holder's obligation to provide documents and information set out in condition 3 will apply.

5.7 If WCC approves an application made under condition 5.4, the Permit Holder must not charge the sub-lessee or any other person any fee or sum greater than the pro-rata Permit Fee for the period of Sub-lease.

5.8 Making good the Site

As soon as practicable after the expiry of the permit, the Permit Holder must to the satisfaction of WCC:

5.8.1 remove from the Site any rubbish, litter or other materials brought onto the Site during the currency of the permit

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

5.8.2 make good any damage to improvements, fixtures, fittings or equipment at the Site arising out of the Permit Holders use of the Site; and

5.8.3 reinstate the Site to the condition it was in immediately prior to the commencement of the permit.

5.9 If the Permit Holder fails to comply with any obligation under condition 5.8, WCC may take such action as is necessary to reinstate the Site to the condition it was in immediately prior to the commencement of the permit, including disposing of any property of the Permit Holder,

5.10 WCC may deduct any costs that it reasonably incurs in reinstating the Site under condition 5.9 from the Permit Bond, or recover those costs as a debt from the Permit Holder.

6 Payments

6.1 The Permit Holder must pay any:

6.1.1 permit Fee and Permit Bond, as required by WCC;

6.1.2 interest on any outstanding amount from the "Due Date" until payment in full is received, (as required by WCC), payable at the rate prescribed in the Penalty interest Rate Act

6.1.3 fee or charge payable for remaining at the Site after the expiry of permit

6.1.4 costs or expenses arising out of damage to the Site, or to any plant or equipment at the Site during the currency of the permit, but not including any fair wear or tear,

6.1.5 fee or charge payable to relocate as Authorised or Substitute Vessel from a Site to another location, in the event that WCC reasonably considers the relocation necessary; and

6.1.6 penalty or fine which may be payable as a result of breach of any Act, regulation or other instrument howsoever imposed during the use and occupation of the site or any of WCC facilities.

6.2 This permit is not valid unless any Permit Fees and any Permit Bond required to be paid have been paid.

7 Failure to pay

7.1 If any sum or part of a sum due under condition 6.1 remains unpaid and the Permit Holder has paid a Permit Bond, WCC may apply the Permit Bond or any port of the Permit Bond to payment of the outstanding sum.

7.2 If any sum or part of a sum due under condition 6.1 remains unpaid for a period of more than 14 days after the due date for payment, without further notice do the Permit Holder, WCC may:

7.2.1 detain and/or impound the Authorised Vessel or Substitute Vessel; and/or

7.2.2 detain and/or impound any fixtures, gear, catch and any other things on the Authorised vessel or Substitute Vessel.

7.3 If WCC takes any action in accordance with condition 7.2, the Permit Holder will:

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

- 7.3.1 be and remain liable for the whole of the outstanding sum until that sum is paid;
and
- 7.3.2 pay all reasonable legal costs, stamp duty and other expenses incurred by WCC, either directly or indirectly, from pursuing payment of the outstanding sum, including any expenses that arise due to an impoundment
- 7.4 In order to exercise its rights under condition 7.2, WCC may board the Authorised Vessel or Substitute Vessel. In that circumstance, the Permit Holder must not obstruct, hinder or prevent WCC from accessing or boarding the Authorised Vessel or Substitute Vessel,
- 7.5 If WCC detains or impounds the Authorised Vessel or Substitute Vessel or any other thing in accordance with condition 7.2 and the outstanding sum remains unpaid, after a reasonable time and without further notice to the Permit Holder, WCC may;
- 7.5.1 arrange for the sale of the Authorised Vessel or Substitute Vessel or other things;
- 7.5.2 Apply the proceeds of sale towards
- (a) the satisfaction of the outstanding sum due and payable by the Permit Holder,
 - (b) the payment of any expenses of charges incurred in rotation to the sale or the enforcement of the outstanding sum and
- 7.5.3 distribute any remainder of the proceeds of the sale to the Permit Holder.
- 7.6 Any Vessel or thing detained or impounded In accordance with this permit is detained or impounded at the risk at the Permit Holder.
- 7.7 The rights of WCC set out in this section are in addition to any common law rights to enforce payment or any sum by the Permit Holder, including any rights of lien over the Authorised Vessel or Substitute Vessel.
8. Compliance
- 8.1 In exercising or performing any right or obligation under this permit, the Permit Holder Must comply with:
- 8.1.1 all relevant laws, regulations, codes and Instruments of any kind;
 - 8.1.2 standards, operating principles, policies or procedures of WCC, in effect from time to time; and
 - 8.1.3 Any reasonable direction of WCC.
- 8.2 Without limiting condition 8.1, the Permit Holder must comply with;
- 8.2.1 the Marine Act 1988;
 - 8.2.2 the Occupational Health and Safety Act 2005;
 - 8.2.3 relevant laws, regulations, codes and instruments relating to the 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
 - 8.2.4 relevant laws, regulations, codes and instruments relating to the handling, storage. Discharge and carriage of dangerous goods, oils, gases, chemicals and refuse.

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

- 8.3 The Permit Holder must obtain any license, registration, permit or authorisation required for the use, berthing or mooring of the Authorised Vessel or any other vessel at the Site.
- 8.4 If the Permit Holder uses, hires or borrows any plant or equipment from WCC, it must and must ensure that any of its servants or agents, use that plant or equipment safely and in accordance with the manufacturer's instructions and applicable procedures.

9 Works

- 9.1 No major works may be conducted at any Site without the prior written approval of WCC. Major works include repair, maintenance, installation, modification or construction works to any Vessel, equipment or fixture.
- 9.2 If prior written approval is given for major works, WCC may attach any conditions to that approval, including a direction that the major works only be carried out at a designated location.
- 9.3 For the purposes of condition 9.1, maintenance works that do not cause the discharge or deposit of any materials or waste on land or into waters are not major works, and do not require the prior written approval of WCC.
- 9.4 The Permit Holder must ensure that any person engaged by the Permit Holder to perform any works at a site or on a vessel at mooring sites holds the necessary qualifications pertaining to the work to be performed.

10 Berth/Mooring Tackle

- 10.1 Berth tackle from the marina (or from the wharf) to the Vessel and from the Vessel to the Buoy marker are the responsibility of the Permit Holder.
- 10.2 Before a mooring is laid WCC must conduct an inspection of the mooring tackle.
- 10.3 The Permit Holder must ensure that
- 10.3.1 mooring tackle used on a swing mooring Site comply with any specification required by WCC and is maintained in good and serviceable condition;
 - 10.3.2 mooring tackle is inspected annually and a signed declaration is completed as to the good and serviceable condition of the mooring tackle;
 - 10.3.3 the signed declaration as to the condition of the mooring tackle is provided to WCC within 7 days after completion of the inspection; and
 - 10.3.4 the mooring buoy is fitted with the Site identification number.
- 10.4 Mooring tackle remains the property of the Permit Holder. The Permit Holder must ensure that mooring tackle is removed from the Site and/or mooring site upon expiry or termination of the permit, WCC may waive this requirement if the tackle is sold to a new Permit Holder, and the new Permit Holder is allocated the same Site by WCC.
- 10.5 The sale of tackle does not authorise the use of a Site or the mooring of a Vessel in a prohibited, regulated or restricted area.

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

11 Indemnity

11.1 The Permit Holder indemnifies WCC and keeps it Indemnified against all actions, claims, demands, losses, damages, costs and expenses whatsoever (including in relation to indirect and consequential losses) for which WCC is or may be or become liable to any person in relation to or arising out of:

11.1.1 any breach of this permit;

11.1.2 the Permit Holder's use or occupation of a Site;

11.1.3 any negligent, careless, reckless or wrongful acts or omissions of the Permit Holder or the Permit Holder's agents;

11.1.4 any breach of statutory duty, license, registration or authorisation requirement by the Permit Holder or the Permit Holder's agents; or

11.1.5 the detention or impoundment of any Vessel or thing.

12 Warranties

12.1 The Permit Holder warrants, on a continuing basis, that

12.1.1 s/he has full authority or power to hold this permit and to give effect to this permit

12.1.2 S/he holds all licenses, registrations, permits, consents and authorisations required under any law in relation to this permit and will continue to do so at all times during the currency of the permit.

12.1.3 all information, representations, warranties and undertakings made or given in relation to this permit are true, complete and accurate in all respects;

12.1.4 s/he has not done anything in an improper or unlawful manner to induce, reward or influence the grant of this permit and

12.1.5 if the Permit Holder is not the owner of a Vessel, the Permit Holder has the full authority of the owner/s to bind the owner/s to each and every obligation in this permit.

13 Liability

13.1 WCC is not liable in any way for any loss, damage or liability suffered or incurred by the Permit Holder or persons claiming through the Permit Holder in anyway arising out of:

13.1.1 refusal of an application, for any reason, to berth or moor a Vessel in a prohibited, regulated or restricted area;

13.1.2 refusal of an application to renew a permit to berth or moor a Vessel in a prohibited, regulated or restricted area;

13.1.3 refusal of any application made under conditions 5.2 or 5.4;

13.1.4 variation or cancellation of the Permit in accordance with condition 2A;

13.1.5 any failure by a preceding Permit Holder or other person to vacate a Site prior to the intended commencement date of a permit;

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

- 13.1.6 refusal to permit a Vessel to enter or use a Site, mooring sites where use or entry is refused due to the failure to provide any information or documents under condition 3;
- 13.1.7 any circumstance or event that is beyond the control of WCC;
- 13.1.8 any negligent act or omission by WCC, or by its servants or agents; or
- 13.1.9 for any other reason whatsoever or howsoever arising

13.2 If this permit attracts the operation of any provisions of the Trade Practices Act 1974 or the Goods Act 1958 (Vic) or any similar legislation of any other State or Territory, any liability that may be imposed on WCC under those laws will be limited to the full extent permissible by law.

14 Suspension or termination of permit

14.1 Without limiting condition 2.4, WCC may, by written notice to the Permit Holder, revoke or vary this permit if:

- 14.1.1 the Permit Holder breaches or causes a breach of the permit
- 14.1.2 conducts an activity that could place property or the safety of persons at risk;
- 14.1.3 conducts an activity that could interfere with the orderly and efficient management of the port
- 14.1.4 fails to pay the Permit Fee, Permit Bond or any other sum payable under this permit
- 14.1.5 fails to provide documents or information required to be provided under this permit or
- 14.1.6 fails to comply with a direction of WCC or a harbour master given in accordance with this Permit, the Regulations or the Marine Act 1988.

14.2 Without limiting condition 2.4, WCC may, by written notice to the Permit Holder, immediately suspend this permit if WCC reasonably believes that the continuation of the permit could:

- 14.2.1 cause a significant risk of injury to any person;
- 14.2.2 cause a significant risk of damage to any property; or
- 14.2.3 interfere with the orderly and efficient management of the port.

14.3 The Permit Holder is not entitled to any refund of the whole or part of any Permit Fee, Permit Bond or other sum paid. If the permit is suspended or revoked in accordance with condition 14.1 or 14.2. or if the Permit Holder terminates the permit in accordance with Condition 14.4, the payment of any refund will be at the sole discretion of WCC.

14.4 The Permit Holder may terminate the Permit by giving 14 days written notice to WCC.

**2019 PORT OF WARRNAMBOOL AUTHORITY
BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL**

15. Launching

15.1 The permit holder is required to provide a minimum 5 day written notice to the Port Engineer of intention to crane a vessel, including evidence of minimum \$10M public liability insurance, Safe Work Method Statement (SWMS) and Traffic Management Plan (TMP).

16. Marine Pest Management

16.1 If a vessel is returning from international waters or any vessel has been moored at another site for a period in excess of three weeks, evidence must be provided to the Port Engineer within 48 hours, of a vessel risk assessment process including but not limited to:

16.1.1 Places of origin and length of stay in the period since the last anti-fouling treatment

16.1.2 Date of last hull and moving parts inspection

16.1.3 Maintenance history

17. Miscellaneous

17.1 Any claim made in relation to this permit whether in contract tort, bailment or otherwise, will be null and void unless suit is brought in a court of competent jurisdiction and notice given thereof to WCC within nine months of the date the cause of action arose.

17.2 This permit is governed by the law of the State of Victoria. The parties submit to the nonexclusive jurisdiction of its courts. The parties will not object to the exercise of jurisdiction by those courts, either for forum non conventions or any other basis.

17.3 In this permit a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision

17.4 Any rights and obligations arising under this permit do not in any way limit or restrict the rights of WCC either at common law or by statute.

17.5 WCC retains the right to supplement and/or alter the terms and conditions of this permit at any time.

17.6 The Permit Holder cannot supplement and/or alter the terms and conditions of this permit except with the prior written agreement of WCC, or as otherwise specified in this permit.

2019 PORT OF WARRNAMBOOL AUTHORITY BERTH PERMIT OR MOORING LICENCE – ANNUAL APPLICATION/ RENEWAL

Attachment 1 – Mooring unique identifier

