

TERMS AND CONDITIONS OF OCCUPATION AND USE OF A BERTH OR MOORING

1. The fee for occupation of berth or mooring shall be paid in advance of issuing a permit.
2. The berth or mooring must be used exclusively by the vessel described in the application. A mooring permit is **not transferable to another vessel or person** unless written approval is given by Colac Otway Shire Council. Colac Otway Shire Council **must be notified immediately in writing if the vessel is sold or otherwise disposed of or permanently relocated from Port of Apollo Bay** by the applicant.
3. A maximum of one berth **or** one mooring only per vessel shall be allocated to an applicant.
4. The vessel shall be securely moored and properly fendered at all times whilst in a berth or on a swing mooring
5. The installation, maintenance and subsequent removal of berth/mooring lines and tackle are the sole responsibility of the applicant.
6. Swing moorings shall be compliant with or exceed specifications outlined in the *Port of Apollo Bay Typical Swing Mooring Apparatus* standard drawing.
7. Swing moorings shall only be identified with mooring buoys issued by Port of Apollo Bay displaying the permit holders mooring number. No other mooring identification buoys are permitted.
8. Swing moorings will be subject to an annual compliance inspection by certified divers at the expense of the permit holder. The Port of Apollo Bay will schedule the inspection, forward the inspection report to the applicant to undertake any maintenance required and invoice the permit holder for inspection costs.
9. Any damage caused to the berth or mooring or to any other vessel must be notified immediately in writing to Colac Otway Shire Council.
10. The vessel shall be maintained in a safe and seaworthy condition. Port of Apollo Bay may carry out vessel condition inspections and issue the permit holders of non-compliant vessels notice to perform maintenance within a specified timeframe.
11. The vessel shall be inspected annually by the Applicant and satisfactory evidence provided to confirm the vessel hull and ballast water is free from *Undaria* (noxious seaweed). In the event the Port of Apollo Bay personnel identify *Undaria* growing on the hull, notice shall be given to the Applicant for the vessel to be slipped, cleaned and antifouled within a defined timeframe.
12. To contain the presence of *Undaria* within Port of Apollo Bay, vessels with *Undaria* present on the hull are prohibited from exiting Port of Apollo Bay until the vessel has been antifouled on the slipway or in the water by specialist contractors with the associated permits.
13. The name and registration number of the vessel shall be prominently displayed on the vessel at all times.
14. All directions given by Colac Otway Shire Council or by an authorised officer of Colac Otway Shire Council shall be complied with.
15. The Colac Otway Shire Council must be advised immediately in writing of any change in the vessel description or the address of the applicant.
16. All notices required to be given by Colac Otway Shire Council to the applicant will be deemed to have been delivered properly if posted by ordinary mail to the last known address of the applicant.
17. The provision of the following legislation shall be complied with:
 - (a) Port Management Act 1995
 - (b) Port Management (Local Ports) Regulations 2015
 - (c) Marine Safety Act 2010
 - (d) Crown Land (Reserves) Act 1978
 - (e) Pollution of Waters by Oil and Noxious Substances Act 1986
 - (f) Pollution of Waters by Oil and Noxious Substances Regulations 2012
 - (g) Environment Protection Act 1970
 - (h) Environment Protection and Sustainability Victoria Amendment Act 2014
18. Insurance

The Applicant shall ensure vessels with berth/mooring permits in Port of Apollo Bay have, at all times, third party insurance for the vessel and provide an insurance cover note to that effect.
19. Indemnity

The Applicant must ensure that the vessel and all associated mooring lines and tackle are inspected frequently and maintained in a seaworthy condition at all times.

The Applicant indemnifies Port of Apollo Bay 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 Port of Apollo Bay is or may be or become liable to any person in relation to or arising out of:

- any breach of this permit
- the Permit Holder's use or occupation of a site, berth or mooring;
- any negligent, careless, reckless or wrongful acts or omissions of the Applicant or the Applicant's agents;
- any breach of statutory duty, licence, registration or authorisation requirement by the Permit Holder or the Permit Holder's agents; or
- the detention or impoundment of any vessel or thing.

20. Warranties

The Applicant warrants, on a continuing basis, that:

- she/he has full authority or power to hold a permit and to give effect to a permit;
- she/he holds all licences, registrations, permits, consents and authorisations required under any law in relation to a permit and will continue to do so at all times during the currency of the permit;
- all information, representations, warranties and undertakings made or give in relation to this permit are true, complete and accurate in all respects;
- she/he has not done anything in an improper or unlawful manner to induce, reward or influence the grant of this permit; and
- if the Applicant is not the owner of a vessel, the Applicant has the full authority of the owner/s to bind the owner/s to each and every obligation in this permit.

21. Liability

Port of Apollo Bay is not liable in any way for any loss, damage or liability suffered or incurred by the Applicant or persons claiming through the Applicant in any way arising out of:

- refusal of an application, for any reason, to berth or moor a vessel in a prohibited, regulated or restricted area;
- refusal of an application to renew a permit to berth or moor a vessel in a prohibited, regulated or restricted area;
- variation or cancellation of a permit;
- any failure by a preceding Permit Holder or other person to vacate a site, berth or mooring prior to the intended commencement date of a permit;
- refusal to permit a vessel to enter or use a site, berth, mooring, port waters or port land where use or entry is refused due to the failure to provide any information or documents;
- any force majeure, circumstance or event that is beyond the control of Port of Apollo Bay;
- any negligent act or omission by Port of Apollo Bay, or by its servants or agents; or
- for any other reason.

22. Suspension or termination of permit

Port of Apollo Bay may, by written notice to the Applicant, revoke or vary a permit if the Applicant:

- breaches or causes a breach of a permit
- conducts an activity that could place property or the safety of persons at risk
- conducts an activity that could interfere with the orderly and efficient management of the port
- fails to pay the permit fee, permit bond or any other sum payable relating to a permit
- fails to provide documents or information required to be provided for a permit, or
- fails to comply with a direction of Port of Apollo Bay Harbour Manager given in accordance with a Permit, or legislation as outlined in item 17.

23. Any claim made in relation to a 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 Port of Apollo Bay within nine months of the date the cause of action arose.

24. This permit is governed by the law of the State of Victoria.

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

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

27. Port of Apollo Bay retains the right to supplement and/or alter the terms and conditions of the permit at any time.

28. The Applicant cannot supplement and/or alter the terms and conditions of the permit except with prior written agreement of Port of Apollo Bay, or as otherwise specified in a permit.

29. The Applicant shall ensure compliance with the Port of Apollo Bay – Safety and Environmental Management Plan (SEMP) at all times whilst operating within the Port of Apollo Bay.