

Dromana Foreshore Committee of Management

BOATSHED / BATHING BOX LICENCE

CROWN LAND (RESERVES) ACT 1978

Section 17B

THIS LICENCE is granted by the Licensor to the Licensee and commences on the date set out in the Schedule.

In consideration of the payment of the licence fee and the conditions contained in this Licence, the Licensor or a person authorised by the Licensor, at the request of the Licensee **HEREBY AUTHORISES** the Licensee to use the licensed site described in the Schedule for the specified purposes set out in the Schedule.

This Licence is subject to the provisions of the *Crown Land (Reserves) Act 1978* and Regulations thereunder, the licence conditions attached and any Statutory and other Special Conditions set out in the Schedule.

.....
Licensor or Authorised person

The Licensee hereby agrees to comply with the terms and conditions of this licence

.....
Licensee

The Minister for Environment and Climate Change approved the terms and conditions of this licence document on 12 September 2012.

NOTE:

1	<i>This Licence is an important document and should be stored in a secure and safe place. In the event of loss, a replacement fee will be charged.</i>
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SCHEDULE

ITEM

- 1 Licence Number:
- 2 Licensor: **Dromana Foreshore Committee of Management (DFCoM)**
- 3 Licensee:
- 4 Licensee's Address:
- 5 Commencement Date:
- 6 Term: **10 (ten) Years**
- 7 Licence fee:
- 8 Payable: **Annually on the anniversary of the commencement date**
- 9 Reservation description: **Dromana Foreshore Reserve – Crown land permanently reserved for Public Purposes (Order in Council 12 November 1872) and temporarily reserved for Public Park (OIC 1891)**
- 10 Licensed site: **<Powered/Non-Powered Boatshed / Bathing Box> Number XXX on the XXXX Foreshore Reserve as shown coloured XXXXX on plan attached and by photograph attached.**
- 11 Area: **m²**
- 12 Powers under which licence granted: **Section 17B *Crown Land (Reserves) Act 1978***
- 13 Specified Purposes: **The use and maintenance of a <Boatshed / Bathing Box>**
- 14 Amount of Public Liability Insurance: **\$10 million**
- 15 Licensor Address:
- 16 Special Conditions **Clauses 16.1 to 16.11 follow**

Special Conditions

16.1 Addition to Clause 3.1 Use of Licensed Site

The Licensee must not use the licensed site for overnight accommodation or long term habitation. The installation of kitchen, toilet and shower facilities and associated plumbing is prohibited.

16.2 Addition to Clause 3.4 Hazardous Chemicals

The Licensee may store up to 40 litres of fuel for power boat purposes within the licensed site.

16.3 Addition to Clause 3.5 Assignment

- 16.3.1 If the Licensee wishes to assign this Licence, the Licensee must:
- 16.3.1.1 provide the personal details including full name and address of the proposed assignee in writing to the Licensor,
 - 16.3.1.2 ensure that any proposed assignee of the Licence is liable to pay municipal rates to the Mornington Peninsula Shire Council or is a resident of the area administered by the Mornington Peninsula Shire Council and provide written evidence of this to the Licensor;
 - 16.3.1.3 provide a written statement from the proposed assignee stating that it does not currently hold any other licence in respect of land which forms part of the Dromana Foreshore Reserve;
 - 16.3.1.4 pay the required transfer fee plus GST thereon to the Licensor in respect of administering the assignment of the licence. Evidence supporting the sale price is to be provided to DFCoM. DFCoM reserves the right to amend the transfer value and associated transfer fee if it is of the opinion that the reported sale price does not reflect the true market valuation of the licensed property.
 - 16.3.1.5 The signing of a transfer form by the Vendor and the purchaser does not in itself legally constitute transfer of ownership of the remaining term of the 10 year licence of the property described herein. Ownership is transferred following compliance with the above conditions and receipt of written advice from DFCoM that the transfer has been approved by DFCoM, as required. The transfer will not be approved by DFCoM until all conditions, as setout by DFCoM, on inspection, have been complied with.
 - 16.3.1.6 The transfer will not be approved where any amounts remain outstanding with respect to annual licence fees.
- 16.3.2 If the Licensee has complied with the requirements specified in Item 16.3.1, the Licensor must not unreasonably withhold its consent to the proposed assignment.
- 16.3.3 It is the responsibility of the Purchaser to notify the Mornington Peninsula Shire Council and any other appropriate authority of any change of ownership.

16.4 Removal of Improvements

- 16.4.1 The Licensee must remove all improvements from the licensed site if:-
- 16.4.1.1 the improvements are dilapidated, beyond repair, abandoned or represent a public risk and the Licensee fails to rectify the problems as notified by the Licensor within 28 days;
 - 16.4.1.2 the licensed site is vulnerable to coastal processes, which result in the improvements being at risk or may contribute to the instability of the licensed site or surrounds, as determined by a suitable qualified expert;
 - 16.4.1.3 access to the beach within the vicinity of the licensed site is unsafe or access to the improvements is unsafe, as determined by a suitable qualified expert;
 - 16.4.1.4 the removal is in accordance with an approved Coastal and Marine Management Plan or policy relating to the licensed site or its surrounds or a directive of the Licensor, the Crown, the Minister, the Secretary or the Minister for Coasts; or
 - 16.4.1.5 the improvements do not meet with minimum construction standards as specified by the Department and/or the Licensor in accordance with their statutory obligations.
- 16.4.2 If the improvements are required to be removed under clause 16.4.1.2, 16.4.1.3 or 16.4.1.4, the Licensor may apply Clause 16.5 in its absolute discretion.

16.5 Relocation of Improvements

- 16.5.1 At the absolute discretion of the Licensor, in the event of the Licensee being required to remove the improvements pursuant to Clause 16.4, this Licence may be terminated and a new Licence offered to the Licensee, provided that:-
- 16.5.1.1 the Licensor has identified an area of reserved Crown land which may be the subject of such a licence; and
 - 16.5.1.2 the Licensor has determined in its absolute discretion that the amenity and safety of the Dromana Foreshore Reserve will be enhanced by the licensing of that site.

16.5.2 The Licensor must consult the Licensee before it determines a site pursuant to Item 16.5.1. For the avoidance of doubt the Licensor has an absolute discretion in determining the site where a new licence may be offered pursuant to this clause.

16.5.3 If a new licence is granted pursuant to this clause, the Licensee must obtain the necessary consents under the *Marine and Coastal Act 2018* and the *Planning and Environment Act 1987*, prior to installing or constructing any improvements on the land subject to the new licence.

16.6 Display of Site Number

The Licensee must display the boatshed/bathing box number, as specified in Item 10 of the Schedule, on the outside of the improvements so that the number is clearly visible beyond the licensed site.

16.7 Asbestos

16.7.1 Removal

16.7.1.1 The Licensee must obtain written permission from the Licensor before it removes any asbestos from the licensed site;

16.7.1.2 All asbestos removal works must be carried out by a licensed asbestos removalist.

16.7.2 Risk Assessment and Notification

16.7.2.1 The Licensor will carry out an annual audit to determine the boatsheds and bathing boxes that contain asbestos and report to the Licensee the condition of the asbestos-containing material. The Licensor will keep records of the results of the audit and any risk assessment conducted. The Licensor will provide all Licensees of boatsheds and bathing boxes which have asbestos roofs details of the requirements under law to act on broken or damaged asbestos as part of the regular annual boatshed inspection;

16.7.2.2 If asbestos roofing is damaged and likely to be a danger to health the Licensee will be notified by the Licensor that the asbestos must be removed by a licensed asbestos removalist. The entire roof must be replaced as soon as is practical within 30 days of notification;

16.7.2.3 If the Licensee's improvements contain asbestos as identified in the audit the Licensee must immediately notify the Licensor of any damage to the asbestos sheeting. To protect persons against asbestos exposure the Licensee must not repair or remove the asbestos but must arrange for the removal of asbestos which must be carried out by a licensed asbestos removalist.

16.7.3 Waste Containing Asbestos

16.7.3.1 No storage of waste containing asbestos is permitted on the licensed site;

16.7.3.2 The Licensee is liable for all costs charged as a result of the removal by the Licensor of waste containing asbestos that originated from the licensed site;

16.7.3.3 When arranging the removal of waste containing asbestos under Item 16.7.3.2 the Licensor must employ a licensed asbestos removalist.

16.8 Alterations and Reconstruction of Improvements

16.8.1 Before carrying out any alterations or reconstructions of the improvements the Licensee must obtain consent under the *Marine and Coastal Act 2018*, a planning permit under the *Planning and Environment Act 1987* and written authorisation from the Licensor. Approvals are subject to, but not restricted by, the following:-

16.8.1.1 Modifications must enhance the external appearance of the improvements, such as exterior finishes including painting, openings, structural features and historical restorations;

16.8.1.2 Modifications must be consistent with the Department's draft "Standards for Bathing Box and Boatshed Construction 1996" (available on request from the Licensor) or any updated version of these standards which may be issued by the Department;

16.8.1.3 Improvements that have been severely damaged by vandalism, weather, impact or fire may be reconstructed provided there is no increase in the footprint of the structure, there is no increase in enclosed or covered areas and reconstruction is to be completed within one year from the date of the planning permit issued under the *Planning and Environment Act 1987*;

16.8.1.4 Permanent exterior fixtures must not be added to the improvements. For example light fittings and TV antennae;

16.8.1.5 New services of any kind must not be connected;

16.8.1.6 Local indigenous vegetation must not be removed, pruned, trimmed or damaged;

16.8.1.7 The footprint of the improvements must not be increased;

16.8.1.8 Enclosed or covered areas must not be increased; and

16.8.1.9 Decks must not extend further than 1.8 metres from the wall of the improvement and must not extend outside of the existing footprint of the improvements as at the commencement date of the Licence.

16.8.1.10 No improvements are to be made to boatsheds/bathing boxes until, after following all the above procedures, consent in writing has been received from DFCoM and the Department. Planning and Building permits may still be required by MPSC and Marine and Coastal Act consent may be required from the Department. It is the responsibility of the Licensee to ensure that all required permits and consents are obtained before any works commence. Copies of all these documents must be provided to DFCoM and retained on site whilst any works are being undertaken for inspection by DFCoM authorised persons.

16.8.2 Approvals are not required for repair or maintenance of the improvements where the external design is unchanged.

16.9 Local Indigenous Vegetation

The Licensee must not remove, prune, trim or damage any local indigenous vegetation on or surrounding the licensed site. Local indigenous vegetation management is the responsibility of the Licensor.

16.10 Change of Address

Within 30 days of a change of address the Licensor must be notified by the Licensee of their changed contact details.

16.11 Water Discharge

The Licensee must ensure that no waste or grey water is discharged on the licensed site or from the licensed site onto the adjoining Crown land.

LICENCE CONDITIONS

1 **Grant**

The rights conferred by this Licence are non-exclusive, do not create or confer upon the Licensee any tenancy or any estate or interest in or over the licensed site or any part of it, and do not comprise or include any rights other than those granted or to which the Licensee is otherwise entitled by law.

2 **Licensee's Obligations (Positive)**

The Licensee **Hereby Covenants** with the Licensor that during the term the Licensee will:-

2.1 **Licence fee**

Duly and punctually pay or cause to be paid the licence fee to the Licensor at the payment address shown in Item 15 of the Schedule or as advised by the Licensor from time to time on the days and in the manner provided in Item 8 of the Schedule without demand, deduction, set-off or abatement.

2.2 **Rates and Taxes**

2.2.1 Duly and punctually pay as and when they respectively fall due all rates and taxes on the licensed site.

2.2.2 If requested to do so by the Licensor, produce receipts to the Licensor evidencing payment of the rates and taxes.

2.2.3 Duly and punctually pay to the Licensor at the same time and in the same manner as the licence fee is payable to the Licensor (or as otherwise notified to the Licensee by the Licensor) under clause 2.1 above the amount of any GST payable on or in relation to this licence and/or the rent payable thereunder or that becomes payable by the Licensor during the period covered by the fee.

2.3 **Indemnity**

Indemnify the Crown in respect of any claim or liability for property damage and/or injury or death of any person which arises directly or indirectly out of negligence, tort, contract, or breach of a statutory duty by the Licensee or any associated party consequential to the use or occupation of the licensed site, including, but without restricting the generality of the foregoing, the pollution or contamination of land or water, and any costs, charges and expenses incurred in connection therewith.

2.4 **Public Liability Insurance**

A public liability insurance policy over the site (providing no less limit of indemnity for any one occurrence during the policy period than the amount shown at Item 14 of the Schedule), which is endorsed (as follows), to note:

<p>'the Committee of Management, the Crown in the right of the State of Victoria, the Secretary to the Department of Environment, Land, Water and Planning, its servants, agents and employees in respect to providing indemnity for personal injury and/or property damage caused by an occurrence, and/or for breach of Professional duty arising out of the negligent acts, errors or omissions of the Licensee and/or its servants agents and employees. The endorsement and extension to the policy does not extend to negligent acts, errors or omissions of the Crown (and others above mentioned), and is limited to the amount shown in Item 14 of the Schedule for any one occurrence.'</p>

2.5 **Maintenance**

2.5.1 Throughout the term keep the licensed site in good order and condition and the improvements on it in good order and condition having regard to their condition at the commencement date or, if constructed or added to the licensed site after the commencement date, at the date of such construction or addition as the case may be and in particular but without restricting the generality of the foregoing will:-

2.5.1.1 Remedy every default of which notice is given by the Licensor to the Licensee within a reasonable time specified in the notice but in any event the time specified in the notice will not be less than 14 days.

2.6 **Fire Protection Works**

Undertake all fire protection works on the licensed site required by law to the satisfaction of the Licensor and the responsible Fire Authority

2.7 **Condition at Termination**

On expiry or prior determination of this Licence return the licensed site, including any remaining improvements, to the Licensor in good order and condition and otherwise in accordance with the Licensee's obligations.

2.8 Notice of Defects and other matters

- 2.8.1 Give the Licensor prompt notice in writing of any accident to or defect in the licensed site and of any circumstances likely to cause any damage risk or hazard to any person;
- 2.8.2 Give to the Licensor within 7 days of its receipt by the Licensee a true copy of every notice, proposal or order given, issued or made in respect of the licensed site and full details of the circumstances of it;
- 2.8.3 Without delay take all necessary steps to comply with any notice, proposal or order referred to in paragraph 2.8.2 with which the Licensee is required to comply; and
- 2.8.4 At the request of the Licensor make or join with the Licensor in making such objections or representations against or in respect of any notice, proposal or order referred to in paragraph 2.8.2 as the Licensor deems expedient.

2.9 Compliance with Law

Comply at the Licensee's cost with the provisions of all statutes, regulations, local laws and by-laws relating to the licensed site and all lawful orders or direction made under them;

2.10 Arrears and Interest

- 2.10.1 Pay to the Licensor:-
 - 2.10.1.1 on any moneys payable by the Licensee to the Licensor and outstanding for thirty (30) days or on any judgment for the Licensor in an action arising under the Licence, interest at the penalty rate of interest for the time being made payable under the **Penalty Interest Rates Act 1983** computed from the date the moneys or judgment became payable until all moneys (including interest on them) are paid in full;
 - 2.10.1.2 on demand all the Licensor's legal costs and disbursements payable in respect of or in connection with any assignment of this Licence or under-licensing of the licensed site, any surrender of this Licence, the giving of any consent by the Licensor or any failure by the Licensee to perform and observe this Licence, or any deed or other document executed in connection with this Licence.

2.11 Further Conditions

Comply with the Special Conditions (if any) contained in Item 16 of the Schedule.

3 Licensee's Obligations (Negative)

The Licensee **Hereby Covenants** with the Licensor that during the term the Licensee will not -

3.1 Use of Licensed Site

Use the licensed site for any purpose other than the specified purpose referred to in Item 13 of the Schedule without first obtaining the Licensor's and the Secretary or delegate's written consent which can be given or withheld at the absolute discretion of the Licensor or the Secretary or delegate or be given subject to conditions.

3.2 Create nuisance

Do not cause or permit to be done anything which constitutes an actionable nuisance, annoyance or disturbance to other persons lawfully entitled to use the licensed site or to use any land in the vicinity or to occupiers of properties adjoining the licensed site. The use of generators is not allowed except where required for authorised works to the licensed property.

3.3 Allow rubbish

Permit any rubbish to accumulate in or about the licensed site.

3.4 Hazardous Chemicals

Keep any hazardous materials on the site without the Licensor's written consent save a reasonable quantity of any hazardous material which is normally used in any specified purpose actually carried on in or upon the site and which is kept in compliance with the requirements of any authority charged with regulating the keeping of it.

3.5 Assignment

Without first obtaining the written consent of the Licensor assign, under-license, mortgage, or charge this Licence or part with or share possession of the licensed site or any part of it.

3.6 Licensor's Entry

3.6.1 Prevent, attempt to prevent or in any other way hinder, obstruct or permit the hindrance or obstruction of the Licensor or the Licensor's employee or agent at any time from entering and remaining on the licensed site either with or without motor vehicles or other equipment for any purpose and in particular, but without restricting the generality of the foregoing, for any of the following purposes:-

- 3.6.1.1 retaking or attempting to retake possession of the licensed site;
- 3.6.1.2 inspection; or
- 3.6.1.3 any other lawful purpose.

3.7 Void insurance

Do or allow anything to be done which might result in any insurances relating to the licensed site becoming void or voidable or which might increase the premium on any insurance.

3.8 Erection of Improvements

Erect or permit the erection of any improvement on the licensed site without the Licensor's and the Secretary or delegate's prior written approval, which can be given or withheld at the absolute discretion of the Licensor or the Secretary or delegate or be given subject to conditions.

4 General Conditions

4.1 Termination upon Default

If the Licensor is satisfied, after giving the Licensee a reasonable opportunity to be heard, that the licensee has failed to comply with any terms or conditions of the licence, the Licensor may, by notice published in the Government Gazette, declare that the licence is cancelled, and upon cancellation the licensee will not be entitled to any compensation whatsoever.

4.2 Licensee's Chattels

4.2.1 Except as provided in sub-clause 4.2.3 the Licensee's chattels shall remain the property of the Licensee.

4.2.2 On the cancellation or expiration of the Licence the Licensee must, within a period of time specified by the Licensor, remove all Licensee's chattels from the licensed site and forthwith make good all damage caused to the licensed site by the affixing, retention or removal of Licensee's chattels to the satisfaction of the Licensor.

4.2.3 If the Licensee's chattels are not removed at the end of the period of time specified under sub-clause 4.2.2, the Licensee's chattels shall become the property of the Licensor.

4.3 Licensor may remove and dispose of Licensee's chattels

If the Licence expires, or is cancelled, the Licensor may at the end of the period of time specified under Clause 4.2.2 remove the Licensee's chattels and store them at the Licensee's expense without being liable to the Licensee for trespass, detinue, conversion or negligence. After storing them for at least one month, the Licensor may sell or dispose of them by auction, private sale, gift, distribution or otherwise and apply the net proceeds towards the payment of any moneys owed by the Licensee to the Licensor.

4.4 Licensor's Agents

Every act or thing to be done, decision to be made or document to be signed pursuant to this Licence by the Licensor and not required by law to be done, made or signed by the Licensor personally may be done made or signed by any person or class of person to whom such power has been delegated by the Licensor.

4.5 Notices

Any notice consent or demand or other communication to be served on or given to the Licensee by the Licensor under this Licence shall be deemed to have been duly served or given if it is in writing signed by the Licensor and delivered or sent by registered post to the Licensee's address set out in Item 4 of the Schedule or to the latest address stated by the Licensee in any written communication with the Licensor.

4.6 Debt recovery

All moneys payable by the Licensee to the Licensor under this Licence are recoverable from the Licensee as liquidated debts payable on demand.

5 Definitions

Unless inconsistent with the context or subject matter each word or phrase defined in this clause has the same meaning when used elsewhere in the licence.

"boatshed/bathing box" means a simple, free standing, non-commercial, non-residential structure used by private individuals and families primarily for storing beach equipment or boats and as a change facility and for shade and shelter.

"commencement date" means the date described in Item 5 of the Schedule and is the first day of the term;

"Crown" means the Crown in right of the State of Victoria and includes the Licensor and each employee and agent of the Crown or the Secretary;

"Department" means the Department of Environment Land, Water and Planning or its successor in law;

"footprint" means the perimeter of all legally established components of the boatshed/bathing box in contact with the land within the licensed site, including steps, decks and ramps.

"GST" means a goods and services tax within the meaning of the *A New Tax System (Goods and Services Tax) Act* 1999.

"hazardous chemical" includes gas, inflammable liquid, explosive substance, pesticide, herbicide, fertilizer and other chemicals;

"improvement" includes building, bathing box, boatshed, sign, permanent fence, or other structure and any addition to an existing improvement;

"Licence fee" means the licence fee described in Item 7 of the Schedule as varied during the term;

"**licensed asbestos removalist**" means a person who holds a licence issued under Part 4 of the *Occupational Health and Safety (Asbestos) Regulations 2003* S.R. No.16/2003;

"**licensed site**" means the land described in Item 10 of the Schedule;

"**Licensee**" means the person named in Item 3 of the Schedule and includes the permitted assigns and successors in law to a Licensee;

"**Licensor**" means the Trustees or Committee of Management appointed by the Minister to manage the reserved land described in Item 9 of the Schedule or if there are no Trustees or Committee of Management means the Secretary to the Department of Environment and Primary Industries or a person or class of person authorised by the Secretary to grant licences under Section 17B of the *Crown Land (Reserves) Act 1978*;

"**Minister**" means the Minister of the Crown for the time being administering the *Crown Land (Reserves) Act 1978*;

"**Minister for Coasts**" means the Minister of the Crown for the time being administering the *Marine and Coastal Act 2018*;

"**person**" includes a body corporate as well as an individual;

"**rates and taxes**" means all existing and future rates (including any special rates or levies) taxes, charges, tariffs, assessments, impositions and outgoings whatsoever now or at any time imposed, charged or assessed on or against the licensed site or the Licensor or the Licensee or payable by the owner or occupier of the licensed site;

"**schedule**" means the schedule to this Licence;

"**Secretary**" means The Secretary to the Department of Environment, Land, Water and Planning, the body corporate established under the *Conservation, Forests and Lands Act 1987*;

"**sign**" includes names, advertisements and notices;

"**soil**" includes gravel, sand, stone, salt, guano, shell, sand, loam and brick earth;

"**term**" means the period of time set out in Item 6 of the Schedule, as and from the commencement date;

"**writing**" includes typewriting, printing, photography, lithography and other modes of representing or reproducing words in a visible form and "written" has a corresponding meaning.

6 Interpretations

6.1 A reference importing the singular includes the plural and vice versa.

6.2 The index and headings are included for ease of reference and do not alter the interpretation of this Licence.

6.3 If any day appointed or specified by this Licence falls on a Saturday, Sunday or a day appointed under the *Public Holidays Act 1993* as a holiday for the whole day the day so appointed or specified is deemed to be the first day succeeding the day appointed or specified which is not a Saturday, Sunday or day appointed as a holiday.

6.4 References to an Act of Parliament or a section or schedule of it shall be read as if the words "or any statutory modification or re-enactment thereof or substitution therefor" were added to the reference.

6.5 If the Licensee comprises more than one person, the covenants and agreements contained in this Licence shall be construed as having been entered into by, and are binding, both jointly and severally on all and each of the persons who constitute the Licensee.

6.6 References to clauses, sub-clauses and Items are references to clauses, sub-clauses and Items of this Licence respectively.