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SPECIAL

Wildlife Act 1975

WILDLIFE (PORT PHILLIP BAY WHALE (DOLPHIN) SWIM TOUR AREA) ORDER 2003

I, Lyndsay Neilson, Secretary to the Department of Sustainability and Environment, make the following Order:

Objective

1. The objective of this Order is—
 - (a) to proclaim the Port Phillip Bay Whale (Dolphin) Swim Tour Area as a whale swim tour area;
 - (b) to invite applications for whale swim tour permits in respect of dolphins in the area;
 - (c) to specify the permit fees and the maximum number of permits in respect of dolphins in the area;
 - (d) to specify the procedures and criteria for the making and assessment of applications for permits.

Authorising provision

2. This Order is made under section 83F of the **Wildlife Act 1975**.

Commencement

3. This Order comes into operation on 8 September 2003.

Definition

4. In this Order—

“**dolphin**” means any member of the family *Delphinidae* of the sub-order *Odontoceti* of the order *Cetacea*;

“**Port Phillip Bay Whale (Dolphin) Swim Tour Area**” means the whale swim tour area proclaimed under clause 5.

Proclamation of Port Phillip Bay Whale (Dolphin) Swim Tour Area

5. The area described in Schedule 1 is proclaimed to be a whale swim tour area.

Applications for whale swim tour permits

6. Applications for whale swim tour permits for the Port Phillip Bay Whale (Dolphin) Swim Tour Area are invited to conduct whale swim tours involving dolphins.
7. The holder of an existing whale swim tour permit may apply for a permit.
8. Applications in writing addressed to the Manager, Tourism Partnerships must be received at the office of Parks Victoria, Level 10, 535 Bourke Street, Melbourne, by 4.00 pm on 29 September 2003.
9. Applications must include the information specified in the ‘Information Kit for Applicants for Whale (Dolphin) Swim Tour Permits on Port Phillip Bay’ in Schedule 2. Information is also available from Parks Victoria (Telephone 13 1963 or www.parkweb.vic.gov.au).

Criteria to be used for assessment of applications

10. Applications for whale swim tour permits will be assessed according to the criteria set out in the ‘Information Kit for Whale (Dolphin) Swim Tour Permits on Port Phillip Bay’ in Schedule 2.

Maximum number of whale swim tour permits

11. The maximum number of whale swim tour permits to be granted for the Port Phillip Bay Whale (Dolphin) Swim Tour Area is four (4).

Fee for whale swim tour permits

12. The fee for a whale swim tour permit is the fee prescribed in Regulation 8(2) of the Wildlife (Whales) Regulations 1998.

Dated 3 September 2003

LYNDSAY NEILSON

Secretary to the Department of Sustainability and Environment

SCHEDULE 1

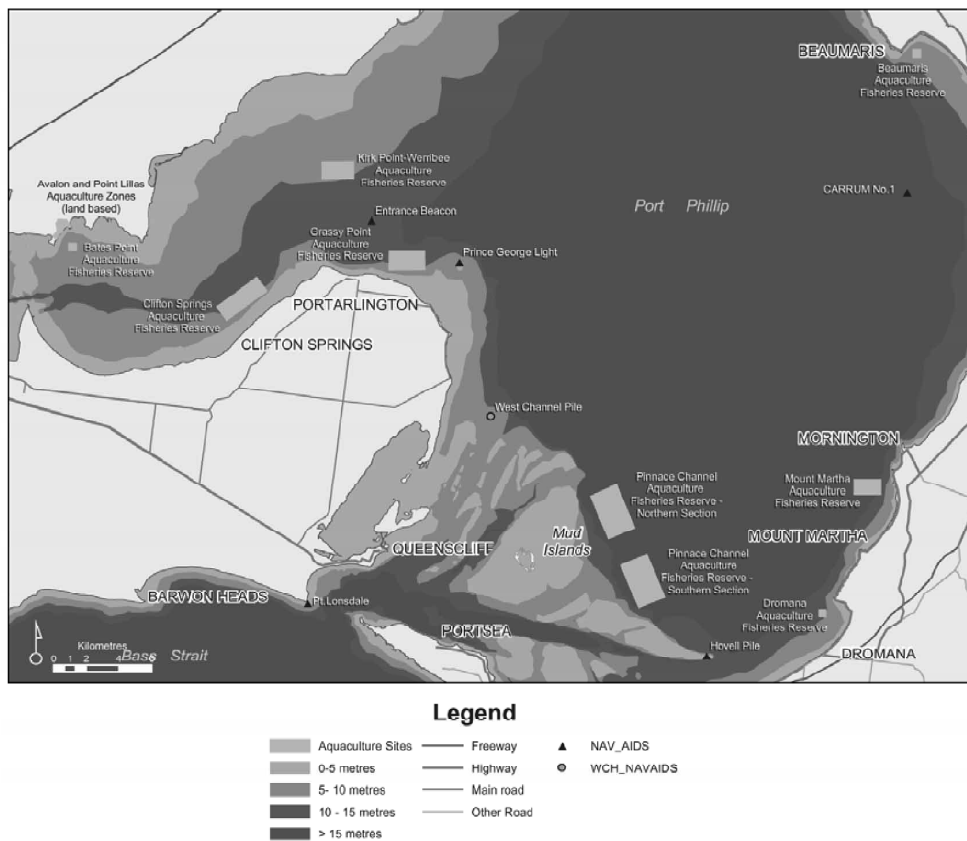
All the waters of Port Phillip Bay that are more than 100 metres seaward of the low water mark of Port Phillip Bay, except the waters of the following areas that are declared as fisheries reserves for aquaculture purposes under section 88 of the **Fisheries Act 1975** ¹:

Grassy Point Aquaculture Fisheries Reserve
Clifton Springs Aquaculture Fisheries Reserve
Kirk Point – Werribee Aquaculture Fisheries Reserve
Bates Point Aquaculture Fisheries Reserve
Beaumaris Aquaculture Fisheries Reserve
Mount Martha Aquaculture Fisheries Reserve
Dromana Aquaculture Fisheries Reserve
Pinnacle Channel Aquaculture Fisheries Reserve

NOTES

1. These fisheries reserves were declared by Orders in Council published in the Government Gazette G 10 on 6 March 2003 at pages 399–407. The Orders define the boundaries of each fisheries reserve (See map below).

Section 83I of the **Wildlife Act 1975** provides that the holder of a whale swim tour permit must comply with the conditions of the permit. Penalty: 100 penalty units (\$10,000) or 6 months imprisonment or both the fine and imprisonment.

Port Phillip Aquaculture Zones

SCHEDULE 2

**INFORMATION KIT FOR APPLICANTS
FOR
WHALE (DOLPHIN) SWIM TOUR PERMITS
ON PORT PHILLIP BAY**

2003/04 SEASON

**INFORMATION KIT FOR APPLICANTS FOR WHALE (DOLPHIN) SWIM TOUR
PERMITS ON PORT PHILLIP BAY FOR THE 2003/04 SEASON**

Parks Victoria, on behalf of the Department of Sustainability and Environment, is inviting applications for whale (dolphin) swim tour permits for the period 1 October 2003 to 30 June 2004.

These permits will apply only to dolphins in Port Phillip Bay.

Throughout this Information Kit and the Application Form, the permits are referred to as 'dolphin swim tour permits'.

1. BACKGROUND

Victoria's Port Phillip Bay supports a small but highly significant resident population of inshore bottlenose dolphins.

Dolphins are wildlife protected under Victoria's **Wildlife Act 1975** and the Wildlife (Whales) Regulations 1998.

In 2002, the **Wildlife Act 1975** was amended to allow a particular area to be declared by the Department of Sustainability and Environment to be "a whale swim tour area" and for the number of tour permits and the level of tour activity in that area to be managed within an ecologically sustainable threshold. Under the Act, that threshold must be determined according to the best available information as to the effect that the conduct of activities is likely to have on individual whales or groups of whales in the area.

To assist in the determination of this threshold, the (then) Department of Natural Resources and Environment funded the Dolphin Research Institute based at Hastings, to analyse data on dolphin interactions with tour and recreational vessels in Port Phillip Bay. This data had been gathered over several years with the assistance of tour operators.

The Co-operative Research Centre for Sustainable Tourism (CRC) was subsequently engaged to undertake the review of this and other local and international research, the principal reviewer being Dr Peter Hale of the University of Queensland. The objective of the review was to determine within a triple bottom line framework (ecological, social and economic) whether the current level of activity is sustainable and, if not, what action should be taken.

The review has identified that:

- *The Port Phillip Bay dolphin population is small and distinct from adjacent bottlenose dolphin populations in Bass Strait. The Port Phillip Bay dolphins are the inshore form of the Bottlenose Dolphin (*Tursiops aduncus*) rather than the more abundant offshore form (*Tursiops truncatus*) as previously thought.*
- *This population is vulnerable to extinction due to its size, female natal philopatry (see below), restricted home range and the large amount of human activity within the home range that is likely to be having an adverse impact.*
- *Breeding females are a critical population parameter. Female *aduncus* stay at or near their birth site and if they perish they are unlikely to be replaced by females from other distant populations.*
- *Dolphin tour boats account for far more interaction with dolphins than do private recreational boats.*
- *The proximity of tour boats is the key disturbance factor posed by boating interaction with dolphins in Port Phillip Bay. Avoidance behaviour (diving, changing direction) in response to tour boats and other motorised vessels is the major indicator of disturbance that needs to be monitored and minimised. While not categorical evidence of stress "avoidance behaviour" is a recognised indicator of change in natural cetacean behaviour.*
- *The cumulative time that tour boats spend in close proximity to dolphins (within 100m) is high and has increased over the last two seasons.*

To implement both the amendments to the **Wildlife Act 1975** and the recommendations of the CRC report, the Secretary of the Department of Sustainability and Environment (DSE) has proclaimed the Port Phillip Bay Whale (Dolphin) Swim Tour Area and set a limit on the number of swim tour permits which will be made available to dolphin swim tour operators on Port Phillip Bay.

DSE is also in the process of proposing amendments to the Wildlife (Whales) Regulations 1998. This process will be subject to further consultation, a formal Regulatory Impact Statement and settling of the proposed regulations by Parliamentary Counsel.

However for the 2003/04 summer season the current regulations will apply. Operators should submit their application on the basis of complying with the current Wildlife (Whale) Regulations 1988 and other conditions as outlined in the 2003 Dolphin Swim Tour Permit Application Form.

2. ADMINISTRATION OF PERMITS

Parks Victoria manages the administration of the tour operator licensing system for public land and waters under delegation from the Department of Sustainability and Environment. This licensing system includes land-based tour operators in parks and forests, tour operators in marine parks and marine sanctuaries and permits for swim and sightseeing dolphin tour operators in Port Phillip Bay.

Parks Victoria will manage the application and assessment process for the dolphin swim permits with support and advice from the Department of Sustainability and Environment. Parks Victoria will also provide on going advice for operators on permit issues.

2.1 Issuing of Dolphin Swim Tour Permits for 2003/04

Applications have been invited from current permitted dolphin swim tour operators and other interested parties via the Wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Area) Order 2003, published in the Victorian Government Gazette on 5 September 2003.

Up to four dolphin swim permits will be made available for the Port Phillip Bay Dolphin Swim Tour Area for the 2003/04 season.

In accordance with the Section 83C of the **Wildlife Act 1975**, permits will be issued in the name of a natural person, not a corporate or business name.

Only one permit will be issued per person. Applicants may nominate other natural persons as 'tour supervisors'. Tour supervisors will be permitted to conduct tours in the absence of the permit holder, but the permit holder retains overall responsibility for all activities conducted under the permit. Applicants must ensure that such nominees are aware of and understand the relevant regulations and permit conditions.

The permit will only be applicable to vessels nominated in the application.

Unlike previous years, the application and assessment process for the 2003/04 season, and future seasons, will be a competitive process. Permits will be awarded to the most suitable applicants on the basis of applicants meeting mandatory and weighted criteria.

2.2 Application process

Applicants will be required to provide:

- A completed 2003 Dolphin Swim Tour Permit Application;
- Evidence of compliance with the 'mandatory' criteria listed in Section 3.1;
- A written submission (and supporting documentation) that addresses the 'weighted' selection criteria outlined in Section 3.2 of this document.

Applications must be submitted by 4.00 pm on 29 September 2003. Late applications will not be considered.

2.3 Assessment process

An assessment panel will consider each application on its merits, according to specified criteria. Successful applicants must meet the mandatory criteria and demonstrate a satisfactory performance in each of the weighted criteria.

While up to four permits will be made available Parks Victoria and the Department of Sustainability and Environment are under no obligation to issue all of these.

Where there are more than four satisfactory applications, the applicants best able to demonstrate their conduct in relation to environmental protection of the dolphin, safety of participants and a quality interpretive experience will be granted permits.

The assessment panel will comprise representatives from Parks Victoria, Department of Sustainability and Environment and Marine Safety Victoria.

Recommendations will then be provided to the senior manager at Parks Victoria who has the statutory delegation to issue the permits.

The panel may choose to interview shortlisted applicants as part of the assessment process.

3. SELECTION CRITERIA

Applicants will be assessed on the basis of their demonstrated ability to meet the following mandatory and weighted selection criteria.

Applicants must demonstrate their previous experience and performance in relation to each of the criteria, as well as proposed operations for the forthcoming season.

Where an applicant has been found guilty of an offence under the **Wildlife Act 1975** or the Wildlife (Whales) Regulations 1998, or a similar offence in another jurisdiction, or has failed to comply with the Act, regulations or conditions of past permits, the application may be refused.

The criteria are designed to ensure the highest levels of professional conduct for environmental protection of the dolphins, safety of participants and interpretation of wildlife and ecosystem values.

3.1 Mandatory Criteria

Applicants must be able to demonstrate:

1. Current public liability insurance cover to the value of \$10 million with an insurer approved by the Australian Prudential Regulation Authority (APRA).
2. Compliance of the applicant's nominated vessel and staff with the requirements of the **Marine Act 1988** and Marine Regulations 1999 including:
 - Valid and up-to-date Certificate of Survey for the nominated vessel;
 - Current Certificates of Competency for the nominated master(s) and crew of the vessel, appropriate to the vessel class, length and operational area.

To demonstrate the mandatory criteria, copies of appropriate schedules, certificates and qualifications must be attached to the Application Form.

3.2 Weighted Criteria

A written submission should be provided, with attached supporting documentation where necessary, addressing past performance and proposed action in relation to each of the following criteria:

1. Environmental Awareness
2. Visitor Experience and Understanding
3. Safety
4. Business Capacity and Resources

The following table provides some indication of the scope of each of these criteria as well as suggestions of ways in which applicants could demonstrate their ability to meet these criteria. The table is a guide only—applicants may include any information that they feel would support their submission.

Criteria	<i>Examples of ways to demonstrate this criteria</i>
<p>1. Environmental Awareness</p> <ul style="list-style-type: none"> • Understanding of dolphin behaviour and biology; • Understanding of dolphin/human interaction including dolphin stress factors; • Commitment to co-operating with ongoing research and monitoring; • Understanding of Wildlife (Whale) Regulations 1998 including compliance history where relevant. 	<ul style="list-style-type: none"> • Previous experience in the dolphin swim industry; • Previous experience in other related activities; • Proposed methods to minimise disturbance to dolphins; • Interpretive messages (to be) delivered; • Previous NRE/DSE report card or other indicator of past performance; • Nature and Ecotourism Accreditation Program (NEAP) certification or equivalent; • Brochure or web content.
<p>2. Visitor Experience & Understanding</p> <ul style="list-style-type: none"> • Education and interpretation program and skills; • Broad-based product i.e. an itinerary and commentary focussed on more than the dolphins. 	<ul style="list-style-type: none"> • Experience, qualifications and role of support staff; • Interpretive messages delivered/outline of commentary; • Nature and Ecotourism Accreditation Program (NEAP) or equivalent accreditation; • Client testimonials or satisfaction surveys; • Brochure or web content; • Staff to client ratios.
<p>3. Safety</p> <ul style="list-style-type: none"> • Risk mitigation; • Emergency response capability. 	<ul style="list-style-type: none"> • Emergency response plan; • First aid and/or rescue qualifications; • Qualifications in snorkelling; • Safety equipment and standards; • Risk and/or safety protocols or operating procedures; • Occupational Health & Safety policies and/or training.
<p>4. Business Capacity & Resources</p> <ul style="list-style-type: none"> • Capacity to deliver service including vessel and staff; • Commitment and skills relevant to business capacity such as quality customer service and accreditation. 	<ul style="list-style-type: none"> • Business plan; • Better Business (or equivalent) accreditation; • Brochure/web site—advertised or proposed schedule; • Boat specifications; • Membership of local and regional tourism industry associations.

4. PERMIT CONDITIONS

4.1 Whale (Dolphin) Swim Tour Area

The Wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Area) Order 2003 gazetted all the waters of Port Phillip Bay that are more than 100 metres seaward of the low water mark of Port Phillip Bay as a Whale (Dolphin) Swim Tour Area. The Whale (Dolphin) Swim Tour Area includes marine national parks and sanctuaries under the **National Parks Act 1975**, but excludes Aquaculture Fisheries Reserves under Section 88 of the **Fisheries Act 1975**. (See Appendix A)

4.2 Acts and Regulations

Swim Whale Tours are to be conducted in accordance with the **Wildlife Act 1975** and the Wildlife (Whales) Regulations 1998, as may be amended from time to time.

Section 83I of the **Wildlife Act 1975** provides that the holder of a whale (dolphin) swim tour permit must comply with the conditions of the permit. The penalty for breach of this provision is 100 penalty units (\$10,000) or 6 months imprisonment or both fine and imprisonment.

Section 83J of the **Wildlife Act 1975** provides that an authorised officer may direct the holder of a whale (dolphin) swim tour permit to immediately cease any activity being carried out under the permit, if the authorised officer reasonably believes that the activity is detrimental to the welfare of any whale. The penalty for breach of this provision is 50 penalty units (\$5,000) or 3 months imprisonment or both fine and imprisonment.

Vessel Operating and Zoning Rules for Victorian Waters (Notice 1 under Section 15(2) of the **Marine Act 1988**) and Harbour Masters Directions under the **Port Services Act 1995**, also apply. Contact Marine Safety Victoria for copies of these requirements on www.marinesafety.vic.gov.au.

4.3 Permit Term

The permits being allocated for 2003/04 are non-renewable and will be allocated for the period until 30 June 2004.

Upon expiry of a permit, previous holders will need to apply through a new applications process, along with all other interested parties. Permits for the 2004/05 season will be granted for two years.

4.4 General Conditions

Permits are not transferable and cannot be traded on the open market. Parks Victoria and Department of Sustainability and Environment may decide to assign the remainder of the one year permit to a prospective purchaser of a dolphin swim business, providing they meet all of the selection criteria, or may choose to readvertise for a new application.

A full list of general conditions is included in the Application Form.

4.5 Permit Fee

For 2003/04, the required fee for a dolphin swim tour permit is \$700 as specified in regulation 8(2) of the Wildlife (Whale) Regulations 1998.

Section 83G of the **Wildlife Act 1975** requires a person who is granted a whale (dolphin) swim tour permit to pay the required fee on the grant of the permit. However the applicant may choose to enclose a cheque or provide credit card details with the Application Form.

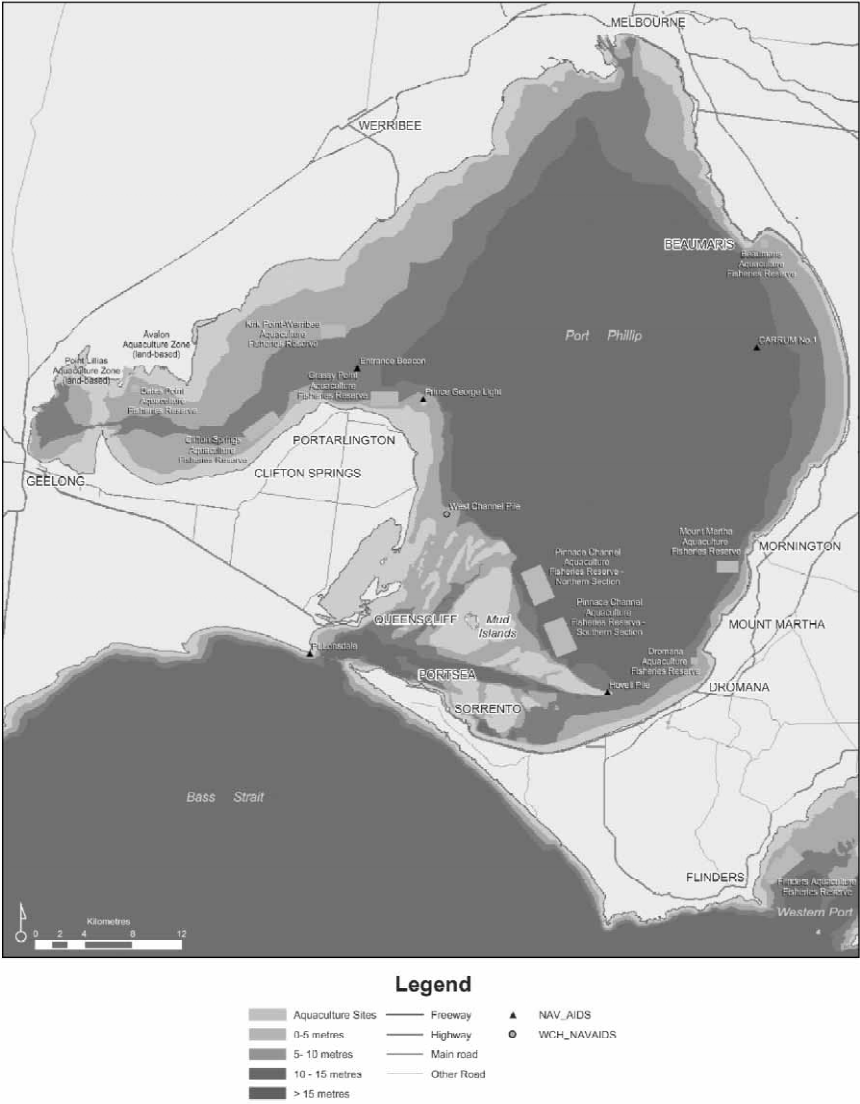
5.5 Submission of Applications

Written applications must be received by Parks Victoria, Level 10, 535 Bourke Street, Melbourne 3000 no later than 4.00 pm on Monday 29 September 2003.

Applications should be marked Dolphin Swim Tour Permit Application and marked to the attention of Manager, Tourism Partnerships.

Late applications will not be considered.

**APPENDIX A –
MAP OF PORT PHILLIP BAY SHOWING FISHERIES RESERVES**



APPENDIX B – APPLICATION FORM

2003 DOLPHIN SWIM TOUR PERMIT APPLICATION

This application is for a Permit to conduct Dolphin Swim Tours in Port Phillip Bay

Complete the steps below and forward your application to Parks Victoria for assessment.

CHECKLIST (for completeness)	(please ✓ tick)
1 Read and understood the attached "Information Kit for Applicants"	
2 Applicant details and proposed tour schedules complete	
3 Read and understood all General Conditions (see page 8)	
4 Addressed the mandatory selection criteria (see page 7)	
5 Addressed the weighted selection criteria (see page 7)	
6 Attached Public Liability Insurance certificate of currency (see pages 7, 10 & 11)	
7 Read, understood and signed Insurance and Indemnity provisions (see page 10-11)	
8 Attached current Certificate of Survey for your vessel	
9 Attached relevant Certificate of Competency for nominated tour supervisors	
10 Submitted all Trip Return details for previous permit	
11 Signed the permit application authorisation below	
12 Attached relevant permit fees (all cheques made payable to Parks Victoria)	

Tour Operator Permit applications will be assessed only when complete.

Applications should be forwarded to:

**Manager, Tourism Partnerships,
Parks Victoria,
Level 10, 535 Bourke Street,
Melbourne VIC 3000**

Authorisation

By completing this application form for a Dolphin Swim Tour Permit, the applicant undertakes to comply with the conditions set out in Parts 4 and 6 of this form.

Family name:

Given name:

Position:

Company / Association / Business:

Signed:

Date:

Dolphin Swim Tour Permits are whale swim tour permits (under the provisions of the Wildlife Act 1975 and Wildlife (Whale) Regulations 1998) and only apply to:

- the "Port Phillip Bay Whale (Dolphin) Swim Tour Area" as proclaimed by the Wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Area) Order 2003.
- dolphins (ie any member of the family *Delphinidae* of the sub-order *Odontoceti* of the order *Cetacea*).

Dolphin Swim Tour Permits are:

- not transferable* (for example, to another individual or entity)
- not renewable. Upon expiry of the Permit on 30 June 2004, previous permit holders will need to apply through a new application process along with all other interested parties
- for the use of the applicant specified in this form only
- issued on the basis that the Permit Holder accepts and undertakes to comply with the permit conditions.
- issued pursuant to the provisions of one or more of the following Acts:
 - *Wildlife Act 1975*
 - *National Parks Act 1975*

Please Note:

- If Tour Operators intend to supply alcoholic beverages to tour participants, a liquor licence must be obtained from Liquor Licensing Victoria after obtaining consent from Parks Victoria.
- If Tour Operators intend to supply food to tour participants, it is advisable to contact Food Safety Victoria for further information/guidelines on food preparation and handling and necessary approvals. (www.foodsafety.vic.gov.au)
- If you are planning to talk to your tour participants about known Aboriginal sites, places or folklore (beyond information contained in the current Parks Victoria Park Notes), it is advisable to contact the relevant Aboriginal people for their input and endorsement.
- Parks Victoria is collecting the information on this form so that your application for a Dolphin Swim Tour Permit can be considered. Parks Victoria will also use this information to assess your compliance with permit conditions. This information will be stored on a database held by Parks Victoria and may be disclosed to other government bodies such as the Department of Sustainability and Environment (DSE).

* "Transfer" means to sell or give a permit to another person, company or association, whether for a cost, a reward or for free.

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PART 1 – APPLICANT DETAILS

1A Permit to be issued to an INDIVIDUAL

Family name:

Given name:

Business and/or Trading name/s:

Registered for GST: (please ☒ tick) Yes ☐ No ☐

Australian Business Number (ABN) if applicable:

Address for correspondence or registered office address:

Street address:

Telephone (Bus hours):

Telephone (After hours):

Mobile:

Fax number:

Email:

Website:

Please (☒ tick if you DO NOT want your contact details available on the Parks Victoria website
☐

Vessel used to conduct Dolphin Swim Tours:

VESSEL
Name:
Class:
Length:

Note: A current Certificate of Currency for the nominated vessel must be included with this application.

Nominated Tour Supervisors:

1.
2.
3.
4.

Note: Certificates of competency for nominated master(s) and crew of the vessel must be appropriate to the vessel class, length and operational area.

- Complete a separate Tour Schedule for each type of Dolphin Swim Tour.
- If you propose to conduct more than two different types of Dolphin Swim Tours, please copy, complete and attach additional Tour Schedules.

Tour Details (eg. Port or place of departures, length of tour, tours per day, proposed season dates, scheduled departure times, number of people, proposed average group size, proposed activities in addition to Dolphin Swim Tours)

[illegible]

TOUR 2 DETAILS

Tour Details (eg. Port or place of departures, length of tour, tours per day, proposed season dates, scheduled departure times, number of people, proposed average group size, proposed activities in addition to Dolphin Swim Tours)

[illegible]

PART 3 – SELECTION CRITERIA

Dolphin Swim Tour Permit applicants will be assessed on the basis of their demonstrated ability to meet the mandatory and weighted selection criteria outlined below.

The criteria are designed to ensure the highest levels of professional conduct for protection of the dolphins, safety of participants and interpretation of wildlife and ecosystem values.

Mandatory Criteria

Applicants must be able to demonstrate:

1. Current public liability insurance to the value of \$10 million with an insurer approved by the Australian Prudential Regulation Authority (APRA). A list of approved insurers can be found on the APRA website (www.apra.gov.au).
2. Compliance of the applicant's nominated vessel and staff with the requirements of the Marine Act 1988 and Marine Regulations 1999 including:
 - a) Valid and up to date Certificate of Currency for nominated vessel; and
 - b) Current Certificates of Competency for nominated master(s) and crew of the vessel appropriate to the vessel class, length and operational area.

To demonstrate the mandatory criteria, copies of appropriate schedules, certificates and qualifications must be attached to the application form.

Weighted Criteria

A written submission should be provided, with attached supporting documentation where necessary, addressing past performance and proposed action in relation to each of the following criteria:

1. Environmental awareness;
2. Visitor experience and understanding;
3. Safety;
4. Business capacity and resources.

The table in Section 3 of the Information Kit provides some indication of the scope of each of these criteria as well as suggestions of ways in which applicants could demonstrate their ability to meet these criteria. Applicants may include any information they feel would support their submission.

PART 4 – PERMIT CONDITIONS

CONDITIONS

Note: Any reference to Parks Victoria includes DSE.

- 1 This permit applies only to dolphins (ie any member of the family Delphinidae of the sub-order Odontoceti of the order Cetacea).
- 2 This permit only applies to the "Port Phillip Bay Whale (Dolphin) Swim Tour Area" as proclaimed by the Wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Area) Order 2003.
- 3 The Permit Holder must comply with the Wildlife (Whales) Regulations 1998 and any conditions, determined by the Secretary, that are specified or referred to in the permit.
- 4 The Permit Holder must not undertake dolphin swim tours in fisheries reserves declared under Section 88 of the Fisheries Act 1995 that have been declared for the purpose of aquaculture.
- 5 The Permit Holder acknowledges that:
 - 5.1 the law which governs the use of the location or area requires the Permit Holder not to damage the location or engage in any use of the location which conflicts with the purpose for which the land or water has been reserved;
 - 5.2 offences may be created, and penalties may be imposed, by the legislation which governs the use of the location.
 - 5.3 this permit does not exempt the Permit Holder from complying with the legislation which governs the use of the location.
- 6 The Permit Holder and the Permit Holder's employees, agents and clients will obey all reasonable directions given by an authorised officer at the site/s.
- 7 The Permit Holder must:
 - 7.1 develop and maintain an Emergency Response Plan for each tour that outlines procedures to be followed in the event of natural or other disaster, injury, illness or delay;
 - 7.2 ensure the safe evacuation of clients in the event of any natural or other disaster adjacent or near approved routes;
 - 7.3 notify the appropriate DSE or Parks Victoria Officer of any natural or other disaster, injury, illness or delay that may impact on the tour group.
- 8 Only Dolphin Swim Tours are allowed to be conducted on any tour.
- 9 Except as expressly authorised by this permit, the Permit Holder must not damage, destroy, disrupt or remove any native flora (live or dead) or any native fauna from the site or the park. (This includes Marine National Parks and Marine Sanctuaries)
- 10 Except as expressly authorised by this permit, the Permit Holder must not damage, deface, remove or otherwise interfere with any built asset, natural feature or cultural heritage place.
- 11 Feeding or handling of wildlife is not permitted.
- 12 All boats carrying passengers must maintain a current Certificate of Survey from the Marine Board of Victoria.
- 13 All nominated master(s) and crew of the vessel must hold a valid Certificate of Competency appropriate to the vessel class, length and operational area.
- 14 Permit Holders must operate their vessels in accordance to the Vessel Operating and Zoning Rules for Victorian Waters under the *Marine Act 1988* and Harbour Masters Directions under the *Port Services Act 1995*.
- 15 Permit Holders must ensure their tour guides and crew have a current first aid qualification. The minimum standard requirement is St Johns Level 2 Basic First Aid or equivalent.
- 16 Permit Holders must:
 - 16.1 make all clients aware **before the tour commences** of:
 - (a) all potential hazards and conditions which may be encountered during the tour. These may include, but are not limited to, heights, exposure to weather, rapid flowing water, fauna and flora; and
 - (b) the experiences clients may encounter during the tour.
 - 16.2 ensure procedures are in place to minimise the risk of potential hazards to clients. These procedures may include, but are not limited to, pre-tour briefings, safety equipment and head counts.
 - 16.3 ensure that all guides and employees have the relevant competencies and skills for leading and guiding an activity.
 - 16.4 ensure that supervision is appropriate to the differing clients' experiences and abilities.
- 17 The Permit Holder is required to submit trip return documentation to Parks Victoria at the conclusion of the Dolphin Swim Tour season (April 2004)
- 18 Parks Victoria may cancel the permit for breach of the terms and conditions of the permit.
- 19 If a conflict arises from, or connected with, the Permit, the Permit Holder agrees to utilise, and participate in, a conflict resolution procedure established with the Victorian Tourism Operators Association.

PART 5 – FEES: 2003

The fee for a dolphin swim tour permit is \$700 as specified under Section 8(2) of the Wildlife (Whales) Regulations 1998. The fee is inclusive of GST.

Payment AmountPermit fee **Payment Method** (please ✓ tick)☐ Cheque (please make cheque payable to Parks Victoria) OR ☐ Credit CardCredit card type: ☐ Visa ☐ Mastercard ☐ BankcardCard Number: Expiry date: / Name on card:

Signature:

Date:

PART 6 – INSURANCE AND INDEMNITY

In this Part:

“Insured” means the Permit Holder (Permit Number eg. PV 5005), including the Permit Holder’s officers, employees, agents, contractors, subcontractors, invitees and their successors and assigns.

“Other Relevant Parties” means the Minister for Environment, Minister for Planning, the Secretary to the Department of Sustainability and Environment, Parks Victoria, the Director of National Parks and any other body delegating its powers to Parks Victoria.

“Permit Holder” means the applicant for the permit specified in the permit application form.

“Term” means the period of operation of the permit.

“Site/s” means the Port Phillip Bay Whale (Dolphin) Swim Tour Area as proclaimed by the wildlife (Port Phillip Bay Whale (Dolphin) Swim Tour Area) Order 2003

1 INSURANCE

1.1 The Permit Holder must effect and maintain throughout the Term with an insurer approved by Parks Victoria which approval shall not be unreasonably withheld:

- (a) a public, and if relevant, products liability insurance policy for not less than \$10 million (or any greater amount required by Parks Victoria) in respect of any single claim arising out of the activities of the Insured, covering all third party claims arising out of:
 - (i) loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property;
 - (ii) death, injury to, or disease of persons; and
- (b) an employers liability and workers’ compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Permit Holder arising:-
 - (i) by virtue of any statute relating to workers’ or accident compensation or employers’ liability; or
 - (ii) at common law,

such policies referred to collectively as “the Policy”.

1.2 The Permit Holder must effect and maintain the Policy in the name of the Insured, and noting the interests of the Other Relevant Parties.

1.3 The Permit Holder must ensure that the Policy contains provisions under which Parks Victoria is to be notified of any changes to the Policy.

1.4 The Permit Holder must provide Parks Victoria with:

- (a) a certificate of currency for the Policy which clearly confirms the requirements of the preceding clause 1.2–
- (i) with the permit application
- (ii) prior to the Permit commencement date; and

(iii) at any other time upon request by Parks Victoria;

- (b) a copy of the Policy upon request by Parks Victoria. Parks Victoria shall have the right to insist on any amendments to the policy wording or limits as it reasonably requires.

1.5 The Permit Holder must promptly notify Parks Victoria if:

- (a) an event occurs which may give rise to a claim under or prejudice the policy; or
- (b) the Policy is cancelled.

1.6 The Permit Holder must not do anything or allow anything to be done which may:

- (a) prejudice any insurance held in connection with the Site/s; or
- (b) increase the premium payable for any insurance held in connection with the Site/s.

1.7 The Permit Holder must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in activities of the kind referred to and permitted by the Permit.

1.8 The Permit Holder shall deliver upon request to Parks Victoria copies of any policies required to be entered into by it pursuant to clause 1.7 and Parks Victoria shall have the right to insist on any amendments to the policy wording or limits as it reasonably requires.

2 RELEASE

2.1 The Permit Holder agrees that it:

- (a) occupies and uses the Site/s at its own risk;
- (b) has inspected the Site/s and is of the opinion that the Site/s is safe and suitable for the activities of the Permit Holder.

- 2.2 The Permit Holder releases Parks Victoria, Department of Sustainability & Environment and Other Relevant Parties from:
- (a) all claims and demands resulting from any accident, damage, death or injury occurring at the Site/s or any other area used by the Permit Holder in connection with this Permit; and
 - (b) all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Permit Holder, as a direct or indirect result of the Permit Holder's occupation and use of the Site/s or other areas used in connection with this permit or the cancellation, amendment or suspension of the Permit, except to the extent caused or contributed to by the negligence of Parks Victoria.
- 2.3 References in this clause to the Permit Holder, Parks Victoria, Department of Sustainability & Environment and the Other Relevant Parties include their respective officers, employees, agents, contractors, subcontractors, invitees and their successors and assigns.
- 3 INDEMNITY**
- 3.1 The Permit Holder indemnifies and agrees to keep indemnified Parks Victoria, Department of Sustainability & Environment and Other Relevant Parties against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) for which any of Parks Victoria, Department of Sustainability & Environment or Other Relevant Parties is or may be or become liable concerning:
- (a) the default of the Permit Holder under this Permit;
 - (b) the Permit Holder's use of the Site/s or any other area used by the Permit Holder in connection with this Permit;
 - (c) loss, damage, or injury to property or persons caused or contributed by the Permit Holder's act, omission, default or negligence, except to the extent caused or contributed to by the negligence of Parks Victoria or Department of Sustainability & Environment.
- 3.2 References in this clause to the Permit Holder, Parks Victoria, Department of Sustainability & Environment and the Other Relevant Party include their respective officers, employees, agents, contractors, subcontractors and invitees.
- 3.3 This clause is intended to operate for the benefit of Parks Victoria and the Other Relevant Party. However, if required by Parks Victoria or the Other Relevant Party at any time after the execution of this Permit, the Permit Holder will enter into a separate deed of indemnity or release – which is applicable with the Other Relevant Party in substantially the same terms as this clause.
- The Permit Holder must ensure that Parks Victoria, the Permit Number and the names of the 'Other Relevant Parties' are included in their insurance policies in accordance with clause 1.2 and also documented in any certificate of currency for such insurance.**

I have read and understood the permit conditions relating to insurance, release and indemnity.

Printed Name:

Position:

Company / Association:

Signed:

Date:

Please ensure you have completed the checklist on page 1 and attached all mandatory and supporting documentation.

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