

1.0 AUTHORITY

- *Crown Land (Reserves) Act 1978*
- *Local Government Act 2020*
- *Marine and Coastal Act 2018*

2.0 INTENTION

The intention of this Policy is to ensure that the Mornington Peninsula Shire Council (Council):

- 2.1 has a consistent, equitable and transparent approach in relation to the management of Bathing Boxes within the municipality.
- 2.2 to provide guidance for the maintenance and appropriate use of these beach structures, recognising their sensitive and dynamic coastal location.
- 2.3 acknowledges the anticipated increase in changes to the coastal environment coastal hazards and will manage Bathing Boxes accordingly.
- 2.4 strategically manages Bathing Boxes in the long-term best interests of the State, Council and the community in a way that does not pose any safety risk to the surrounding environment and supports public use of the foreshore.

3.0 SCOPE

- 3.1 This Policy applies to all Bathing Boxes located on land owned or managed by Council. At the time of this Policy, Council manages 819 Bathing Boxes.

4.0 GOVERNANCE PRINCIPLES

- 4.1 Under the *Local Government Act 2020*, Council must give effect to the following overarching governance principles:
 - 4.1.1 Council decisions are to be made and actions taken in accordance with the relevant law

- 4.1.2 priority is to be given to achieving the best outcomes for the municipal community, including future generations
- 4.1.3 the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted
- 4.1.4 the municipal community is to be engaged in strategic planning and strategic decision making
- 4.1.5 innovation and continuous improvement is to be pursued
- 4.1.6 collaboration with other Councils and Governments and statutory bodies is to be sought
- 4.1.7 the ongoing financial viability of the Council is to be ensured
- 4.1.8 regional, state and national plans and policies are to be taken into account in strategic planning and decision making
- 4.1.9 the transparency of Council decisions, actions and information is to be ensured.

5.0 POLICY STATEMENT

5.1 Introduction

- 5.1.1 Bathing Boxes are an iconic feature of the Mornington Peninsula foreshore, valued for their unique role in bayside beach life. These structures are located on the foreshores around Port Phillip Bay.
- 5.1.2 Bathing Boxes are located in areas that are inherently vulnerable to coastal processes and climate change, and may be at risk of storm damage, erosion and inundation.

5.2 Bathing Boxes Principles of Use

- 5.2.1 The DEECA Guidelines apply to Bathing Boxes and this Policy is consistent with those Guidelines.
- 5.2.2 Bathing Boxes must only be used for:
 - 5.2.2.1 Storage of boats, boating equipment and beach accessories incidental to the use of the foreshore reserve.
 - 5.2.2.2 Shelter, convenience and comfort associated with beach use.

5.2.3 Bathing Boxes must not be used for:

- 5.2.3.1 accommodation purposes including overnight stays or habitual purposes;
- 5.2.3.2 any use that negatively impacts the foreshore reserve;
- 5.2.3.3 storage of combustible or hazardous substances or materials except for fire extinguishers and up to 40 litres of fuel for power boat purposes; and ; and
- 5.2.3.4 commercial purposes, unless approved by Council.

5.2.4 Bathing Boxes must be secured when not in use.

5.3 Licences

- 5.3.1 Council may grant a Licence to occupy a Bathing Boxes for a maximum term of 10 years.
- 5.3.2 The maximum number of people that can be signatories to a Licence is two (2). This does not apply to existing Licences with more than two signatories as at the date of this Policy. No more than two signatories will be permitted on transfers.
- 5.3.3 A Licence must be executed by all required signatories within six (6) months of Council's request, unless otherwise agreed by Council in writing. If this does not occur, the occupancy of the Bathing Box will be deemed unlicensed and unlawful. In these circumstances, ownership of the Bathing Box will vest in Council and the occupier will not be entitled to receive any compensation from the Council.
- 5.3.4 Licences will only be issued to a Licensee.
- 5.3.5 A Licence may not be issued for a Bathing Box where DEECA or Council has determined that the location is inappropriate or no longer feasible for such a structure, poses a hazard, health or safety risk or obstructs access and egress and Council will provide adequate notice to the Licensee.
- 5.3.6 Licensees must:
 - 5.3.6.1 take out and maintain appropriate public liability insurance covering an amount of at least \$20,000,000, or as amended from

time to time by Council, and promptly providing a valid Certificate of Currency to Council if requested; and

5.3.6.2 pay the annual Licence Fee and any applicable rates, charges and levies associated with the Bathing Box.

5.3.7 Council does not take any responsibility for insuring a Bathing Box or a Licensee's equipment and contents. This is solely the responsibility of the Licensee.

5.3.8 Council may at its discretion inspect a Bathing Box to ensure compliance with the Licence conditions.

5.4 **General obligations regarding maintenance and works**

5.4.1 Licensees must:

5.4.1.1 carry out any maintenance and Structural Works to a Bathing Box in accordance with the Construction Guidelines or as directed by Council;

5.4.1.2 remove any unapproved or illegal structure, extension or modification to a Bathing Box as directed by Council;

5.4.1.3 ensure that the Bathing Box does not pose any risk to public safety; and

5.4.1.4 consider the unique foreshore environment and demonstrate consistency with overarching environmental objectives and sensitivities when carrying out any repairs, maintenance or other works.

5.4.2 Any increase in the Footprint of a Bathing Box is prohibited.

5.4.3 Commercial advertising is prohibited on a Bathing Box, except for the short term display of a "For Sale" sign.

5.4.4 If a Licensee does not carry out repairs, maintenance or works required to a Bathing Box as directed from Council, failing which Council may carry out such repairs, maintenance or works and recover the costs from the Licensee.

5.4.5 The Marine and Coastal Policy 2020 and the DEECA Guidelines generally do not support the relocation of an existing Bathing Box. Council will only

consider a relocation of an existing Bathing Box with the prior written consent of DEECA.

5.5 Repairs and Maintenance

Licensees must:

- 5.5.1 routinely maintain the Bathing Box in a safe and presentable condition to the satisfaction of Council.
- 5.5.2 ensure that any artwork displayed on the Bathing Box is not offensive, in Council's reasonable opinion.
- 5.5.3 ensure any retractable steps and awnings are contained within the Bathing Box Footprint and are stowed away when the Bathing Box is not being used.
- 5.5.4 clearly display their allocated number on their Bathing Box.
- 5.5.5 remove graffiti from the Bathing Box in a timely manner or as otherwise directed by Council.
- 5.5.6 immediately notify Council of any damage or deterioration to asbestos contained in a Bathing Box and obtain written approval from Council prior to the removal of asbestos.
- 5.5.7 ensure that removal of asbestos is carried out by a licensed asbestos remover and Council is provided with an asbestos clearance certificate once works are completed.

5.6 Structural Works

- 5.6.1 Rebuilding of a Bathing Box will only be permitted where the new structure is being built within the existing Footprint.
- 5.6.2 Construction of new (not replacement) access ramps, verandas, decks, steps, storage space and other structural additions to a Bathing Box is prohibited.
- 5.6.3 A Licensee is required to obtain (at its own cost) various approvals and consents for Structural Works, including but not limited to:

- 5.6.3.1 Council (as land manager and licensor under the *Crown Land Reserves Act 1978*);
 - 5.6.3.2 Council as Planning Authority under the *Planning and Environment Act 1987*;
 - 5.6.3.3 DEECA (under the *Crown Land Reserves Act 1978* and the *Marine and Coastal Act 2018*); and
 - 5.6.3.4 Building surveyor (building permit).
- 5.6.4 If Council approval is given under 5.6.3.1 and/or 5.6.3.2, the Licensee acknowledges that Council accepts no liability for that approval and any loss, destruction or damage to the Bathing Box is at the Licensee's own risk.
- 5.6.5 Structural Works may not be approved where DEECA or Council has determined that the location is inappropriate or no longer feasible for such a structure, poses a hazard, health or safety risk or obstructs access and egress.
- 5.6.6 A Licensee must when undertaking Structural Works, comply with:
- 5.6.6.1 the Construction Guidelines,
 - 5.6.6.2 DEECA Guidelines;
 - 5.6.6.3 Mornington Peninsula Planning Scheme;
 - 5.6.6.4 relevant Cultural Management Plans;
 - 5.6.6.5 Building Code of Australia and the *Building Act 1993*;
 - 5.6.6.6 relevant laws; and
 - 5.6.6.7 any direction from Council.
- 5.6.7 If a Bathing Box, or any part of it, is destroyed, removed or damaged to the extent that a Licensee cannot use or have access the Bathing Box, the Licensee must obtain Council consent under 5.6.3.1 to commence Structural Works to reinstate the Bathing Box within 12 months from the date of such damage or destruction (or such other time agreed by Council). If the Licensee fails to do so, Council may give written notice to terminate the Licence under clause 5.11.2.

- 5.6.8 All Structural Works must be completed within 12 months of approval under clause 5.6.3.

5.7 Emergency Works

- 5.7.1 If Council reasonably determines that emergency works are required to a Bathing Box for public safety the Licensee must carry out make safe works to the Bathing Box within the time specified in the written notice from Council. In carrying out those works, the Licensee must comply with the Licence and this Policy.
- 5.7.2 If the Licensee fails to undertake the required make safe works in accordance with clause 5.7.1, Council may carry out the necessary works and recover the costs from the Licensee.
- 5.7.3 Rebuilding of a Bathing Box is not considered emergency works.

5.8 Connection to Services

- 5.8.1 A Licensee must not:
- 5.8.1.1 install kitchens or have any cooking facilities;
 - 5.8.1.2 connect to water, gas or plumbing (including showers, toilets, sewerage and downpipes);
 - 5.8.1.3 connect to telecommunications, surveillance cameras or similar services;
 - 5.8.1.4 connect to electricity (including mains power, solar power, petrol/diesel generated power and air conditioning/heating, sensor lighting); or
 - 5.8.1.5 impact the direction of natural water flow.
- 5.8.2 Clause 5.8.1 does not apply to a Licensee that has previously installed a Council approved service connection, as documented in writing by Council.
- 5.8.3 Council will direct the Licensee to disconnect services where the connected service:

5.8.3.1 is a danger to the Bathing Box, beach users or the surrounding environment;

5.8.3.2 where the service is unauthorised; or

5.8.4 at the request of any service authority.

5.9 Bathing Box Surrounds

5.9.1 Any works outside a Bathing Box Footprint e.g. retaining walls, rock revetments, fencing is prohibited, except with prior written approval from Council.

5.9.2 Prior written consent of Council is required for vehicle access to a Bathing Box to carry out any repairs, maintenance or Structural Works to a Bathing Box.

5.9.3 Planting of vegetation is prohibited, except with prior written approval from Council.

5.9.4 Removal, lopping or trimming of vegetation (either within or outside the Footprint) by a Licensee is prohibited except with the prior written approval of Council.

5.9.5 The Licensee can only remove sand to the minimal extent necessary to ensure the Bathing Box remains functional. Sand removal by the Licensee can only be undertaken by manual methods or such other methods with the prior written approval of Council.

5.10 Transfer of a Bathing Box Licence

5.10.1 A Licensee must obtain Council's prior written consent to transfer a Bathing Box Licence, including deceased estates.

5.10.2 All signatories to a Licence must provide prior written consent to a transfer of a Bathing Box Licence.

5.10.3 Council may approve the transfer of a Bathing Box from a deceased estate to no more than two beneficiaries of that estate and a maximum of two Licensee's. A deceased estate Transfer Fee will apply.

5.10.4 Prior to approving a transfer of a Bathing Box, Council may:

- 5.10.4.1 inspect the Bathing Box and request that repairs, maintenance or works are undertaken
- 5.10.4.2 require the disconnection of any illegal service connections or if any services pose a risk
- 5.10.4.3 require the removal of any structures located outside the approved Footprint
- 5.10.5 The transfer of a Bathing Box Licence will only be approved by Council where:
 - 5.10.5.1 the transferee is an individual aged 18 years or older, corporation or an incorporated body;
 - 5.10.5.2 all signatories to the existing Licence have provided prior written consent to the transfer;
 - 5.10.5.3 there are no repairs, maintenance, work or non-compliant matters outstanding;
 - 5.10.5.4 there are no outstanding fees, rates or levies; and
 - 5.10.5.5 the payment of the Transfer Fee is paid in full.
- 5.10.6 Once the conditions of clause 5.10.5 have been met, a new Licence will be issued in accordance with clause 5.3.

5.11 Surrender and Termination

- 5.11.1 A Licensee may choose to surrender their Licence, by providing written notice to Council.
- 5.11.2 Council may terminate a Licence without compensation if a Licensee:
 - 5.11.2.1 breaches the Licence and does not remedy the breach within the time specified in the written notice from Council;
 - 5.11.2.2 fails to obtain and comply with relevant permits and legislative requirements;
 - 5.11.2.3 fails to obtain Council and DEECA consent to commence Structural Works to reinstate a Bathing Box within the timeframe specified by Council;

- 5.11.2.4 fails to comply with a written notice issued by Council to undertake works or removal within the time specified on such notice;
- 5.11.2.5 fails to pay any part of the Licence Fee or other costs by the due date;
- 5.11.2.6 fails to disconnect services when directed by Council; or
- 5.11.2.7 fails to obtain and keep current public liability insurance for at least \$20,000,000.
- 5.11.3 Council may also terminate a licence without compensation if DEECA:
 - 5.11.3.1 determines that the location of a Bathing Box is inappropriate or no longer feasible for such a structure, poses a hazard, health or safety risk or obstructs access and egress; or
 - 5.11.3.2 needs to undertake protective coastal works and such works cannot be carried out practicably without vacant possession of the Bathing Box
- 5.11.4 If a Licence is surrendered or terminated:
 - 5.11.4.1 The Licensee must remove the Bathing Box and make good if directed by Council
 - 5.11.4.2 Subject to 5.11.7 Council may deal with the Bathing Box in its absolute discretion; and
 - 5.11.4.3 the Licensee agrees to compensate Council for any loss or damage Council suffers arising in connection with the Licensee's surrender or breach of the Licence

6.0 HUMAN RIGHTS CHARTER COMPATIBILITY

This policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

7.0 ASSOCIATED DOCUMENTS

- *Aboriginal Heritage Act 2006*

- *Building Act 1993*
- *Draft MPS Coastal Strategy*
- *Crown Land (Reserves) Act 1978*
- *Local Government Act 2020*
- *Marine and Coastal Act 2018*
- *Planning and Environment Act 1987*
- *Public Health and Wellbeing Act 2008*
- Building Code of Australia
- Council Plan 2025–2029
- DEECA Marine and Coastal Policy
- Construction Guidelines
- DEECA Guidelines

8.0 DEFINITIONS

Bathing Box

means a freestanding structure erected on the foreshore which is to be used primarily for storing beach equipment and/or boats as a change facility and for shade and shelter.

A reference to Bathing Box includes a Bathing Box or a Boatshed as defined in the Construction Guidelines and the terms are interchangeable within the Policy

Committee of Management

means a Committee of Management appointed under the *Crown Land (Reserves) Act 1978* to manage Crown land on behalf of the Victorian State Government. A Committee of Management is a land manager rather than the land owner.

Construction Guidelines

means *DELWP Standards for Bathing Box and Boatshed – Construction Guidelines 2015* as updated from time to time.

Council

means the Mornington Peninsula Shire Council.

DEECA	means the State Government Department of Energy, Environment and Climate Action.
DEECA Guidelines	means <i>Guidelines for the management of existing Bathing Boxes and Boatsheds on marine and coastal Crown land</i> published by the Victorian Government in March 2022, as may be amended from time to time.
Footprint	means the area of the foreshore occupied by the Bathing Box, including steps, ramps, decks or the like in accordance with Council records.
Licence	means an agreement between Council and a Licensee for the occupation of a Bathing Box.
Licence Fee	means the annual fee paid by the Licensee to occupy a Bathing Box. The Licence Fee will be determined by Council each year as part of the annual budget.
Licensee	means a Licensee under a Licence and is an individual, corporation or an incorporated body that has entered into a Licence.
Transfer Fee	means the fee payable to Council for the transfer of a Bathing Box Licence. The Transfer Fee will be determined by Council each year as part of Council's annual budget.
Structural Works	means any structural alterations, reconstruction and replacement or similar works associated with a Bathing Box.

9.0 POLICY SPONSOR

The Manager – Assets, Building and Property is responsible for overseeing the application and review of the Boatshed and Bathing Box Policy.

10.0 DOCUMENT CONTROLS

- 10.1 Council will review the Boatshed and Bathing Box Policy within four years or earlier as required.

10.2 **Document Version Table**

Summarise the key changes made to the document to provide a quick understanding of the updates.

Document Version Control				
Version	Section	Revision Description	Date Revised	Approved by

Administrative Updates

It is recognised that, from time to time, circumstances may change leading to the need for minor administrative changes to this document. Where an update does not materially alter this document, such a change may be made administratively. Examples include a change to the name of a Shire department, the change to an existing policy or document referred to in this policy, and minor updates to legislation and the like which does not have a material impact. However, any change or update which materially alters the document must be by resolution of Council.