



DEW Reference Number DEW22/006

Your ref: 12908988

81-95 Waymouth Street
Adelaide SA 5000

GPO Box 1047
Adelaide SA 5001
Australia

Ph: +61 8463 6625

www.environment.sa.gov.au

Dear [REDACTED]

I refer to your application pursuant to the *Freedom of Information Act 1991* (the Act) received by the Department for Environment and Water (DEW) on 10 February 2022, seeking access to:

"I'd like the permit conditions for the kayak business operators who are located and work from Garden Island please".

On 16 February 2022, you narrowed the scope of the application to:

"the permit conditions for company: 'Adventure Kayaking SA / Wilderness Escape' who are located and work from Garden Island...".

The determination was due to be completed and forwarded to you by the statutory due date of 14 March 2022.

As the agency did not determine the application within 30 days of receiving it, by the operation of section 19(2)(b) of the FOI Act, the agency is taken to have determined the application by refusing access. Section 19(2a) of the Act permits a determination to be made after the statutory due date has lapsed, this course of action was pursued.

DETERMINATION

Searches of the department's records have found one document held by this agency within scope of your request.

As a DEW Accredited FOI Officer, I have determined to grant you partial access to this document.

Section 20 of the Act provides that an agency may refuse access to a document if it is an exempt document under the Act. The parts of the document to which I am refusing access and the reasons for the refusal are summarised in the attached document schedule. An extract of the FOI Act exemption clauses relevant to this determination are also attached for your reference.

On this occasion the department is required to provide the determination electronically.

In accordance with [PC045 – Disclosure logs for Non-personal information](#) once a determination has been provided, the agency is required to make available on our website information and documents that have been disclosed. Information will be publicised online at <http://www.environment.sa.gov.au/about-us/freedom-of-information/foi-disclosure-log>.

FEES AND CHARGES

There is no further charge for processing this application.

YOUR APPEAL RIGHTS

If you are dissatisfied with this determination, you are entitled to exercise your rights to internal review and appeal as outlined in attachment 3. To do so, you may complete the attached 'FOI Application Form – For Internal Review of a Determination'. If you decide to apply to exercise your rights to review, the completed form must be returned within 30 days to:

Chief Executive (Principal Officer FOI)
Department for Environment and Water
GPO Box 1047
ADELAIDE SA 5001

Should an FOI applicant believe an agency has failed to identify all of the documents within the scope of their FOI application, they can make a complaint to the Ombudsman under the Ombudsman Act 1972. Attachment 5 of this determination outlines this process. You can also visit: www.ombudsman.sa.gov.au

If you have any queries in relation to the above please contact a Freedom of Information Officer on telephone (08) 8463 6625 or email DEW.FOI@sa.gov.au.

Yours sincerely



Virginia Fisher

Accredited Freedom of Information Officer, Department for Environment and Water

22 / 06 / 2022

- Encl:
1. Document Schedule
 2. Relevant FOI Act exemption clauses
 3. Release documentation
 4. FOI Fact Sheet – Your Rights to Review and Appeal
 5. Sufficiency of Search – Factsheet – Ombudsman SA



Freedom of Information application: DEW22/006 - Member of the Public

"the permit conditions for company: 'Adventure Kayaking SA / Wilderness Escape' who are located and work from Garden Island...".

No	Date	Author	Document Description	No. of Pages	Determination	Clause	Reason	Public Interest Test - Contrary to release	Public Interest Test - In favour of release
1	11/10/2021	DEW	Permit	18	Release in Part	6(1) - Documents affecting personal affairs	The release of names and signatures would involve the unreasonable disclosure of information concerning the personal affairs of those individuals		
						16(1)(a)(iv) - Documents concerning operations of agencies	The release of staff and associate names would involve the unreasonable disclosure of information that could adversely effect the performance of the agency's functions	- The redactions do not impact the flow, readability or understanding of the content of the document. This is strengthened by being able to advise you of the type of information that forms the redaction (individual identities). - It is not unreasonable to consider any member of society or staff may hold reservations with the release of their identities and signatures into the public domain	Meeting the objects of the FOI Act, which promotes public access and transparency of government held information and records.

Relevant FOI Act Exemption Clauses - extract

6—Documents affecting personal affairs

- (1) A document is an exempt document if it contains matter the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).
- (2) A document is an exempt document if it contains allegations or suggestions of criminal or other improper conduct on the part of a person (living or dead) the truth of which has not been established by judicial process and the disclosure of which would be unreasonable.
- (3) A document is not an exempt document by virtue of subclause (1) or (2) merely because it contains information concerning the person by or on whose behalf an application for access to the document is made.
- (3a) A document is an exempt document if it contains matter—
 - (a) consisting of information concerning a person who is presently under the age of 18 years or suffering from mental illness, impairment or infirmity or concerning such a person's family or circumstances, or information of any kind furnished by a person who was under that age or suffering from mental illness, impairment or infirmity when the information was furnished; and
 - (b) the disclosure of which would be unreasonable having regard to the need to protect that person's welfare.

6A—Exempt electoral records

A document is an exempt document if it is a record of information about an elector obtained in the course of the administration of the *Electoral Act 1985* or the *Local Government (Elections) Act 1999*; but not recorded on an electoral roll (as defined in that Act).

...

16—Documents concerning operations of agencies

- (1) A document is an exempt document if it contains matter the disclosure of which—
 - (a) could reasonably be expected—
 - (i) to prejudice the effectiveness of any method or procedure for the conduct of tests, examinations or audits by an agency; or
 - (ii) to prejudice on the attainment of the objects of any test, examination or audit conducted by an agency; or
 - (iii) to have a substantial adverse effect on the management or assessment by an agency of the agency's personnel; or
 - (iv) to have a substantial adverse effect on the effective performance by an agency of the agency's functions; or
 - (v) to have a substantial adverse effect on the conduct of industrial relations by an agency; and
 - (b) would, on balance, be contrary to the public interest.
- (2) A document is an exempt document if—
 - (a) it relates to an agency engaged in commercial activities; and
 - (b) it contains matter the disclosure of which could prejudice the competitiveness of the agency in carrying on those commercial activities.



Permit Number: DEW: 70/0790-19 – reissue following sale of business

Commercial Marine Mammal Interaction Permit

Issued pursuant to section 68(2) of the *National Parks and Wildlife Act 1972*

The Minister for Environment and Water grants to the Permit Holder named below a non-exclusive Permit to undertake the activities described in Clause 10 (“the Permitted Activities”), within the area described in Clause 10 (“the Permitted Area”), subject to the terms and conditions set out in this Permit.

Permit Holder

Not relevant to application request

Trading as **Adventure Kayaking SA**

Australian Business Number (ABN)

47 007 952 114

Australian Company Number (ACN)

N/A

Address of Permit Holder

PO Box 639

Kent Town SA 5071

Term of Permit

This Permit commences on the date it is signed on behalf of the Minister and remains in force until **31 March 2022**, unless surrendered or revoked under the Act or this Permit.

Permit Fee

The Permit Holder must pay the following permit fee, fixed in accordance with Regulation 20 of the Regulations.

\$ 1206.00 PAID

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless inconsistent with or repugnant to the context, the following words will have the meanings set opposite them respectively:

The Act means the *National Parks and Wildlife Act 1972*;

Conditions or Limitations in relation to the Permitted Activities, define the parameters or limitations which apply to the undertaking of those Activities;

Department for Environment and Water or **DEW** means the administrative unit that is responsible for the administration of the *National Parks and Wildlife Act 1972*;

Disturbance means - for dolphins and whales:

- attempts to leave an area;
 - attempts to leave waters in the vicinity of a vessel;
 - hasty diving;
 - changes in breathing patterns;
 - increased time diving as compared with time spent at the surface of waters;
 - changes in acoustic behaviour;
 - the onset of aggressive behaviour such as tail slashing or trumpet blowing.
- for seal or sea lions:
- rapid movement from land towards water;
 - sudden awakening from sleep on land;
 - the onset of vocalisation or growling;
 - attempts by a female to shield a pup with her body or by her movements.

DIT means the South Australian Department of Infrastructure and Transport, the administrative unit that is responsible for the administration of the *Navigation and Harbors Act 1993*;

Environmental harm, material environmental harm and **serious environmental harm** will have meanings in this Permit consistent, as far as the context of this Permit permits, with the meanings of those expressions in the *Environment Protection Act 1993*;

Hazardous Material means any dangerous, noxious, toxic, volatile, explosive, inflammable or environmentally hazardous chemical, substance or compound in any form;

Insolvency Administration means if the Permit Holder is a company:

- an administrator is appointed to the Permit Holder or action is taken to make such an appointment;
- the Permit Holder resolves to be wound up;
- an application is made to a court for an order or an order is made that the Permit Holder be wound up (whether on grounds of insolvency or otherwise);
- the Permit Holder ceases to carry on business;
- a receiver or a receiver and manager of property of the Permit Holder is appointed whether by a court or otherwise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Permit Holder or one of them is appointed, whether or not under an order;
- the Permit Holder enters into a compromise or arrangement with its creditors or a class of them; or
- the Permit Holder is or states that it is unable to pay its debts when they fall due.

If the Permit Holder is a natural person:

- the Permit Holder has committed an act of bankruptcy as contemplated by the *Bankruptcy Act 1966* (Cth);
- the Permit Holder is unable to pay his or her debts as and when they become due and payable;

- the court has made a sequestration order against the Permit Holder's estate;
- a creditors' petition has been presented against the Permit Holder;
- the Permit Holder has presented to the official receiver a declaration of intention to present a debtor's petition;
- the Permit Holder becomes a bankrupt;
- a meeting of creditors of the Permit Holder is convened; or
- the Permit Holder lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

Minister means the Minister for Environment and Water and his or her successors;

Minister's Representative means such person or persons as are from time to time nominated to the Permit Holder as the Minister's Representative;

Neonate means a dolphin calf approximately 1m in length (or just under a third the size of an adult), with distinct foetal folds (light coloured lines and or wrinkles along the body of the animal), possible folded over dorsal fin, uncoordinated swimming technique, holding head above water to breath (not a smooth breathing motion), and swimming in close proximity to an adult who may be assisting it to swim by pushing it to the surface to breathe.

Permit means the Permit granted to the Permit Holder by the Minister pursuant to section 68(2) of the Act and includes the terms and conditions as permitted under section 69 of the Act that are set out in this document;

Permit Holder means the Permit Holder named on the front page of this Permit, and includes the Permit Holder's permitted assigns;

Permitted Activities means the activity or activities listed in clause 10 of this Permit and the activities necessarily incidental to such activity or activities;

Permitted Area means the area/s identified in clause 10 of this Permit;

Special Permission means any special permission listed in clause 10 of this Permit;

Term means the term of the Permit, as set out on the front page of this document;

The Regulations means the *National Parks and Wildlife (Protected Animals Marine Mammals) Regulations 2010*;

- 1.2 Words importing the singular number include the plural and vice versa.
- 1.3 Words importing any gender include the other gender.
- 1.4 A reference to a person includes a reference to a group of persons or a body corporate.
- 1.5 The headings in this Permit are for the purpose of convenience only and will not affect the interpretation of this Permit.
- 1.6 A reference to any legislation or to any provision of any legislation includes:
 - 1.6.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
 - 1.6.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision.

2. GRANT OF PERMIT

- 2.1 Pursuant to section 68(2) of the Act, the Minister grants the Permit Holder a non-exclusive contractual right to use the Permitted Area for the Permitted Activities during the Term, subject to the Conditions or Limitations set out in this Permit.
- 2.2 The Permit is not transferable to another individual or entity without the Minister's (entirely discretionary) consent.

3. **VARIATION**

This Permit may be varied either:

- 3.1 by the Permit Holder applying to the Minister requesting a variation, which variation may be refused at the sole discretion of the Minister; or
- 3.2 by the Minister (through DEW) giving written notice to the Permit Holder of a variation to the terms that apply to the Permitted Activities or Permitted Areas, which variation does not require the consent of the Permit Holder.

4. **PERMIT HOLDER'S GENERAL OBLIGATIONS**

Use and compliance

- 4.1 The Permit Holder must at all times during the Term comply with and perform the requirements of all laws (including the Act, any regulations, by-laws, ordinances and other forms of statutory instrument or delegated legislation or plan of management) to the Permitted Activities, including without limitation, the *Australian National Guidelines for Whale and Dolphin Watching*.
- 4.2 The Permit Holder must not contravene any of the conditions of the Permit or any written instruction from the Minister in relation to the Permit or the Permitted Activities.
- 4.3 The Permit Holder must carry this Permit at all times while carrying out the Permitted Activities, and must produce this Permit if requested by the Minister's Representative.

Safety

- 4.4 The Permit Holder must, in the course of undertaking the Permitted Activities, provide and use such safety equipment and take such safety precautions as are reasonably required by the Minister. The Permit Holder must, to the extent reasonably required by the Minister, caution all persons involved in any activity connected with this Permit (including the Permitted Activities) about the hazards likely to be encountered.

Qualifications and skills of Permit Holder, including other persons engaged by Permit Holder

- 4.5 The Permit Holder must ensure that any agents, staff, employees, contractors or volunteers employed, engaged or used by the Permit Holder from time to time to undertake the Permitted Activities are sufficiently experienced and competent to perform the duties they carry out or are required to carry out in the course of undertaking the Permitted Activities.
- 4.6 The Permit Holder and any agents, staff, employees, contractors or volunteers employed, engaged or used by the Permit Holder from time to time to undertake the Permitted Activities must, as and when reasonably required by the Minister, undertake such training and/or accreditation as the Minister reasonably requires in relation to the Permitted Activities.

Provision of material and information

- 4.7 The Permit Holder must:
 - 4.7.1 Provide a copy of any material or information in respect of the Permitted Activities to the Minister prior to displaying or releasing to the public such material or information (including, but not limited to, maps); and
 - 4.7.2 Without limiting clause 5.2, indemnify and keep indemnified the Minister, his agents, officers, contractors and servants and the Crown in the right of the State of South Australia from and against all claims, actions, demands, costs, charges and expenses of any kind arising out of or in connection with any misleading or inaccurate information or material displayed or released to the public by the Permit Holder, its agents, contractors, officers or servants in respect of the Permitted Activities.

Logos

- 4.8 The Permit Holder must not at any time use the DEW tour operator logo or other logo owned by the Minister except with the prior written approval of the Minister, unless such use during the Term accords with the procedures as determined by the Minister from time to time.

Assignment

- 4.9 The Permit Holder must not assign, convey, charge, mortgage, sub-license, or otherwise transfer this Permit or any of its rights or obligations under this Permit except with the prior written consent of the Minister, which consent may be withheld in the absolute discretion of the Minister or may be given subject to such conditions as the Minister may determine.
- 4.10 The Permit Holder "assigns" its rights for the purposes of clause 4.9 if:
- 4.10.1 The Permit Holder being a company, or any one of the Permit Holders being a company, has had a change in the beneficial ownership of its shares, which change has the effect of altering the person or persons in effective control of the company or any change in the ownership of 20% or more of the Permit Holder's issued capital, whichever occurs first;
- 4.10.2 The Permit Holder being a partnership, has had a change in the constitution of the partnership, except by the death of any partner; or
- 4.10.3 If one of the Permit Holders is a joint venturer with another person or entity, any change to the joint venture agreement.
- 4.11 Any such assignment taking effect without the Minister's prior written consent will be deemed a default of the Permit under the terms of this Permit.

Vessels and Aircraft

- 4.12 The Permit Holder may only use Vessels and Aircraft listed in clause 10, "Permitted Vessels/Aircraft" to conduct the Permitted Activities pursuant to this Permit.
- 4.13 The Permit Holder must ensure that all vessels it uses in relation to the Permitted Activities have a current Certificate of Survey issued by DIT, or by another relevant Australian authority which is valid for the activities being undertaken.
- 4.14 Prior to using any Vessels not listed in clause 10, the Permit Holder must notify DEW in writing of the intended use of the Vessel and provide evidence of a current Certificate of Survey issued by DIT, or by another relevant Australian authority which is valid for the activities being undertaken.
- 4.15 The Permit Holder warrants that the Permit Holder, the drivers it engages and the vessels it uses in relation to the Permitted Activities fully meet the accreditation requirements as determined by DIT.
- 4.16 The Permit Holder must at all times comply with any conditions imposed by the DIT Certificate of Survey.
- 4.17 The Permit Holder must ensure that for any aircraft used for the Permitted Activities:
- 4.17.1 the Permit Holder has a current Air Operator's Certificate; and
- 4.17.2 all pilots it engages meet the licensing requirements as determined by the Civil Aviation Safety Authority; and
- 4.17.3 all aircraft it uses have a current Certificate of Airworthiness issued by the Civil Aviation Safety Authority.
- 4.18 Prior to using any aircraft not listed in clause 10 the Permit Holder must notify DEW in writing of the intended use of the Aircraft and provide evidence of a current Certificate of Airworthiness issued by the Civil Aviation Safety Authority which is valid for the activities being undertaken.
- 4.19 The Permit Holder warrants that the Permit Holder, the pilots it engages and the aircraft it uses in relation to the Permitted Activities fully meet all accreditation requirements as determined by the Civil Aviation Safety Authority.
- 4.20 The Permit Holder must at all times comply with any conditions imposed by the Civil Aviation Safety Authority.

Warranty

- 4.21 The Permit Holder warrants that the information provided (including any links to websites) in any application submitted by the Permit Holder for this Permit remains true and correct, and if circumstances change affecting the information provided or the capacity of the Permit Holder to perform its obligations under the Permit, the Permit Holder must immediately advise the Minister of such changes.

Specific Conditions for Multi Year Term

- 4.22 These Special Conditions 4.22-4.24 only apply whenever this Permit has a Term that is to run for a period of three years or five years from the commencement of this Permit.

- 4.23 The Permit Holder must for the relevant Term:

- 4.23.1 At its cost hold and maintain at least one of the following approved accreditation schemes where the Term runs for:

- (a) Three Years being:

- (i) the Australian Tourism Accreditation Program;
- (ii) the Nature Based Eco Accreditation Program;
- (iii) the Climate Action Certification Program; or
- (iv) the Green Globe Company Standard

- (b) Five Years being:

- (i) the Advanced Ecotourism Eco Certification Program; or
- (ii) the Ecotourism Eco Certification Program.

- 4.23.2 provide to the Relevant Authority at the start of each permit year or when requested by the Relevant Authority confirmation of such current accreditation required under clause 4.23.1; and

- 4.24 Where the Permit Holder:

- (a) is not able to maintain the accreditation held under clause 4.23.1 for any reason; or
- (b) is not able to meet the terms and conditions required under clause 4.23; the Permit Holder must immediately advise the **RELEVANT AUTHORITY AND FURTHER ACKNOWLEDGES AND AGREES:**
- (c) this Permit will revert to an annual Permit expiring on 31 March of the relevant permit year;

5. RELEASE, INDEMNITY AND PUBLIC RISK INSURANCE

Release

- 5.1 The Permit Holder performs the Permitted Activities pursuant to this Permit at the risk in all things of the Permit Holder and releases to the full extent permitted by law the Minister, his agents, officers, contractors and servants and the Crown in the right of the State of South Australia, in the absence of any default on their part, from all claims and demands of every kind resulting from any accident, damage or injury to persons or property occurring as a result of performing the Permitted Activities (including any loss or damage to the personal property of the Permit Holder).

Indemnity

- 5.2 The Permit Holder must indemnify and keep indemnified the Minister, his agents, officers, contractors and servants and the Crown in the right of the State of South Australia against all actions, suits, claims, demands, liabilities, costs, charges and expenses of any kind in respect of any loss of life, injury to person or damage to

property suffered as a result of the undertaking of the Permitted Activities by the Permit Holder or otherwise arising out of or in connection with this Permit except to the extent where such loss of life, injury to person or damage to property is caused by any neglect or default of the Minister, his agents, servants or contractors.

Insurance

- 5.3 The Permit Holder must at its expense effect or cause to be effected and during the Term maintain or cause to be maintained at all times for the Term, with an insurer acceptable to the Minister, insurance against public liability risks (such insurance to be for not less than ten million dollars (\$10,000,000.00) in respect of any one claim or such further sum as the Minister may from time to time reasonably require and to be in the name of the Permit Holder and be endorsed with the Minister's interest) and the Permit Holder must whenever requested by the Minister produce evidence of the currency of such insurance.

6. TERMINATION AND SUSPENSION

- 6.1 The Minister may in its absolute discretion elect either to suspend this Permit for a period of time determined in the absolute discretion of the Minister or terminate with immediate effect, if any of the following occurs:
- 6.1.1 where the Minister considers that the Permit Holder has or is causing a serious threat to Tour Participants' safety and/or environmental safety or sustainability, whether caused by the Permitted Activities or otherwise;
 - 6.1.2 if the Permit Holder breaches this Permit in any other way and fails to rectify the breach within a reasonable time (which will not be less than 7 days) of receipt of a written notice setting out details of the breach from the Minister;
 - 6.1.3 if the Permit Holder breaches this Permit and the breach is incapable of being remedied, and after having received notice of that breach from the Minister, the Permit Holder commits another breach of the Permit of the same kind;
 - 6.1.4 where in the Minister's opinion, the Permit Holder has demonstrated a consistent lack of compliance with the terms of this Permit; or
 - 6.1.5 if the Permit Holder enters into Insolvency Administration.
- 6.2 Termination or suspension of this Permit by the Minister under this clause will be without prejudice to any right of action or remedy of the Minister in respect of any breach committed by the Permit Holder.
- 6.3 In the event of variation, termination or suspension of the Permit by the Minister whether under this clause or clause 3, or where the Minister otherwise restricts access to any part of the Permitted Areas or Permitted Activities for any reason (including safety or the preservation of the environment) or otherwise takes remedial action in relation to the Permit, the Permit Holder will not have any claims against the Minister.

7. MISCELLANEOUS

Notice/consents

- 7.1 Any consent, notice or thing which pursuant to this Permit is required or permitted to be given, done or performed by the Minister may for the purposes of this Permit be properly given, done or performed by the Minister's Representative.

Relationship

- 7.2 Nothing contained in this Permit will be deemed or construed to constitute either party to be a partner, joint venturer, employee, employer, principal, agent, trustee (whether express or constructive), beneficiary, fiduciary, borrower, lender or representative of the other party. In this regard, the Permit Holder must not hold itself out as or in any way represent itself as an employee or agent of the Minister or DEW.

8. GENERAL CONDITIONS FOR PERMITTED AREA

General

- 8.1 In the Permitted Area, the Permit Holder must:
- 8.1.1 Ensure that its clients comply with the relevant Specific Conditions referred to in clause 8 and any additional site or activity special permissions and conditions referred to in clause 9;
 - 8.1.2 Conduct its operations in a manner which will protect the experiences of other users in the Permitted Area;
 - 8.1.3 Be responsible for the safety, safe management, wellbeing and behaviour of the Permit Holder's tour guides, clients and vehicles at all times;
 - 8.1.4 Ensure that before a tour commences, the Permit Holder's clients are fully informed of the experiences and all potential hazards and conditions that they may encounter during the tour;
 - 8.1.5 Take all reasonably practical steps to ensure that the Permit Holder's clients are not exposed to unreasonable risks to their health or safety whilst in the Permitted Area or undertaking the Permitted Activities;
 - 8.1.6 Ensure that adequate procedures are in place to minimise the risk of potential hazards to the Permit Holder's clients; and
 - 8.1.7 Ensure that all tour guides or persons engaged by the Permit Holder have the necessary competencies, skills and qualifications for leading and guiding the Permitted Activities and understand the terms and conditions including their responsibilities under this Permit.

Access and restrictions

- 8.2 The Permit Holder and the Permit Holder's employees, agents and Tour participants must obey all reasonable directions given by the Minister or the Minister's Representative, in respect of the Permitted Area and the Permitted Activities.
- 8.3 Without limiting the generality of the foregoing, the Permit Holder acknowledges that the Minister may direct it to cease or suspend the Permitted Activities or may restrict access to any part of the Permitted Areas by the Permit Holder, for a period specified by the Minister that is reasonable in the circumstances, as a result of any of the following causes:
- 8.3.1 severe storms and other natural disasters; or
 - 8.3.2 where a Permitted Area is determined to be a breeding site for Australian Sea Lions; or
 - 8.3.3 any other cause reasonably specified by the Minister, which is directed at the preservation of human health and/or the environment, including the health of marine mammals.
- 8.4 For the avoidance of doubt, the Permit Holder is not entitled to any compensation from the Minister whatsoever for loss or damage caused or contributed to by the need to suspend, cancel or cease the Permitted Activities under the provisions of this clause.

Water and waste removal

- 8.5 The Permit Holder must undertake steps to minimise impact on the Permitted Area by persons on tours operated by the Permit Holder and remove all equipment, rubbish and/or waste associated with the running of the Permit Holder's business from the Permitted Area.

Hazardous material and other contamination

- 8.6 The Permit Holder must not bring or permit to be brought into the Permitted Area any Hazardous Material other than Hazardous Material:
- 8.6.1 Of a kind which is normally used for the Permitted Activities;
 - 8.6.2 Which is to be used in the Permitted Area when used for the Permitted Activities; and

- 8.6.3 Which is handled and stored in accordance with and in compliance with all laws.
- 8.7 The Permit Holder must not at any time during the Term do or permit:
- 8.7.1 Anything which will contaminate or pollute the Permitted Area or any other property (real or personal) or any part of the environment with any Hazardous Material;
- 8.7.2 Anything on the Permitted Area which would result in any relevant authority issuing a notice direction or order requiring any clean up, decontamination, remedial action or making good under any law; or
- 8.7.3 Anything in the Permitted Area that constitutes a violation or contravention of any law dealing with the environment.
- 8.8 In the event that any pollution, contamination or degradation occurs, of the kind referred to in clauses 8.6 and 8.7, then the Permit Holder must:
- 8.8.1 At its expense remove all Hazardous Material brought onto, or permitted to occur or created in the Permitted Area causing or contributing to pollution, contamination or degradation of the Permitted Area or any other property, and immediately make good any damage so caused and reinstate such portions of the Permitted Area to the same condition as the Permitted Area was in prior to the occurrence of such pollution, contamination or degradation;
- 8.8.2 At its expense immediately comply with all notices, directions and requirements of any relevant authority in respect of any Hazardous Material brought onto, or permitted to occur or created on, the Permitted Area, including notices to remediate the Permitted Area; and
- 8.8.3 Indemnify and keep indemnified the Minister against all claims which the Minister may incur or incurs as a result of the Permit Holder's failure to comply with its obligations under this clause or otherwise from the negligence or default of the Permit Holder in the performance of the Permit Holder's obligations under this clause.

Notice of damage

- 8.9 The Permit Holder must give prompt notice to the Minister of any substantial damage occurring to the Permitted Areas, including any act or omission of the Permit Holder or the Permit Holder's staff or of any tourist or visitor or invitee of the Permit Holder to the Permitted Areas of which the Permit Holder either becomes aware or ought to be aware, which has been caused or which has a reasonable prospect of causing serious or material environmental harm within the Permitted Areas (whether such act or omission occurs in the Permitted Areas or not).

Nuisance

- 8.10 The Permit Holder must not do or permit to be done in or about the Permitted Area anything, which in the reasonable opinion of the Minister or DEW may be, or be likely to become, a nuisance or annoyance to or in any way interfere with the quiet enjoyment and comfort of other users from time to time in the Permitted Area.

Environmental harm

- 8.11 The Permit Holder must not do or permit to be done in or about the Permitted Area anything, which in the reasonable opinion of the Minister or DEW may cause any serious or material environmental harm within the Permitted Area.

9. SPECIFIC CONDITIONS FOR PERMITTED ACTIVITIES

9.1 General

The Permit Holder must at all times:

- 9.1.1 ensure its agents, crew and tour clients comply with the Terms and Conditions of this permit at all times;
- 9.1.2 comply with the Regulations and with any special permissions granted in Section 10 of this permit;

- 9.1.3 make available (free of charge but subject to availability) a position on the tour for any DEW officer for the purpose of observing the conduct of the operations;
- 9.1.4 ensure that the crew is conversant with up to date knowledge of:
 - (a) natural resource and conservation values/status of the area and marine mammals;
 - (b) laws relating to protection of marine mammals; and
 - (c) animal behaviour (and their apparent meanings), biology, migration;
- 9.1.5 not intentionally make any noise to attract marine mammals;
- 9.1.6 ensure that information or education material is clearly displayed;
- 9.1.7 make available any relevant guidelines and regulations as well as its permit conditions to its tour clients upon request;
- 9.1.8 verbally advise its tour clients of the regulations before commencing marine mammal interaction activities.
- 9.1.9 report to DEW as soon as practicable particulars of any accidents or other notable incidents involving marine mammals, vessels or clients;
- 9.1.10 provide such data, information or reports in the format notified to the Permit Holder required by DEW from time to time regarding compliance with any permit held by the Permit Holder or other information required by DEW relevant to the Permitted Activities undertaken pursuant to this permit; and
- 9.1.11 agree to comply with such further conditions the Director of National Parks and Wildlife or the Minister may require from time to time during the term of this Permit provided prior written notice is given to the Permit Holder.

9.2 **Vessels**

The Permit Holder must in addition to the requirements in the Regulations:

- 9.2.1 not approach nor anchor within 100 metres of another permitted tour vessel conducting a dolphin or seal swim tour;
- 9.2.2 not undertake any activity that deliberately hinders the operation of other vessels, either dockside or in the water;
- 9.2.3 not restrict the movement of marine mammals in against the shore;
- 9.2.4 ensure operators of vessels do not deliberately encourage marine mammals to bow ride; and
- 9.2.5 not circle dolphin pods or attempt to circle dolphin pods once they move away from the vessel.

9.3 **Marine Parks**

Whilst operating in a marine park the Permit Holder must:

- 9.3.1 not anchor on reefs or seagrass beds in sanctuary zones wherever possible.
- 9.3.2 not erect any structures, including vessel moorings, in a sanctuary zone without prior written authorisation.
- 9.3.3 inform participants in the activity of the values of the species and habitats encountered in the marine park and of their obligations under the *Marine Parks Act 2007*.
- 9.3.4 take all reasonable measures to prevent or minimise harm to a marine park through their actions or the actions of persons associated with the activity.

10. PERMITTED AREA, ACTIVITIES AND SPECIAL PERMISSIONS AND CONDITIONS

- 10.1 Under section 68(1)(c) of the Act a person must not undertake or continue an act or activity in relation to a protected animal that is contrary to regulations made under that section unless the person acts pursuant to the Act or a permit granted by the Minister under section 68(2) or another provision of the Act or other legislation.
- 10.2 The Regulations regulate interactions with marine mammals that are protected animals, including by prescribing distances to be kept by vessels, aircraft and swimmers when near marine mammals, and restricting commercial activities.
- 10.3 This Permit is issued under section 68(2) of the Act and allows the Permit Holder to conduct the Permitted Activities in the Permitted Areas in accordance with this clause such that the Permit Holder (and its employees, agents, or subcontractors and any invitee that is carried on any vessel owned or used or under the control of the Permit Holder) may do the things in any of the Special Permissions, **PROVIDED AT ALL TIMES** the Permit Holder must comply with the following:
- 10.3.1 the Permit Holder (and its employees, agents, or subcontractors) must, on request, provide DEW from time to time with a passenger and crew manifest for each vessel listing the persons who have the benefit of the Special Permissions that have entered into or left the Permitted Area;
- 10.3.2 the Permit Holder:
- (a) must ensure that it (and its employees, agents, subcontractors or Tour participants) or any person that has the benefit of the Special Permissions complies at all times with the Special Permissions and any applicable Conditions or Limitations stipulated below whenever undertaking the Permitted Activities in the Permitted Area;
 - (b) must take such reasonable actions necessary for the Permit Holder (and includes its employees, agents, or subcontractors) to prevent any person from being in breach of the Special Permissions, including by removing that person for public safety reasons; and
 - (c) acknowledges and agrees that other than undertaking the Permitted Activities in accordance with the Special Permissions granted to it, the Permit Holder will comply at all times with all other aspects of the Regulations.

The Minister, through DEW, reserves the right to change or add to the Permit Conditions, including Special Permissions, contained in this document after conducting a DEW site inspection.

Permitted Vessel(s)	Vessel type 1	Vessel type 2	Vessel type 3
Vessel Name	17 x Double Sea Kayaks	12 x Single Kayaks	12x paddle boards
Survey Number	N/A	N/A	N/A

SPECIAL PERMISSIONS

Permitted Activity: Dolphin viewing from a vessel

Permitted Area	Those waters at Garden Island, Gillman SA as identified by the area bounded in black and marked "tour area" on map 1, Annexure A.	
Regulation which governs the Activity	Special Permission	Conditions or Limitations on Permitted Activities
Regulation 19 (1)(a) and (b) prohibits a person for fee or reward, from using (a) a vessel to take another person into the vicinity of a marine mammal to enable the other person to observe the animal or swim near the animal; or (b) assisting another person in the vicinity of a marine mammal to observe the animal or swim near the animal.	The Permit Holder may use a vessel to take another person into the vicinity of a dolphin to enable that person to observe a dolphin from the vessel.	The Permit Holder is not to: <ul style="list-style-type: none"> • conduct more than four viewing tours per day • attempt to interact with an individual dolphin or pod of dolphins more than 2 times per tour. • kayaks should remain as close together as possible when approaching dolphins and all kayaks should approach from the same direction (preferably from behind and parallel to the dolphins' travel path); • when observing dolphins, it is recommended that kayaks remain idle and in a group (i.e. avoid kayaks spreading in close proximity (50m) to dolphins); and • no more than twelve kayaks should be within the 150m caution zone at any one time.
Regulation 9(1)(b) prohibits a person who is in control of a vessel that is not a prescribed vessel from moving the vessel closer than 50 metres to a marine mammal other than a whale.	No special permissions apply.	
Regulation 9(3)(a)(v) prohibits a person who is in control of a vessel from moving the vessel closer than 150m to a marine mammal other than a whale if the marine mammal is a calf or a pup.	The Permit Holder must not move a vessel closer than 50m to a dolphin calf.	If the dolphin calf is a neonate the Permit Holder must immediately retreat the vessel to 150m.

Permitted Activity: Seal and Sea-lion viewing from a vessel		
Permitted Area	<p>Those waters at Rapid Bay, SA as identified by the area bounded in red on map 2, Annexure A.</p> <p>Those waters at Goose Island, SA as identified by the area bounded in red on maps 3 & 4, Annexure A.</p>	
Regulation which governs the Activity	Special Permission	Conditions or Limitations on Permitted Activities
<p>Regulation 19 (1)(a) and (b) prohibits a person for fee or reward, from using</p> <p>(a) a vessel to take another person into the vicinity of a marine mammal to enable the other person to observe the animal or swim near the animal; or</p> <p>(b) assisting another person in the vicinity of a marine mammal to observe the animal or swim near the animal.</p>	<p>The Permit Holder may use a vessel to take another person into the vicinity of a seal or seal-lion to enable the other person to observe the seal or sea-lion from the vessel.</p>	<p>The Permit Holder must not take more than 12 tours per year in the waters at Rapid Bay or more than 12 tours per year in the waters at Goose Island.</p>
<p>Regulation 9(1)(b) prohibits a person who is in control of a vessel that is not a prescribed vessel from moving the vessel closer than 50 metres to a marine mammal other than a whale.</p>	<p>No special permissions apply.</p>	
<p>Regulation 9(3)(a)(v) prohibits a person who is in control of a vessel from moving the vessel closer than 150m to a marine mammal other than a whale if the marine mammal is a calf or a pup.</p>	<p>The Permit Holder must not move a vessel closer than 50m to a seal or sea-lion pup.</p>	<p>Should any Disturbance be observed the Permit Holder must immediately retreat the vessel to 150m.</p>
Permitted Area	<p>Those waters at Victor Harbor, SA as identified by the area bounded in red on map 5, Annexure A but excluding RAZ-4 of the Encounter Marine Park.</p>	
Regulation which governs the Activity	Special Permission	Conditions or Limitations on Permitted Activities
<p>Regulation 19 (1)(a) and (b) prohibits a person for fee or reward, from using</p> <p>(a) a vessel to take another person into the vicinity of a marine mammal to enable the other person to observe the animal or swim near the animal; or</p> <p>(b) assisting another person in the vicinity of a marine mammal to observe the animal or swim near the animal.</p>	<p>The Permit Holder may use a vessel to take another person into the vicinity of a seal or seal-lion to enable the other person to observe the seal or sea-lion from the vessel.</p>	<p>The Permit Holder must not take more than 12 tours per year in the waters at Victor Harbor.</p>
<p>Regulation 9(1)(b) prohibits a person who is in control of a vessel that is not a prescribed vessel from moving the vessel closer than 50 metres to a marine mammal other than a whale.</p>	<p>No special permissions apply.</p>	
<p>Regulation 9(3)(a)(v) prohibits a person who is in control of a vessel from moving the vessel closer than 150m to a marine mammal other than a whale if the marine mammal is a calf or a pup.</p>	<p>The Permit Holder must not move a vessel closer than 50m to a seal or sea-lion pup.</p>	<p>Should any Disturbance be observed the Permit Holder must immediately retreat the vessel to 150m.</p>

11. SIGNATURES

Signed for and on behalf of the Minister for Environment and Water

16 - Documents concerning the operations of agencies



11/10/21

Jo Podoljak

Date

Director, Tourism and Economic Development
National Parks and Wildlife Service

Signature of witness

Print witness name

16 - Documents concerning the operations of agencies



Signed by the Applicant
(If the Applicant is a natural person)

6 - Documents affecting personal affairs



30/9/21
(Date)

30/9/21
(Date)

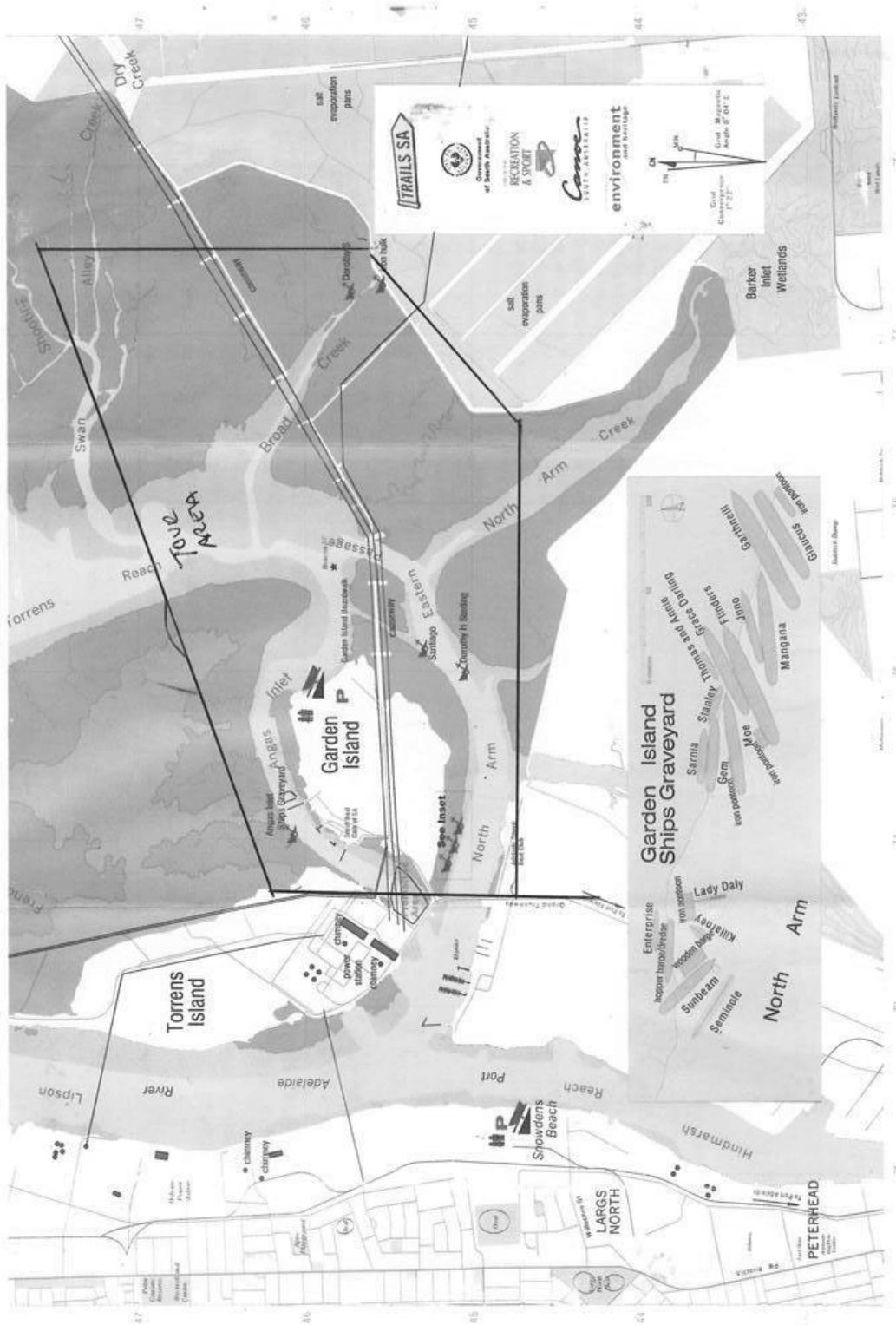
Witness (Signed)

ANNEXURE A

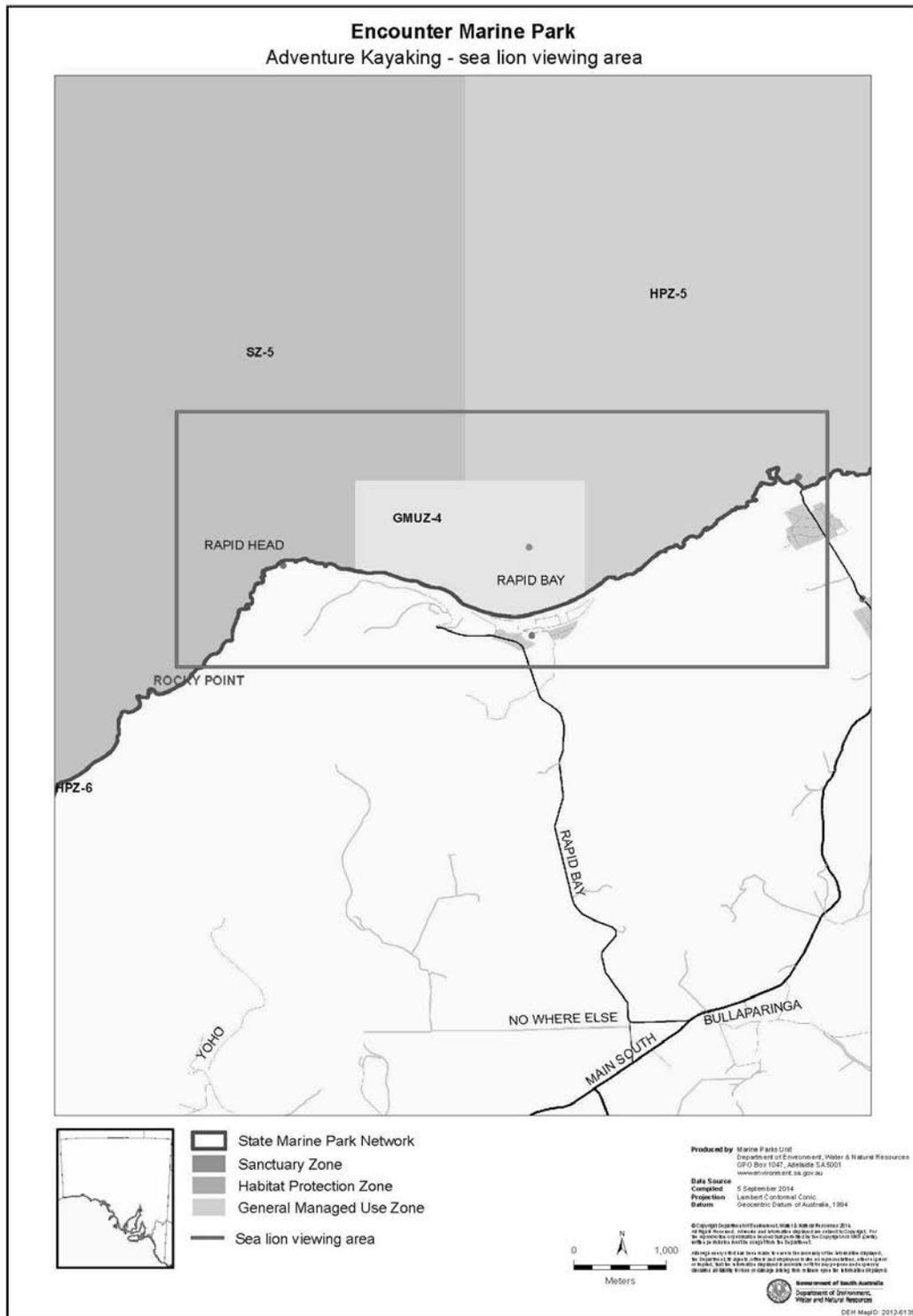
Maps identifying the Permitted Areas

(to be read in conjunction with Clause 9 - Permitted Area)

Map 1: Dolphin viewing area at Garden Island, Gillman SA

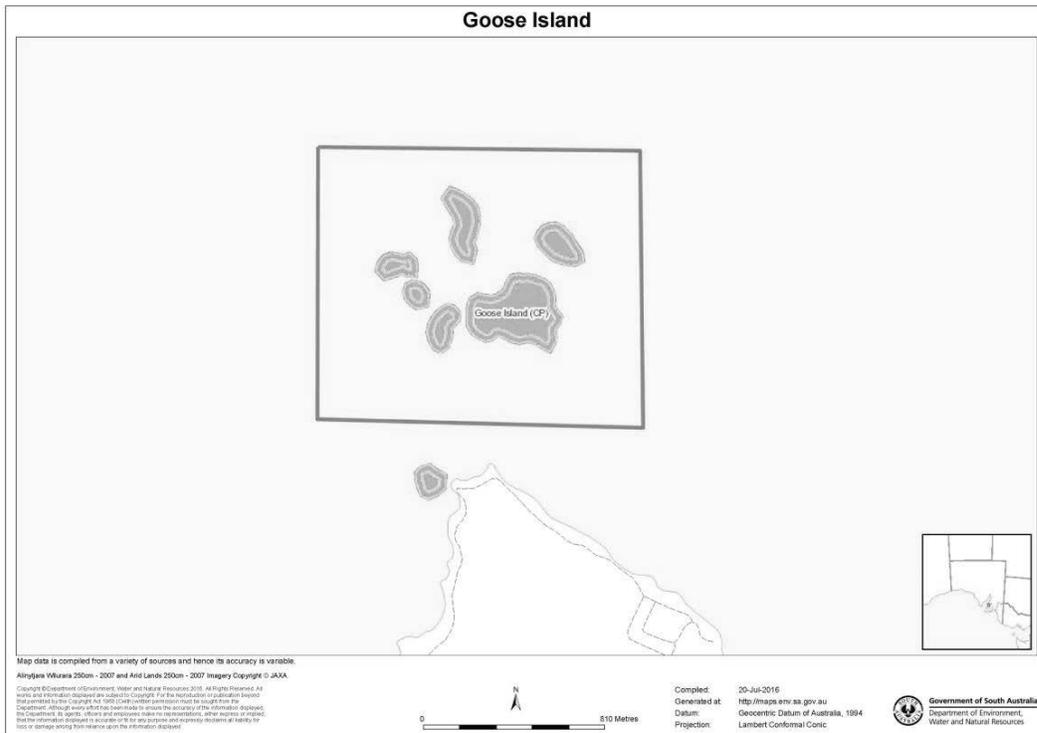


Map 2: Sea –lion viewing area at Rapid Bay, SA.

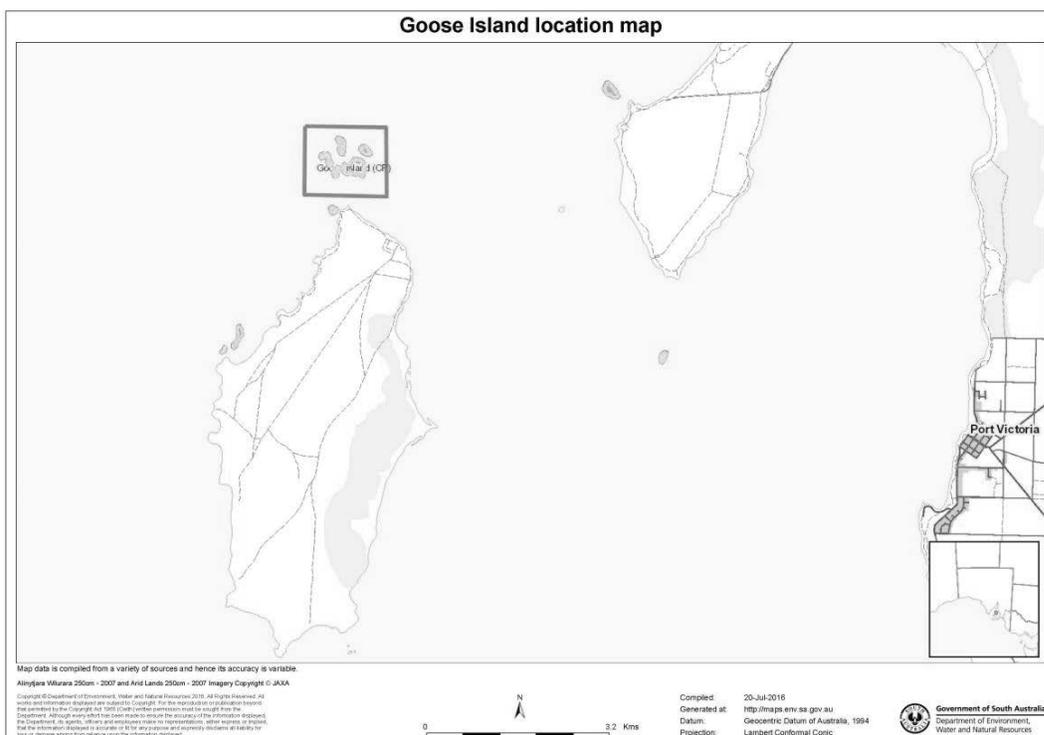


Maps 3 & 4: Seal & Sea –lion viewing area at Goose Island, SA.

Goose Island Map 3



Goose Island location – Map 4



Map 5: Seal and Sea –lion viewing area at Victor Harbor, SA

