

Whangaroa Marina Terms and Conditions

2016

APPLICATION OF THESE TERMS AND CONDITIONS

- 1.1. Every person entering the Marina, for any purpose and by any means whether they are a member of the public, an Occupier, a Visitor or Crew shall be deemed to agree to be bound by these Terms and Conditions.
- 1.2. By entering the marina with a vessel or placing a vessel in a marina berth or mooring any vessel to any part of the marina structure any person, including but not limited to an Occupier, is bound by these Terms and Conditions whether or not they have a Berth Occupation Licence, paid a fee or completed the Rental Agreement.
- 1.3. The WMMT accepts no obligation to any Occupier or any other person to enforce the provisions of these Terms and Conditions against any other Occupier or person and as such may not be required to do so.
- 1.4. These Terms and Conditions can be viewed on the Whangaroa Marina Management Trust (WMMT) website at www.whangaroamarina.co.nz.

2. DEFINITIONS

- 2.1. Terms in these Terms and Conditions listed in "Schedule A – Definitions" will have the special meaning as defined in Schedule A.

3. CONSENT

- 3.1. In consideration of the Occupier adopting the obligations imposed by these Terms and Conditions and Rental Agreement or Berth Occupation Licence as the case may be, and payment of the fee, WMMT hereby grants to the Occupier the rights to:
 - 3.1.1. berth only the Nominated Boat in the Berth;
 - 3.1.2. tie up to the allocated Berth structures;
 - 3.1.3. use the Structures and Facilities, on payment of any required additional fees; and
 - 3.1.4. navigate boats within the shared waterways within the marina footprint.
- 3.2. The Occupier acknowledges that the rights granted pursuant to sub clause 3.1.2 and 3.1.3 are subject to:
 - 3.2.1. the rights of public access provided for in the Resource Consents; and
 - 3.2.2. the rights of other Occupiers in the Marina and all other persons authorised by WMMT from time to time.
 - 3.2.3. such rules, and during times, as WMMT may from time to time specify for the safety, security and preservation of good order in the Marina.
- 3.3. For the avoidance of doubt, nothing in these rules or associated occupation agreements or licences create a beneficial entitlement or interest in the Assets of WMMT.

4. THE FULL AGREEMENT

- 4.1. The full agreement between the WMMT and any person including the Occupier are contained within the:
 - 4.1.1. **Berth Occupation Licence or Rental Agreement** as appropriate in the circumstances.

- 4.1.2. **Whangaroa Marina Terms and Conditions ("Marina Rules")**, and any variation to those Terms and Conditions as notified by WMMT,
- 4.1.3. **Any other document published by WMMT** or its duly authorised employee or agent for the purpose of managing the marina.

5. RESPECT FOR ALL MARINA USERS

- 5.1. All Occupiers, their crews and visitors and any other people will at all times:
 - 5.1.1. exercise respect for the peaceful enjoyment of other marina users.
 - 5.1.2. Navigate and control a vessel in a seamanlike manner so as to cause no danger or inconvenience to any other person or vessel and will at all time obey the "no wake" rule.
 - 5.1.3. Ensure that all pontoons, walkways, fingers and bridges are kept clear for the safe use of others.

6. OCCUPATION OF MARINA STRUCTURES

- 6.1. **AA, A, B, C and D Piers** – Berths on these piers are occupied under Berth Occupation Licences or Rental Agreements.
- 6.2. **The Eastern Section of the Northern Breakwater not occupied by "D" berths** – This area is available for casual short term occupation for visiting boats. Conditions for occupation are:
 - 6.2.1. These terms and conditions apply to all vessels and all personnel.
 - 6.2.2. Mooring is for vessels only and not for dinghies which can be moored on AA pier.
 - 6.2.3. Occupation is on a "first come first served basis".
 - 6.2.4. Overnight berthing is allowed only with permission from the marina. Fees apply for overnight berthing.
 - 6.2.5. To protect the marina the use of adequate fenders, provided by the vessel, is mandatory.
 - 6.2.6. In adverse weather conditions berthing at this location is not recommended.
- 6.3. **Dinghy Mooring on AA Pier** – Dinghies may be moored on the eastern side of AA pier. The conditions are:
 - 6.3.1. These terms and conditions apply to all dinghies and personnel.
 - 6.3.2. Dinghies must only occupy the designated area and not be moored past the sign on AA pier.
 - 6.3.3. Mooring is complimentary.
 - 6.3.4. Dinghies must be moored with lines as per these terms and conditions. Under no circumstances should dinghies be moored with chains, wires or cables or be padlocked to the marina.
- 6.4. **Western Breakwater** – The water space outside the Western Breakwater is a designated Fairway for the approaches to the Marina. **UNDER NO CIRCUMSTANCES SHOULD ANY VESSEL OR DINGHY BE MOORED OR TIED TO THE WESTERN**

BREAKWATER OR SHOULD THE BREAKWATER BE USED FOR LOADING OR UNLOADING OF VESSELS.

7. MANAGEMENT

7.1. Appointment of Manager

7.1.1. The Licensor shall appoint a manager to perform the obligations of the Licensor under these Terms and Conditions. Such manager shall act for and on behalf of the Licensor, and shall have all the rights and powers of the Licensor.

7.1.2. The Occupier shall obey all lawful directions of the Licensor's manager whether or not the specific instruction is covered by these Terms and conditions.

7.2. The Occupier agrees and understands that the WMMT has the right to require the Occupier or Visitors (or any of them) to leave the marina immediately if they act recklessly or unreasonably or fail to observe these Terms and Conditions or any other applicable regulations.

7.3. WMMT reserves the right to, at any time and at its sole discretion, introduce regulations and new Terms and Conditions or to vary these regulations and terms and conditions to better administer the marina or for the betterment of the interests of the Occupiers as a whole or to comply with statutes, regulations or by Laws.

7.4. WMMT reserves the right to give exception to any of these terms and conditions on a temporary basis providing the exception is provided to the Occupier in writing and does not in any way compromise the immediate safety of the marina, vessels in the marina or any other Occupier.

7.5. WMMT is the sole manager of the marina and its decisions are final on all matters. WMMT will not tolerate any physical, emotional or verbal abuse of a Trustee, employee, tradespersons or invitee of WMMT. Any such abuse or vexatious communications from an Occupier may be cause for immediate termination of the Occupiers Berth Occupation Licence or Rental Agreement as the case may be.

8. CONSIDERATION

8.1. The Occupier agrees to pay a fee to WMMT, at the rate and on the terms and conditions set out in the Rental Agreement or Berth Occupation Licence.

8.2. In the case of: -

8.2.1. Occupation for a period of 30 days or less, the fee is payable in advance by the occupier ("short term occupation").

8.2.2. Occupation for a period of longer than 30 days, but that is not a "Licence", then monthly in advance and monthly thereafter for the term of occupation ("long term occupation").

8.2.3. Occupation as provided in a "Berth Occupation Licence" is payable as set out in the Licence ("licence").

8.3. All payments to be made by the Occupier by Internet Banking, Cheque, Credit or Debit Card, Direct debit or by cash.

8.4. WMMT may alter the rental rate by giving the Occupier one month's written notice of the revised rental rate.

8.5. Failure to pay the fee or any other moneys payable shall be a breach going to the essence of the Occupier's obligations. The Occupier shall compensate WMMT and WMMT shall be entitled to recover damages from the Occupier for such breach.

8.6. The acceptance by WMMT of any arrears of the Occupier's fee or other moneys payable shall not constitute a waiver of the Occupiers continuing obligations.

8.7. The Occupier may be required pay a late payment fee for fees unpaid after 14 days from the due date. A minimum fee of \$25.00 will be charged, or the Occupier will pay interest on the overdue amount at the rate of 15% per annum, whichever is the greater. Interest shall be calculated on a daily basis from the due date for payment until the actual date of payment and shall be payable on demand. The right of WMMT to recover interest shall be without prejudice to any other rights, powers and remedies of the licensor.

8.8. In the event of a default WMMT may secure the amount owed by the Occupier by way of Financing Statement over all or any of the personal property of the Occupier registered with the Personal Property Securities Register.

8.9. The Occupier therefore hereby irrevocably appoints the Chairperson of WMMT to be the attorney of the Occupier to execute all documents and do all such things as are necessary to give effect to the enforcement measures recorded above.

9. THE NOMINATED BOAT

9.1. The boat moored in the Berth must be nominated by the Occupier.

9.2. The nominated boat shall be used only for recreational boating purposes unless specific written consent has been obtained from WMMT whose decision shall be at its own discretion.

9.3. The Nominated Boat shall be personally and beneficially owned (as to not less than a one quarter share) by the Occupier if the occupation is by way of a Berth Occupation Licence.

9.4. The Nominated Boat shall conform to the dimensions (including spars, equipment or appurtenances of any kind) specified in Schedule B, Part 3 of the Berth Occupation Licence or on the Rental Agreement.

9.5. Statutory Declaration:

The WMMT may require the occupier to sign a statutory declaration at any time confirming the use of or ownership of the nominated boat.

9.6. Maximum Dimensions:

9.6.1. The Occupier shall at no time allow any part of any vessel using or moored in the Berth (including spars, bowsprits, anchors, davits and

tenders and any other things affixed to the vessel) to extend beyond the maximum permitted dimensions of the Berth as specified on the Occupiers Agreement.

9.6.2. For the avoidance of any doubt the vessel, as defined above, must not, when occupying the berth, extend beyond the outermost poles of the Berth or extend over the Berth face of the walkway. Vessels berthed on "C" pier must not extend beyond the yellow line marked on the walkway.

9.6.3. Temporary exemption from this clause may be granted by WMMT at its sole discretion.

9.7. Change of nominated boat:

9.7.1. The Occupier may, by written request to WMMT, nominate a different boat, provided that the boat so nominated complies with these Terms and Conditions. A nomination fee may apply.

9.7.2. Upon receiving consent from WMMT, but not before, the Occupier may substitute the boat to the new nominated boat.

9.7.3. For the avoidance of doubt, the new nominated boat shall replace the previous nominated boat to the intent that the Occupier cannot substitute boats at will.

9.7.4. In the event that a boat is moored in the berth which does not comply with these Terms and Conditions can, without limiting WMMT's other remedies hereunder, charge the Occupier two times the amount of the current short term occupation fee.

9.8. General Provisions of Nominated Boat:

9.8.1. Condition of Boats, Abandoned, Unseaworthy or Ill Repaired Vessels: -

9.8.1.1. The Occupier shall keep any vessel occupying the berth in good serviceable condition and repair as to not obstruct, interfere with or endanger other vessels navigating or berthed in the marina.

9.8.1.2. Vessels must be kept seaworthy, capable of self-propelled movement and in a reasonably tidy and clean condition.

9.9. **Notice to Repair:** WMMT may serve a Notice to Repair on the Occupier requiring the Occupier to remedy specific areas in default within the time specified in the notice.

9.10. Use of Floating Docks with the Nominated Boat:

9.10.1. The Occupier may place a floating dock in a berth only with the express written permission from the Licensor in the Licensor's sole judgement and at the Licensor's sole discretion.

9.10.2. A fee in addition to the annual fee will be charged to the Occupier by the Licensor.

9.10.3. The dock must meet the requirements of the Licensor.

9.10.4. The floating dock must be moored as instructed by the Licensor.

9.10.5. The floating dock and associated dock side equipment must not provide a hazard or

inconvenience to other Occupiers or visitors to the marina. The Licensor will be the sole arbiter as to whether such hazard or inconvenience exists.

9.10.6. A floating dock is not a "nominated boat" as defined in these Terms and Conditions but is bound by all the clauses on these Terms and Conditions as if it were one.

9.11. Dinghies and Tenders:

9.11.1. All dinghies and tenders must be stored on the nominated boat whilst the boat is in the marina.

9.11.2. Dinghies or tenders must not be moored in the berth at any time.

10. MOORING OF BOATS (FASTENING AND SECURITY)

10.1. No boats shall be anchored in the marina nor moored in such a way as to cause any obstruction in the marina or to any other user.

10.2. Boats shall only be moored to bollards, cleats or Ds and equipment designated for such purpose and in such a manner and within berths or such other position as WMMT may require.

10.3. Mooring Lines:

10.3.1. **Lines:** The use of correct lines and mooring procedures are essential for the safe berthing of boats and the safety of the marina. For the purpose of mooring any boat to the Berth, the Occupier shall use only mooring lines approved by WMMT.

10.3.2. To provide the required strength and shock absorbing properties lines should preferably be nylon or polyester. This is "good practice" to limit the possibility of damage to the marina or vessel in adverse weather conditions.

10.3.3. The use of lines that do not stretch is forbidden.

10.3.4. The minimum diameter of a nylon line when new must be as follows: -

8 metre vessel - 10mm

12 metre vessel - 16mm

15 metre vessel - 20mm

17 metre vessel - 20mm

20 metre vessel - 24mm

10.4. Notwithstanding the above minimum line sizes, it is the Occupiers' responsibility to ensure their vessel is moored with lines that are adequate for the size and weight of the vessel.

10.5. The Occupier is responsible for regular inspections of their mooring lines and in ensuring they are the correct size and type of rope. In particular, it is the responsibility of the Occupier to check the security of the lines and to replace them when necessary.

10.6. Lines deemed inadequate by the WMMT in size and type or condition and not replaced by the Occupier under a "notice to repair" will be replaced by the WMMT at the Occupiers expense.

10.7. The Occupier shall pay the cost of providing, fixing, repairing and replacing such lines from time to time

as required by WMMT. All mooring lines shall be left with the Berth on termination of this licence.

10.8. **Crossed Stern Lines:** Where practical all vessels, regardless of their length of stay in the marina, must be moored with crossed stern lines from the walkway to the port and starboard cleats at the stern of the boat. If in doubt as to how to comply with this clause the Occupier must discuss this requirement with WMMT before leaving their boat unattended or as soon as practical.

10.9. **Mooring Lines for Boats on Berths D1 to D11:** All boats moored on these berths MUST use the lines and the mooring configuration as advised by WMMT.

10.10. **Lines Attached to the marina but NOT attached to a vessel:** The WMMT monitors lines not fastened to boats and will at its sole discretion move or remove the lines so as to comply with the Marina Rules.

10.11. Lines when not fastened to the vessel must comply with the following: -

10.11.1. Must not be dropped in the water. This applies in particular to lines attached to the pile rings on piles.

10.11.2. Must be arranged in a tidy and seamanship like manner on the walkways or fingers so as to not act as a hazard or obstruction.

10.11.3. **Lines on Pile Rings:** Pile rings on piles have two sets of "Ds" – a port set and a starboard set. The Occupier will only use lines attached to the "Ds" appropriate for his berth and under no circumstances use the lines belonging to the adjacent berth. When not attached to a boat the Occupier will fasten these lines to the pile so as to not present a hazard to boats such as entanglement with a propeller.

10.12. **Cleats:** It is the responsibility of the Occupier to ensure that all cleats or tie up fasteners on the vessel are well maintained and fit for purpose.

10.13. **Notice to Repair:** The WMMT may serve on the Occupier a notice requiring the Occupier, within the time specified in the notice, to repair the fastening on any such vessel so as to ensure that they will safely secure the said vessel.

10.14. **Default:** If the Occupier fails to comply with a Notice to Repair to the satisfaction of WMMT, WMMT may:

10.14.1. Have the work completed to remedy the default to the satisfaction of WMMT and charge such work to the Occupier, and/or

10.14.2. Invoke the Termination or the Claims Procedure as contained in these rules.

10.15. **Berthing Steps:** If berthing steps or ladders are required to facilitate boarding and disembarkation from the boat the Occupier must obtain written permission from WMMT for their use. Berthing steps will remain the property of the Occupier and WMMT reserves the right to remove any such items without notice to the Occupier if they are deemed inappropriate or present a hazard to users of the pontoon or jetty.

10.15.1. **Tenders:** Tenders may not be left on vacated berths or left afloat at the bow or stern of the boat occupying the berth. WMMT reserves the right to remove any tenders from a vacated berth.

10.16. **Berth Audit by WMMT:** If a berth audit by WMMT identifies the vessel is inadequately moored the WMMT will issue the Occupier with a Notice to Repair.

11. BAILMENT

The terms of this agreement are not in any way intended by either party to create a bailment and the Occupier understands that WMMT accept no responsibility for the care of any vessel and its contents.

12. RIGHT TO MOVE AND ENTER BOATS

12.1. The occupier acknowledges and agrees that the WMMT shall have the right without prior notice to require the Occupier to move and relocate the boat and that the WMMT has the right to board, move, moor or re-berth any boat, gear, equipment or other property at the marina at any time for reasons of safety, security or emergency or to prevent or stop a nuisance.

12.2. The WMMT shall have the right to board and enter the boat (by force if necessary) to carry out any necessary or emergency work on the boat without prior notice to the Occupier if such work or action is reasonably necessary for the safety of the boat or the safety and or convenience of other Occupiers or visitors. The Occupier shall pay on demand the WMMT's reasonable charges and expenses for such work.

13. PRIVACY

13.1. **Right to take Photos or Videos** - WMMT from time to time may take photographs or videos of the marina for promotional or other purposes. If an Occupier has objections to either themselves or their boat being photographed or videoed they should advise this to WMMT. WMMT will take reasonable steps to avoid their inclusion in any photographs or filming. WMMT however cannot guarantee that they will not be included on an incidental basis.

13.2. **CCTV Surveillance** - WMMT operates CCTV cameras in the marina and vicinity in accordance with the CCTV Code of Practice and the Data Protection ACT.

14. MARINA SERVICES

14.1. Car Park:

14.1.1. Whenever practical and subject to availability Occupiers should use the Marina car park located on Old Church Road to ensure effective and efficient use of car parking available to the public and wider community.

14.1.2. Occupiers with a berth occupation Licence or a "Long Term" Rental Agreement may, when visiting the marina or nominated boat, use the Carpark on an occasional basis only, for the

parking of only one motor vehicle and upon display in the vehicle of the Whangaroa Marina Car Park berth holders pass.

14.1.3. The Occupier shall not park their vehicle in the middle of the car park in such a manner as to block access for water trucks delivering water to the water tanks occupying the eastern end of the carpark.

14.1.4. Consent for use of the carpark is on a "first come first served" basis and does not include the use of the carpark for long term parking of any vehicle nor for the parking of any trailer, boat trailer or boat.

14.1.5. Any deviation from the occasional parking of one vehicle per berth Occupier as in 14.1.2 above must be agreed to by the WMMT and may be subject to fees.

14.2. Marina Shore Power Connections:

14.2.1. All vessels connected to Shore Power must display a current Electrical Warrant of Fitness (EWoF) that complies with the latest update of "Electrical Installations on recreational craft" S/NZ3004.2.

14.2.2. It is the Occupiers responsibility to ensure his vessel has such a EWoF and WMMT must be satisfied that the vessel has a current EWoF before the vessel connects to shore power.

14.2.3. If the Berth Renter finds a fault with the power supply they must disconnect from the shore power and notify WMMT immediately.

14.3. Shore power supply leads:

14.3.1. Must be tested and tagged annually as per AS/NZS3760.

14.3.2. Must permit normal movement of the boat at its mooring under any weather conditions without undue stress. The electrical lead must not be fixed to a cleat any other such device on the boat so as to create a rigid fixture to the electrical plinth. Any damage caused to the plinth or the pontoon by so doing will be the sole responsibility of the Occupier

14.3.3. Must prevent water flowing along the supply lead from reaching the appliance inlet on the boat or the supply plug on the plinth.

14.3.4. Must minimise the likelihood of the plug or the cord falling in the water.

14.3.5. Must minimise the possibility of accidental disconnection.

14.3.6. Must not present a hazard to people walking in the vicinity of the boat.

14.3.7. Must not be wrapped around the electrical plinth on the pontoon. Any surplus lead to be contained on the vessel and not on the pontoon. This is a safety issue and the WMMT will remove any such lead.

14.3.8. When a vessel leaves its berth the electrical lead must not be left on the marina structure, fender or walkway. The WMMT will remove any such leads.

14.3.9. WMMT can advise regarding requirements for a vessel electrical warrant of fitness.

14.3.10. The WMMT will disconnect power to any berth that does not comply with the above conditions.

14.4. Use of Services (Water and Electricity):

14.4.1. The Occupier may use the water, power and any other facilities on the structures, in common with any other berth licensees, on an occasional basis only.

14.4.2. The Occupier shall ensure that the use of any power, water, sewage, pump or any other shore service complies with all the relevant regulations and rules governing the supply or discharge of water, sewerage or other shore services.

14.5. Hoses

14.5.1. Hoses must not be left on the marina structure, walkways or fingers except when in use and at no times, even when in use, must they be left on walkways so as to cause an obstruction.

14.5.2. When the vessel is unattended or has left the berth any hose must be removed from the marina structure except where there is provision provided for hose storage by the WMMT on the electrical and water plinth.

14.5.3. The WMMT will remove any hoses not conforming to this condition.

15. MARINA STRUCTURE

15.1. **No Alterations to Berth:** The Occupier shall not alter, modify the berth or adjacent structures, or accommodate anything other than the nominated boat or make any additions without the prior written approval of WMMT.

15.2. **Fenders or Berthing Wheels attached to marina structure:** The Occupier will not attach any fender or berthing wheel to the marina structure by any means unless prior written permission from WMMT is obtained.

15.2.1. Only fenders permanently attached to the marina will be authorised by the WMMT.

15.2.2. The attachment of any fenders or berthing wheels to the marina must be supervised by the WMMT or nominee. The WMMT will advise the Occupier of fenders that are acceptable and how and where they should be attached.

15.2.3. The Occupier is responsible for all costs for providing and attaching any fender or berthing wheel to the marina.

15.2.4. The Occupier will maintain the fender and maintain it in a clean and tidy seamanship like manner.

15.2.5. The Occupier will be responsible for any damage to the marina structure caused by the misuse of fenders berthing wheels or their incorrect attachment.

15.2.6. The WMMT will remove any fenders or wheels not meeting the above conditions.

- 15.2.7. The Occupier will be responsible for any damage to the marina structure caused by the removal of any fenders or berthing wheels.

16. DAMAGE TO MARINA PROPERTY

The Occupier will be responsible for all damage to all marina property including docks, pontoons, structures, pilings or property in the marina and or vessels and persons using the marina arising from any act or omission, neglect or default of the Occupier or its agents, servants, contractors, employees or invitees relating to the use of or storage of their boat.

17. SAFETY

- 17.1. **No wake Zone:** The marina is a “**NO WAKE ZONE**”. Boats manoeuvring in the marina are subject to a maximum speed of 5 knots subject to the NO WAKE requirement and should not cause wake and or endanger or cause nuisance to other Boats or users.

- 17.2. **NZ Maritime Rules: Part 22: Collision Prevention:** The Occupier shall navigate and control any boat in the marina at all times in a seamanlike manner and in particular in accordance with the “Maritime Rules: Part 22 Collision Prevention” so as to cause no danger, damage or inconvenience to any other person or boat. In particular, the boat shall proceed at a speed which does not create wake and is safe in relation to the prevailing conditions.

17.3. Propulsion of boats in the Marina:

- 17.3.1. **Nominated Boats** are to be propelled by an engine in the marina. A nominated boat must not be propelled by sail or oar except in an emergency.
- 17.3.2. **Nominated Waka.** A nominated Waka may be propelled by paddle or oars.
- 17.3.3. **Other vessels propelled by paddles or oars** that have permission from the WMMT to enter the marina may be propelled by paddles or oars.
- 17.3.4. **Tenders** from a nominated boat attempting to gain access to other parts of the marina may be propelled by oars but must keep clear of the fairways and must obey the “Maritime Rules Part 22: Collision Prevention”.

18. CONTRACTORS AND DIVERS

- 18.1. The Occupier is responsible for ensuring that any Contractor invited into the marina complex has in accordance with the marina’s Health and Safety Policy completed registration in the Marina’s Contractors Log Book.
- 18.2. On arrival at the marina a contractor must report to the marina office with a copy of their insurance documentation.
- 18.3. The Occupier must ensure and accepts responsibility to ensure that any contractor or tradesman invited into the marina complex for the purpose of carrying out work on the Occupier’s vessel holds sufficient insurance to satisfy the insurance requirements of WMMT.
- 18.4. The Occupier indemnifies and will keep indemnified WMMT against all actions, suits, claims, debts,

obligations and other liabilities arising out of the activities of any contractor invited by the Occupier to work on the Occupiers vessel.

- 18.5. Any contractor invited by an Occupier to work on the Occupiers vessel must behave in a workman like manner and not create any nuisance including obstructing walkways with trolleys or work material and will remove completely any debris or liquids deposited on or in the marina whilst working. The contractor must not use any walkway or finger as a place of work. The WMMT may at its sole discretion require a contractor to cease work and leave the marina

- 18.6. The Occupier is responsible for any contractor working on his vessel whether or not the Occupier is present when the work is undertaken. The WMMT will charge the Occupier for the administrative, cleaning or repair costs incurred due to the actions of a contractor.

- 18.7. If the Occupier requires the use of a Professional Diver in the marina they may only operate in the marina with the express written permission of WMMT and must first complete registration in the Marina’s Contractors Log Book.

19. WORKING PRACTISES (Including Resource Consent Requirements)

- 19.1. While a vessel is on a berth, permitted work is limited to minor running repairs or minor routine maintenance. The Resource Consent General Conditions state: -

Clause 10: Maintenance of vessels using the marina berths authorised by this consent shall be limited to minor activities that do not give rise to discharges or contaminants to the coast marina are or the potential for these to occur.

Clause 11: Boat maintenance that is likely to cause contaminant to either the coastal marine area shall not be carried out within or adjacent to the marina facilities (e.g. removal or application of paint or antifouling, or activities involving grease or oil).

- 19.2. Work on a boat at the marina other than that permitted in the above clause requires the prior written permission of the WMMT.
- 19.3. The Occupier must ensure that work carried out to a vessel in the marina is executed in a safe, workmanlike manner and does not cause any noise, dust, pollution, nuisance or annoyance to other Occupiers or users of the marina or cause any damage to any vessel, walkways, pontoons or any marina equipment. Tools and equipment must not be placed or left on any part of the marina. Occupiers must not spill liquids on or into the marina. All waste materials must be removed from the marina by the Occupier. The WMMT will charge the Occupier for the administrative, cleaning or repair costs incurred due to the actions of the Occupier.

19.4. The Occupier will ensure that any contractor working on his vessel will comply with Clause 18.0 of these Terms and Conditions.

19.5. The Occupier shall take all steps to be aware of current Health and Safety, Environmental and other legal requirements and shall comply with all reasonable instructions of the WMMT.

20.

21. VISITORS TO THE MARINA

21.1. The Occupier shall ensure that: -

21.1.1. All of its "Visitors" or "Crew" comply with these Terms and Conditions.

21.1.2. Any children under the age of 12 and for whom the Occupier or its visitors or crew are responsible, are accompanied by an adult.

22. BYLAWS, INSTRUCTIONS AND RULES

22.1. Bylaws and Instruction: The Occupier shall in the use of the Berth comply with all statutes, ordinances, regulations, by-laws, planning decisions, resource consents and associated conditions, or other lawful requirements.

22.2. The Occupier shall, in its use of the common waterways within the Marina comply with the provisions of the Ministry of Transport General Harbour Regulations, the International Collision Regulations, Harbour by-laws and any other provisions passed in substitution for, or in succession to, the above or acts and regulations passed after the Commencement Date relating to the use of the common waterways.

22.3. The Occupier shall also comply with any special instructions from time to time issued by the Licensor or any of its agents for the efficient, safe and harmonious use of the Marina and Facilities.

23. GENERAL RULES

Without limitation to the provisions of the above clauses the Occupier shall comply with the following rules: -

23.1. **No Pollution of Marina:** The Occupier shall not pollute or permit the pollution of the Marina or discharge in the Marina or its waters any poisonous, noxious, dangerous or offensive substance or thing.

23.2. **No Discharge of Sewage:**

23.2.1. Without prejudice to the generality of the preceding provision, the Occupier shall not discharge any sewage or otherwise empty any latrines into the Marina waters, or otherwise dispose of any garbage, oil, fuel or other material whatsoever on the Marina, except into containers which may be provided by WMMT. The failure of WMMT to provide containers shall not derogate from the Occupier's obligations under this provision.

23.2.2. If a vessel has been found to have discharged sewage into the marina the WMMT is bound by the Resource Consent to immediately evict the vessel from the marina and report the Occupier

to the Northern Regional Council for possible prosecution.

23.3. Overnight Accommodation (Resource Consent requirements)

23.3.1. No vessel may be used for overnight accommodation unless either: -

23.3.1.1. It is equipped with an effective sewage holding tank sealing device which is activated for the time the boat is moored.

23.3.1.2. It is equipped with a portable toilet.

23.3.1.3. The vessels holding tank has been sealed by the Occupier whilst the vessel is used for accommodation.

23.3.1.4. The vessel is equipped with a sewage treatment system specified in schedule 5 or 7 of the Resource Management (Marine Pollution) Regulations 1998 or is compliant with schedule 6 of this Act.

23.4. **No Living on Boat:** The Occupier shall not live on board any boat at the Berth or permit anyone else to do so without the express permission of WMMT. For the purposes of this clause a person shall be deemed to be "living aboard" a boat if they shall spend more than 8 nights aboard in any period of 30 days.

23.5. **Laundry:** The Occupier shall not erect any washing line on the boat or within the marina or allow any washing to be displayed on the exterior of the boat.

23.6. **Animals:** The Occupier shall not permit or suffer any animals (for example, but not limited to, dogs) belonging to the Occupier or in the Occupier's charge to enter or remain on the Marina, or land adjacent thereto under the control of WMMT, unless such animal is led by a chain, strap or other efficient restraint.

23.7. **Unaccompanied Children:** The Occupier shall not permit or allow any children for whom the Occupier is responsible, being children under the age of 12 years, to enter into the Marina unless accompanied by an adult.

23.8. **No Swimming, Diving or Fishing:** The Occupier shall not engage in any swimming or fishing, diving or underwater activities within the Marina subject to such reasonable directions as WMMT may stipulate from time to time.

23.9. **Control of Boats within the Marina:** The Occupier shall not within the Marina moor, sail or manoeuvre any boat so as to create a danger, impediment, obstacle or inconvenience to other Marina users.

23.10. **No Noise Nuisance:** The Occupier shall ensure that all halyards, lines, ropes, rigging and sheets on any vessel at the Berth are secured so that they shall not create any noise. The Occupier shall also observe a complete silence period after 11.00pm every evening until 8.00am the next morning, except for starting a motor to leave the Marina.

23.11. **Use of Fire Hoses:** The Occupier shall not use firefighting equipment supplied by WMMT for any purpose other than the fighting of fires.

23.12. **Storage of Flammable Substances:** The Occupier shall not store motor spirit, petroleum, petroleum products, fuel, oil, liquefied petroleum gas, compressed natural gas, kerosene or goods of a similarly dangerous or similarly inflammable nature on any Marina structure or area under the control of WMMT. Nothing in this clause shall prevent the Occupier from carrying small quantities of fuel, in safe containers, in quantities reasonably required for small outboard engines or stoves.

23.13. **Refuelling:** The Occupier shall not carry out any refuelling of any boat, outboard boat motor or tender within the Marina.

23.14. **Prohibited Activities:** The Occupier shall not carry out the following activities within the marina: -

23.14.1. spray painting

23.14.2. welding, metal grinding or dry sanding

23.14.3. Pressure washing of any kind during which the spray from the washing falls on any other vessel.

23.14.4. Filleting, gutting or otherwise cleaning of fish and the disposal of the blood or any part of the fish onto any part of the marina or into the waters of the marina.

23.14.5. In-water cleaning of the hull below the waterline.

23.14.6. Use walkways or fingers as "workshop" areas so as to block access for other users or to have any debris whatsoever resulting from any work be deposited on the marina or in the marina waters.

23.15. **Vehicles:** No bicycle, scooter, motorcycle, skateboard or any other vehicle may be used on any walkway or jetty.

23.16. **Trolleys:**

23.16.1. should only be used for their intended purpose.

23.16.2. Trolleys must not be used for storage purposes on jetties or pontoons.

23.16.3. Riding in trolleys is forbidden.

23.16.4. Trolleys must be returned to one of the trolley storage areas at the marina and must not be left at the Occupier's berth.

23.16.5. Trolleys must not be left blocking the walkways or where they can present an obstruction or hazard.

24. INSURANCE AND RESPONSIBILITY FOR LOSSES

24.1. Occupier to insure boat

24.1.1. The Occupier shall throughout the Term keep the Occupier's nominated boat, equipment and other property in the Marina fully insured against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, aircraft, burglary, act of God and all other usual maritime risks.

24.1.2. The Occupier shall also effect adequate public liability insurance against death and/or bodily injury to persons and loss or damage to property of others (including the Occupier)

arising out of the use of water craft and/or use or occupation of the Marina. The amount of such liability insurance shall be as specified by the Licensor from time to time.

24.1.3. The Occupier shall provide the Licensor with a copy of the above insurance policies and evidence that they are in full force and effect

24.1.4. The Occupier shall also require any contractor or labourer ("agent") who from time to time carries out commercial repairs, maintenance or work on the Occupier's boat to carry public liability insurance together with ship repairers' liability insurance, and shall direct such agent to produce a copy of such policy to WMMT. Such agent shall also be required to sign an "on site" register.

24.1.5. **Occupier not to invalidate insurance:** The Occupier will not do anything or allow anything to be done which may render void or voidable any policy of insurance retained by WMMT or the Occupier. If the Occupier shall do anything or allow anything to be done which may render any increased or extra premium payable in respect of any such insurance, the Occupier will forthwith on demand pay to WMMT such increased or extra premiums as WMMT may be liable to pay.

24.2. Limitation of Liability and Indemnity:

WMMT shall not be liable, and accepts no responsibility, for loss theft or damage to vessels of any type or the contents of such vessels or any third party property or persons using the same within the confines of, or near to the Marina, nor for the adequacy or otherwise of the Marina, or of the Berth, or any other part of the facilities of the Marina, and WMMT shall not be liable to the Occupier or any other person for any loss or damage to property, or death, or personal injury incurred or suffered within the Marina, however the same occurs, and whether or not attributable to the acts or defaults of WMMT, or its servants, agents, contractors or otherwise howsoever.

24.3. **Occupiers Indemnity:** The Berth Occupier, in addition, shall indemnify WMMT and the Kent Bay Trust against any loss, expense, legal liability, claims and costs incurred by WMMT or the KBT arising as a result of the Occupiers acts or omissions, or the acts or omissions of others to which the Occupier has contributed or the acts or omissions of any persons invited in the Marina by the Occupier.

24.4. **Occupiers responsibility for the boat and contents:** The Licensee shall be responsible for the security of the nominated boat or any vessel and will use their best endeavours to protect the boat and its contents from loss or theft including not leaving valuable items in view so as to possibly encourage targeting of boats by criminals.

25. TERMINATION

- 25.1. If the Occupier fails to pay the fees and charges due or otherwise defaults on any of the terms and conditions herein the WMMT may at its total discretion issue the Occupier with a default notice. Such notice to be sent to the Occupier's address recorded in the Occupiers Agreement.
- 25.2. If the breach detailed in the Default Notice is not remedied within 7 working days of receipt of the Default Notice then the right of occupation shall at the discretion of the WMMT be terminated immediately, PROVIDED THAT the Occupier shall remain liable for payment of rental fees and other charges until the vessel is removed from the marina.
- 25.3. WMMT may secure the default amount owed by the Occupier by way of Financing Statement over all or any of the personal property of the Occupier registered with the Personal Property Securities Register.
- 25.4. The Occupier therefore hereby irrevocably appoints the Chairperson of WMMT to be the attorney of the Occupier to execute all documents and do all such things as are necessary to give effect to the enforcement measures recorded above.
- 25.5. On the termination of the right of occupation the Occupier shall promptly remove the vessel and all goods and effects of the Occupier from the marina and in default of the Occupier so doing the WMMT shall be entitled to invoke the claim procedure as outlined below.

26. CLAIMS PROCEDURE

- 26.1. In cases of termination of the right of occupation and or failure to comply with a Default Notice WMMT may seize and sell a vessel to defray costs.
- 26.2. If the Occupier defaults under this agreement and occupation is terminated under the Termination clause of this agreement (clause 11) WMMT may at its total discretion, serve a notice of Claim on the Occupier by posting the same to the Occupier's given address and affixing the Notice of Claim in a prominent position to the vessel requiring the Occupier to remedy the default within 14 working days.
- 26.3. Should the Occupier fail to comply with the Notice of Claim, WMMT may (but without any obligation to do so) without further notice seize the vessel occupying the berth and sell it to recover the cost of removal and storage from the Occupier. WMMT can at its total discretion either secure the vessel in its berth or alternatively remove the vessel to another berth or hardstand. Where WMMT issues a Notice of Claim in accordance with this claim procedure it shall be entitled to a lien on the vessel to the extent of the costs of the removal and storage.
- 26.4. If 14 days after the date for compliance with the Notice of Claim has fallen due the Occupier has failed to remedy the default WMMT may, at any time thereafter, offer the vessel for sale by public auction or private contract and apply such of the proceeds of any resulting sale first in satisfaction of WMMT's

expenses incurred in the removal and storage including administrative expenses and the cost of providing custodians, secondly in or towards satisfaction of any debts or liabilities owed by the Occupier to WMMT and thirdly to the Occupier.

- 26.5. The Occupier hereby irrevocably appoints the Chairman of the WMMT to be the attorney of the Occupier to execute all documents and to do all things as necessary to give effect to such sale.
- 26.6. **Default in Complying:** Should the Occupier fail to comply with any such notice with the time specified, WMMT may, without incurring any liability for so doing and without further notice, remove the vessel and recover the cost of removal from the Occupier.
- 26.6.1. **WMMT Lien:** Where WMMT removes any vessel in accordance with this clause, it shall be entitled to a lien on the vessel to the extent of the costs of removal and storage.
- 26.6.2. **WMMT Right to Sell:** Should the Occupier fail to claim such vessel within the period of one month after the date of such removal, WMMT may at any time thereafter offer the same for sale and appropriate the proceeds of any resultant sale in satisfaction of such expenses as may be incurred in respect thereof.
- 26.6.3. **Custodial Arrangements:** WMMT may, if WMMT thinks fit, place and maintain on such vessel such number of custodians as may be necessary, and WMMT shall be entitled to a lien on the vessel to cover the costs in so doing.

27. EMERGENCY MANAGEMENT

- 27.1. The WMMT reserves the right to use the berth in case of an emergency and also to require the Occupier to vacate the berth if necessary to allow urgent repairs to be carried out. In such circumstances WMMT may with best endeavours, but shall not be obliged to, provide an alternative berth or mooring.
- 27.2. In extreme emergencies, WMMT reserves the right to take whatever steps are required to ensure the integrity of the marina facility. WMMT's judgement in this respect is actioned at their sole discretion.

28. PRIVACY ACT DISCLOSURES

- 28.1. The Occupier hereby authorises WMMT to upon default or termination of this agreement disclose to the membership of the Marina Operators Association of New Zealand any personal information held by WMMT about the Occupier.
- 28.2. The Occupier hereby consents to WMMT disclosing the status of a Financing Statement registered over the personal property of the Occupier held in respect of any liquidated default to such Marine Brokers as WMMT thinks appropriate.

29. NOTIFICATION OF OCCUPIER'S ADDRESS

- 29.1. Notification of Address: The Occupier shall at all times keep WMMT informed of any change of the Occupier's current address from that stated in the Schedule, or alternatively the name and address of

any Agent to whom the Occupier grants unlimited authority to act for the Occupier in all matters concerned with or arising out of this licence, and in that event WMMT shall be entitled to deal with that agent in all respects as if the agent were the Occupier, and the Occupier shall be bound accordingly.

30. SERVICE OF NOTICE

30.1. Notices: Wherever in this licence WMMT is required to give notice to or communicate in any way with the Occupier, such notice or communication shall for all purposes be deemed sufficiently made, given, served or communicated if given in writing by WMMT, and posted to the Occupier or his agent at the last address recorded with WMMT, and any notification so posted shall be deemed to have been delivered and received in the ordinary course of post.

31. NEW ZEALAND LAW TO APPLY

31.1. The law to which these Terms and Conditions are subject is New Zealand law.

32. LIABILITY OF WMMT

32.1. **Limitation of Liability:** WMMT contracts as a Board incorporated under the Charitable Trust Act 1957, and the liability of any trustee of WMMT hereunder is not personal, but limited to the assets of WMMT from time to time.

SCHEDULE A - DEFINITIONS:

"Authority" means any local body, Government or other authority or department having jurisdiction or authority, over or in respect of, the Marina or its use or occupation.

"Berth" means the berth in the Marina, described in the Schedule of Licence Details.

"Berth Occupation Licence" means a Deed of Licence granted by WMMT to a Licensor pursuant to a separate Deed.

"Rental Agreement" means a rental agreement to occupy a berth by the WMMT to the Occupier pursuant to the terms in the agreement.

"Boat" means any boat or vessel whether nominated by the Occupier or not.

"Carpark" means the portion of the land on Old Church Road, Whangaroa, contained in Certificate of Title NA115A/760 comprised as Lot 2 Deposited Plan 184356 that is allocated for the parking of vehicles.

"Crew" means any person manning a vessel for the Occupier.

"Default Rate" means the Licensor's bank overdraft interest rate plus a further 4% per annum.

"Fee" means the amount of funds required to be paid by the Occupier to WMMT for occupation of the berth.

"Facilities" means the waterways, parking areas, toilets, walkways, shower and laundry facilities in or available in the "marina" subject to payment for such facilities as is required.

"Goods and Services Tax" and "GST" means tax levied pursuant to the Goods and Services Tax Act 1985 and includes any tax levied in substitution for such tax.

"Licensor" means the Body Corporate of Whangaroa Marina Management Trust incorporated under registration number 2631115 referred to as "WMMT" or its successors and assigns.

"Marina" wherever used herein includes the Marina waters, the seabed thereunder, the floating structures, fingers and jetties, all Marina foreshore areas, administration and service areas, parking areas, ramps and driveways and all other areas under the control or administration of WMMT

"Marina Area" means the area of seabed as described in Resource consent 36864

"Navigation Area" means the area of seabed adjoining the Marina Area.

"Nominated Boat" means the boat specified in Schedule B, Part 3, Nominated Boat Details in the Berth Occupation Licence or in the Rental Agreement.

"Occupier" means the person(s) who is entitled to occupy, for the time being, the marina structure and use the associated common area and structures pursuant either to Berth Occupation Licence or Rental Agreement or clause 5.0 of these terms and conditions or their crew or visitors or any other person entering the marina.

"Rental Agreement" means the booking form or document used by the WMMT for recording the booking and rental of a berth. The WMMT reserves the right to change or alter this form at any time.

"Rental Rate" means the rate charged under a Rental Agreement or a Berth Occupation Licence.

"Maritime Rules of the Road" means Part 22: Collision Prevention of New Zealand Maritime Rules which give effect to "The convention on the International Regulations for Preventing Collisions at Sea 1972" to which New Zealand is party.

"Services" means the power, water and other services provided for the benefit of the Occupier in the Marina.

"Structures" means the breakwater, fingers, piles and other structures constructed or placed on or in the Marina Area.

"Vessel" means any boat or vessel whether nominated by the Occupier or not.

"Visitor" mean any person accompanying an Occupier whether invited by the Occupier or not.

"WMMT" means the Body Corporate of Whangaroa Marina Trust incorporated under registration number: 865826 referred to as "WMMT" or its successors and assigns

"Working Day" means any day of the week other than:

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, Waitangi Day, and Auckland/Northland Anniversary Day; and

(b) a day in the period commencing with 24 December in any year and ending 5 January in the following year.

A working day shall be deemed to commence at 9.00am and terminate at 5.00pm.



Whangaroa Marina Management Trust

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