

# **KERIKERI CRUISING CLUB**

## **BERTH LICENCE RULES**

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Formally adopted by Special General Meeting on the 14<sup>th</sup> day of May 2003.

### 1. INTERPRETATION

1.1 In these Rules, unless the context requires otherwise:

"*Berth*" means a berth in the Marina in respect of which a Licence has been issued to a Licensee by the Club;

"*Club*" means Kerikeri Cruising Club Incorporated, being a duly incorporated society and having its registered office at Kerikeri and includes its successors and assigns;

"*Financial Year*" means the financial year of the Club, commencing on 1 July and ending on 30 June, or such other financial year as may be adopted by the Club from time to time;

"*Licence*" means a licence to use a Berth in the Marina issued by the Club to a Licensee;

"*Licensee*" means the person(s) identified as such in the Schedule to a Licence and where there is more than one person then each of them jointly and severally, and includes each such person's successors and assigns;

"*Licensee's Proportion*" means the Licensee's proportion of the Operating Expenses determined in accordance with clause 2.1;

"*Marina*" means the marina development owned and operated by the Club and situated at Doves Bay, Kerikeri Inlet, Kerikeri;

"*Maximum Transfer Price*" means the maximum transfer price for a Berth determined in accordance with clause 8.1(f) of the Licence;

"*Operating Expenses*" means all costs, charges, expenses, wages, salaries, fees and outgoings paid or payable by the Club (or on its behalf) in the management, supervision and operation of the Marina as described at clause 2.5;

"*Refurbishment Account*" means the refurbishment reserve fund to cover prospective repairs, renovations, works, replacements and maintenance of a substantial but infrequent or irregular nature in respect of the Marina structures and services;

"*Rules*" means these berth licence rules as may be varied, amended or replaced from time to time;

"*Statutory Supervisor*" means TOWER Trust Limited at Wellington and any successors; and

"*Visitors Berth Pool*" means a pool of Berths established by the Club for use from time to time by visitors to the Marina, as described in section 24.

- 1.2 Clause headings appear as a matter of convenience and will not affect the construction of these Rules.
- 1.3 In these Rules where the context requires or admits:
- (a) The plural number includes the singular number and vice versa, and words importing any gender includes the other gender;
  - (b) References to a statute include amendments to that statute and a statute passed in substitution for that statute and regulations passed under that statute;
  - (c) A reference to "written" or "in writing" includes facsimile and electronic mail communications;
  - (d) Reference to a "person" includes an individual, firm, company, corporation, unincorporated body of persons or the trustees of a trust (in each case whether or not having separate legal personality);
  - (e) References to clauses, sections and schedules are to those contained in these Rules, unless stated otherwise; and
  - (f) Any covenant or agreement on the part of two (2) or more persons shall be deemed to bind them jointly and severally.

## 2. OPERATING EXPENSES

- 2.1 The Licensee's Proportion shall be calculated as follows:

$$\text{Licensee's Proportion} = A/B$$

Where:

- (a) "A" is the total Operating Expenses; and
- (b) "B" is the number of Berths in the Marina for which Licences have been issued.

Provided that:

- (a) The Club may adjust the Licensee's Proportion so as to ensure that each Licensee pays such proportion of the Operating Expenses as the Club determines is fair and reasonable. Further, the Club may allocate the Operating Expenses to a greater or lesser extent to different sizes of Berths to ensure that each Licensee bears that proportion of Operating Expenses which the Club considers fair and reasonable; and
  - (b) The Club by resolution of its executive committee may from time to time alter the method of calculation of the Licensee's Proportion provided that such alteration shall not take effect until notice of the same has been sent to all Licensees and then upon the commencement of the next Financial Year.
- 2.2 On or before the end of each Financial Year, the Club shall notify the Licensee of the Club's reasonable estimate of the total Operating Expenses and Licensee's Proportion for the ensuing Financial Year, following which the Licensee will pay the estimated Licensee's Proportion to the Club by half-yearly instalments in advance or in such other instalments and at such times as the Licensee and Club may agree. Payments

of the Licensee's Proportion shall be by automatic payment or such other manner as directed by the Club and all payments shall be made without demand and free of all deductions.

- 2.3 The actual total Operating Expenses and actual Licensee's Proportion will be determined by the Club at the end of each Financial Year and any necessary adjustment between the estimated and actual Licensee's Proportion shall be made as follows:
- (a) Where the estimated Licensee's Proportion exceeds the actual Licensee's Proportion, the excess shall be credited to future Licensee's Proportion payments to be made by the Licensee; or
  - (b) Where the actual Licensee's Proportion exceeds the estimated Licensee's Proportion, the shortfall shall be payable by the Licensee to the Club upon demand.
- 2.4 As soon as practicable after the end of each Financial Year and upon request by the Licensee, the Club will supply to the Licensee a statement giving reasonable details of the total Operating Expenses for the preceding twelve (12) month period stating the amount of the Licensee's Proportion. Such statement shall (if so required by the Licensee in writing) be certified correct by an independent chartered accountant to be retained by the Club for the purpose.
- 2.5 "*Operating Expenses*" means (to the extent to which the same are not separately payable from time to time by any Licensee in terms of the Licence, these Rules or otherwise) all costs, charges, expenses wages, salaries, fees and outgoings paid or payable by the Club (or on its behalf) in the management, supervision and operation of the Marina including, but not limited to, the following expenses:
- (a) All rates, charges, levies and fees of any local body or Government body, authority or department, including levies payable by the Club under the Accident Compensation Act 1982, in respect of the Marina;
  - (b) All insurance premiums, valuation fees and other charges payable by the Club for the insurance of such items and against such risks as the Club shall in its sole discretion from time to time determine;
  - (c) All charges for utilities and other services or requirements whatsoever supplied to or used by the Marina;
  - (d) All running costs and costs of repairs and maintenance to and replacement of all utilities, services and equipment on the Marina, including the cost of service contracts in respect of such utilities, services and equipment and depreciation at normal rates on all machinery and equipment acquired by the Club for such purpose;
  - (e) All costs of repairs, painting, dredging channels, maintenance, renovations and replacements of and to the Marina;
  - (f) All costs and expenses associated with the repair and maintenance of common public facilities, parking areas, fencing, direction and information signs and drains, and the regular maintenance of lawns and planted areas including the replacement of plants and shrubs;

- (g) All costs and expenses in operating (including, but not limited to, all taxes, levies and assessment of every nature and kind) Marina equipment, vessels, vehicles and other facilities, and including all costs and expenses of insuring, repairing, maintaining and replacing equipment, vehicles and other facilities relating to or serving the Marina and, where appropriate, an amount necessary for the amortisation of the Club's initial capital investment in the said equipment, vessels, vehicles and other facilities over the expected life thereof;
  - (h) The cost of cleaning the Marina area including the common public facilities, parking areas, landscaped areas and the cost of garbage disposal and any charges or remuneration paid to any contractor for any such purpose;
  - (i) All costs (including wages, remuneration and other fees) of administration, operation supervision, supply, caretaking, night watchmen, security personnel or contractors, parking attendants, cleaning, gardening and provisions of any other services to the Marina which the Club may actually and reasonably incur;
  - (j) Such other costs and expenses including professional fees as may from time to time arise and be properly and reasonably assessed, charged, chargeable, paid, payable or otherwise incurred by, against or upon the Club in relation to the ownership, management and maintenance of the Marina;
  - (k) All licences or other fees payable by the Club in relation to the Marina under any licence, permit or consent from time to time in force in relation to the Marina;
  - (l) Any management fee charged by the Club, provided that any such management fee shall not exceed a sum equal to 10% of the aggregate of the costs, charges, expenses, wages, salaries, fees and outgoings referred to in sub-paragraphs (a) to (k) (inclusive) above; and
  - (m) Such annual sum as the Club shall from time to time determine to be placed in the Refurbishment Account, to cover prospective repairs, renovations, works, replacements and maintenance of a substantial but infrequent or irregular nature in respect of the Marina structures and services, provided that nothing in this clause shall affect the Licensees' obligations in terms of clause 2.7. Such payments to the Refurbishment Account shall be called "*Refurbishment Contribution Charges*".
- 2.6 In the event that any of the Operating Expenses are not incurred solely in respect of the Marina, the Club shall make an apportionment of the relevant Operating Expense so that a fair proportion of those Operating Expense will be attributable to the Marina. The Club's determination of such proportion shall be final and binding on the Licensee.
- 2.7 Where it has been determined by the Club that the funds held in the Refurbishment Account are not sufficient or it is not appropriate to use the funds held in the Refurbishment Account for the repair, renovation, replacement or substantial maintenance of the Marina structures and services, then the Licensee shall upon demand pay to the Club the Licensee's Proportion of any such insufficiency or the amount required to undertake the repair, renovation, replacement or substantial maintenance in one cash sum.

### **3. RECREATIONAL BOATS ONLY**

- 3.1 Unless the Club agrees otherwise in writing, the Berth shall be used for recreational purposes only by the Licensee.

### **4. MAXIMUM DIMENSIONS OF BOAT**

- 4.1 The Licensee shall at no time allow any part of the boat moored in the Berth to extend beyond the dimensions of the Berth and in particular (but not by way of limitation) the Licensee shall not permit any part of such boat to extend onto or over any walkway forming part of the Marina.

### **5. VACATE BERTH**

- 5.1 The Club may at any time require the Licensee to vacate the Berth either on a temporary or permanent basis and to take up another suitable berth within the Marina.
- 5.2 If the Club requires the Licensee to permanently vacate the Berth:
- (a) The Club shall take all such steps as are reasonably practicable to ensure that the new berth is similar in size, value and location as the Berth;
  - (b) The Club will not be liable to pay any compensation in respect of which change of Berth; and
  - (c) The terms of this Licence shall apply to the new berth.
- 5.3 The Club may use the Berth in case of emergency and may require the Licensee to vacate the Berth to enable the Club to carry out repairs or maintenance and in either such case the Club shall not be obliged to provide an alternative berth.

### **6. SECURITY OF BOAT**

- 6.1 The Licensee shall use only standard mooring lines as specified by the Club from time to time for the purpose of mooring any boat to the Berth.
- 6.2 The Licensee shall pay the cost of providing, attaching, repairing and replacing the mooring lines from time to time in accordance with the instructions of the Club.
- 6.3 The Club may by notice to the Licensee require the Licensee to repair the fastenings on any boat in the Berth so that they safely secure such boat. If the Licensee fails to comply with any such notice within the time specified, the Club may remove such boat.

### **7. REMOVAL OF BOAT**

- 7.1 Where the Club is entitled to remove any boat occupying the Berth because of default on the part of the Licensee or any persons for whom the Licensee is responsible:
- (a) The Club may recover the cost of removal of the boat from the Licensee;
  - (b) The Club shall not incur any liability to the Licensee under such circumstances;

- (c) Where the Club removes any boat in accordance with this clause, the Club shall be entitled to a lien on such boat for the costs of removal and storage;
- (d) If the Licensee fails to claim such boat within a period of three (3) months after the date of removal, the Club may offer such boat for sale. The Club may utilise the proceeds of sale:
  - (i) In payment of all costs and expenses of and incidental to the sale;
  - (ii) To recover the costs of removal and storage of such boat; and
  - (iii) Subject to the lawful claims of any other persons, pay the balance of the proceeds of sale to the Licensee; and
- (e) The Club may (but shall not be obliged to) appoint a custodian for the care of such boat pending any sale and the cost of doing so shall be treated as a cost incurred in the course of the sale in terms of clause 7.1(a)(i).

## **8. ALTERATIONS TO BERTH**

- 8.1 The Licensee shall not make any alterations or additions to the Berth or adjacent structures without the prior consent of the Club.

## **9. USE OF FACILITIES**

- 9.1 The Licensee may use the water, power and any other facilities forming part of the Marina in common with any other berth licensees from time to time but on an occasional basis only.
- 9.2 If the Licensee requires the permanent or regular use of such facilities, the Licensee shall advise the Club accordingly and the Club shall be entitled to charge such sum as it considers appropriate for the use of the facilities. The Club's decision as to what constitutes permanent or regular use for the purposes of this clause shall be final and binding on the Licensee.

## **10. POLLUTION**

- 10.1 The Licensee will not pollute or permit the pollution of the Marina or the waters of the Marina.
- 10.2 In particular (but not by way of limitation of clause 10.1), the Licensee shall not discharge or dispose of any sewage, garbage, oil, fuel or other material on the Marina or into its waters except into containers which may be provided for the purpose by the Club. However, the Club shall not be under any obligation to provide such containers.
- 10.3 Failure by the Club to provide the containers referred to in clause 10.2 shall not excuse the Licensee from the Licensee's obligations pursuant to clauses 10.1 and 10.2

## **11. LIVING ON BOARD**

- 11.1 The Licensee shall not, without the prior written consent of the Club, live on board any boat at the Berth or permit anyone else to do so.
- 11.2 For the purpose of this section, the expression "*live on board*" shall mean sleeping overnight on any boat for three (3) consecutive nights or more.

**12. DOGS**

- 12.1 All dogs, owned or in the charge of the Licensee or the guests of the Licensee, shall, while on the Marina, be led by a chain, strap or similar efficient restraint.

**13. CHILDREN**

- 13.1 The Licensee shall ensure that any children who the Licensee brings onto the Marina or invites onto the Marina are supervised at all times.

**14. SWIMMING**

- 14.1 The Licensee and the guests of the Licensee shall not swim, dive or engage in any other underwater activities within the Marina.
- 14.2 The provisions of clause 14.1 shall not prohibit the underwater inspection of and minor repairs to any boat at the Berth in accordance with such reasonable direction as are stipulated by the Club from time to time. The Licensee shall not be entitled within the Marina to clean the hull of any boat underwater.

**15. CONTROL OF BOATS**

- 15.1 The Licensee shall not within the Marina moor, sail or manoeuvre any boat as to create a danger, obstacle or inconvenience to other Marina users.

**16. NOISE NUISANCE**

- 16.1 The Licensee shall ensure that all halyards, lines, ropes, rigging and sheets on any boat using the Berth or otherwise berthed in the Marina and under control of the Licensee are secured so that they do not create any noise.

**17. STORAGE**

- 17.1 The Licensee shall not permit or allow any property under the control of the Licensee or the guests of the Licensee to be stored on the Marina (including, without limitation, the walkways, fingers or foreshore thereof), without the prior written consent of the Club.

**18. ALCOHOL**

- 18.1 Neither the Licensee nor the guests of the Licensee shall consume alcoholic beverages within the Marina except on private vessels or on licenced premises.

**19. FIRE HOSES**

- 19.1 The Licensee shall not use fire fighting equipment supplied by the Club for any purpose other than the fighting of fires.

**20. SAFETY RESTRICTIONS**

- 20.1 The Licensee shall not store motor spirit, 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 in any area under the control of the Club without the prior consent of the Club.



- 20.2 The Licensee shall not bring within the Marina any motor spirit, petroleum products, fuel, oil, liquefied petroleum gas, compressed natural gas, kerosene or goods of a similarly dangerous or similarly inflammable character without the prior consent of the Club.
- 20.3 Nothing in this section 20 shall prevent the Licensee from carrying onto the Marina and directly to the Licensee's boat small quantities of fuel in safe containers in quantities reasonably required for any small outboard engines or stoves on the Licensee's boat.
- 20.4 The Licensee shall not carry out any refuelling of any boat within the Marina, other than at the Marina's fuel jetty from the pumps provided, unless otherwise directed or authorised by the Club.

## **21. INSURANCE**

- 21.1 The Licensee shall at all times keep all boats, craft and other property owned or brought into the Marina by the Licensee and/or invitees of the Licensee, fully insured whilst within the confines of, or near to, the Marina against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accidental damage, burglary, act of God and all other usual maritime risks.

## **22. NOTIFICATION OF LICENSEE'S ADDRESS**

- 22.1 The Licensee shall at all times keep the Club informed of any change to the current address of the Licensee, or alternatively, the name and address of any agent to whom the Licensee grants unlimited authority to act for the Licensee in all matters concerned with or arising out of the Licence.
- 22.2 Where the Licensee has appointed an agent then the Club shall be entitled to deal with that agent in all respects as if the agent was the Licensee and the Licensee shall be bound accordingly.
- 22.3 In the event that the Licensee comprises more than one person, then all those persons comprising the Licensee shall appoint one of their number or some other person to be their agent as set out in clause 22.1 and in default of any such appointment, the first named person on the Licence shall be deemed to be their agent in terms of clause 22.1.

## **23. HOURS OF OPERATION**

- 23.1 The Marina shall be open twenty-four (24) hours a day to all Licensees and the public in general on such terms and conditions as the Club from time to time determines.

## **24. VISITORS - ACCESS TO BERTHS**

- 24.1 The Club may elect to operate a Visitors Berth Pool for visitors on the following basis:
- (a) Any Licensee not using the Licensee's Berth may advise the Club accordingly and request that the Club include the Berth in the Visitors Berth Pool. In making the request, the Licensee shall specify the dates between which the Berth shall be vacant;
  - (b) The Club shall from time to time allocate berths forming part of the Visitors Berth Pool to visiting boats and charge such visitors a fee which is from time to time fixed by the Club. Such fee shall be credited to the "*Visitors Berth Pool Account*".

- (c) The Club shall be entitled to deduct from the Visitors Berth Pool Account on an annual basis:
  - (i) An administration fee from time to time fixed by the Club; and
  - (ii) The cost of repairing damage caused to any of the Berths comprising the Visitor Berth Pool by visitors where the Club has been unable to recover the same from the visitors.
- (d) Following the deduction of those items specified at clause 24.1(c) the balance of the Visitors Berth Pool Account as at the end of each Financial Year shall be distributed to those Licensees whose Berths have formed part of the Visitors Berth Pool during that Financial Year on a pro rata basis for the period of time during which the Berth formed part of the Visitor Berth Pool, whether or not with Berth was occupied by visitors during that period.

## **25. FURTHER DEVELOPMENT**

- 25.1 The Licensee acknowledges that the Club will be entitled from time to time to improve, extend, add to, reduce or alter the Marina in any manner whatsoever with the consent of the Statutory Supervisor. The Club acknowledges that the Statutory Supervisor may not be able to grant such consent without the prior approval of the Licensees by way of Extraordinary Resolution. In exercising such right the Club will endeavour to cause as little inconvenience to the Licensee as is practicable in the circumstances.
- 25.2 The Licensee acknowledges that the Licensee will not be entitled to make any requisition objection or claim for compensation in respect of any improvement, extension, addition or alteration to or reduction of the Marina or alteration to the facilities comprising the Marina to the extent that the Statutory Supervisor has consented to the same in terms of clause 25.1 and will if required by the Club sign all such consents and surrenders as may be required by the Club to give effect to such improvement, extension, addition or alteration to or reduction of the Marina or alteration to the facilities comprising the Marina to the extent that the Statutory Supervisor has consented to the same in terms of clause 25.1.
- 25.3 The Licensee will not object either to the operations associated with the construction and completion of additional floating structures, fingers and jetties or other improvements in the Marina or to any nuisance which may arise from the construction operations to the extent that the Statutory Supervisor has consented to the same in terms of clause 25.1. The Licensee will not institute or prosecute any action or proceedings for injunction or damages arising out of or consequent upon any such construction operations.

## **26. GENERAL**

- 26.1 A Licensee will be entitled to obtain a copy of these Rules upon request from the Club, which are to be supplied by the Club free of charge.
- 26.2 No waiver by the Club of a breach of any express or implied covenant in these Rules or the Licence by the Licensee shall operate as a waiver of another breach of the same or of any other covenant expressed or implied in these Rules or the Licence by the Licensee.
- 26.3 All demands, requisitions, consents, approvals or notices to be given by either the Club or the Licensee under these Rules or the Licence must be in writing and may be

given to or served upon the Club by delivery to the Club at its registered office or at the Marina office during normal business hours and in the case of a notice to be given to the Licensee by being posted to the Licensee at the address specified in the Licence or such other address as the Licensee may from time to time notify the Club. Any such demand, requisition, consent or notice if posted will be deemed to be received on the date it would have been received in the ordinary course of posting.

- 26.4 In any case where pursuant to these Rules or the Licence the doing or execution of any matter or thing by the Resident is dependent upon the consent or approval of the Club, such consent or approval may be given conditionally or unconditionally or withheld by the Club in its absolute uncontrolled discretion unless otherwise provided in these Rules or the Licence and such consent must be given in writing.
- 26.5 All rules previously in force are hereby repealed. However, all acts of authority that originated under the rules repealed in accordance with this clause shall endure for the purpose of these Rules as fully as if they had originated under these Rules and accordingly shall, where necessary, be deemed to have been so originated.