

KERIKERI CRUISING CLUB

MARINA BERTH LICENCE

**Law North Limited
Kerikeri
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“Licensee” means the person(s) identified as such in the Schedule and where there is more than one person then each of them jointly and severally, and includes their successors and assigns;

“Licensee’s Proportion” means the Licensee’s proportion of the Operating Expenses determined in accordance with the Rules;

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

“Maximum Transfer Price” means the amount calculated in accordance with clause 8.1(f);

“Named Boat” means the boat identified in the Schedule or such other boat as may be nominated by the Licensee and accepted by the Club from time to time in terms of this Licence;

“Operating Expenses” has the meaning given to that term by the Rules;

“Rules” means the Club’s berth licence rules as set out in the Appendix and as may be amended from time to time by the Club; and

“Working Day” means any day other than Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, Labour Day, Waitangi Day, and Auckland Anniversary Day.

1.2 Clause headings appear as a matter of convenience and will not affect the construction of this Licence.

1.3 In this Licence 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 “assign” mean to assign, transfer, sub-licence or otherwise dispose of an interest in this Licence or grant an occupation right in the Berth and references to “assigned” have a corresponding meaning;
- (f) References to clauses, sections, schedules and appendices are to those contained in this Licence, unless stated otherwise; and
- (g) Any covenant or agreement on the part of two (2) or more persons shall be deemed to bind them jointly and severally.

2. GRANT OF LICENCE

2.1 Pursuant to the Agreement the Club grants to the Licensee a licence to use the Berth on the terms and conditions set out in this Licence and the Licensee accepts such licence.

3. USE OF BERTH FOR NAMED BOAT

3.1 The Licensee shall use the Berth for:

- (a) the purpose of berthing the Named Boat; and
- (b) any other purpose authorised by this Licence, but for no other purpose.

3.2 The Licensee covenants that the Named Boat is individually and beneficially owned by the Licensee. The Licensee may at any time or times, by notice in writing to the Club, nominate a different boat, providing that the boat so nominated complies with section 4 of the Rules.

4. TERM OF LICENCE

4.1 This Licence commences on the Commencement Date and expires on 30 March 2051.

5. ANNUAL FEE

5.1 The Licensee will pay the Annual Fee to the Club by instalments in the amount and at the time provided for in the Schedule.

5.2 The Licensee acknowledges that the Club may from time to time review the Annual Fee payable by the Licensee. Such reviewed Annual Fee shall be payable by the Licensee in the amount and at the time provided for by the Club from the commencement of the Financial Year.

6. OPERATING EXPENSES

6.1 The Licensee will pay the Licensee's Proportion of the Operating Expenses in accordance with the Rules.

7. LICENCEE'S COVENANTS

7.1 The Licensee covenants as follows:

- (a) to be and remain a full financial member of the Club for so long as the Licensee is a Licence Holder;
- (b) to observe and be bound by the terms and conditions contained in this licence; and
- (c) to attend an annual meeting (if called to do so) for the purpose of considering accounts and balance sheets for the last preceding financial year and to transact any other business relating to the operation of the Marina.

8. PERMITTED ASSIGNMENT

8.1 This Licence may be assigned:

- (a) To the Licensee's executors or administrators following the death of the Licensee;

- (b) To the Licensee's beneficiaries following the death of the Licensee; or
- (c) Where the Licence is held by more than one person, to a lesser number of the same people.

9. OTHER ASSIGNMENTS

9.1 If the Licensee wishes to effect any assignment other than an assignment pursuant to clause 7.1 of this Licence, then the following provisions shall apply:

- (a) The Licensee shall notify the Club of the Licensee's desire to assign the Licence and the sale price sought for the Licence.
- (b) Within 10 Working Days of the Club receiving notice under clause 8.1(a), the Club shall advise the Licensee of the Maximum Transfer Price and the name or names of any prospective purchasers nominated by the Club.
- (c) Contemporaneously with the Club performing its obligations under clause 8.1(b), it shall notify the nominated prospective purchaser or prospective purchasers (referred to in clause 8.1(b)) of:
 - (i) The offer of the Licence for sale by the Licensee; and
 - (ii) The sale price for the Licence, being the lesser of the sale price nominated by the Licensee in accordance with clause 8.1(a) and the Maximum Transfer Price.
- (d) The Licensee shall accept the first offer to purchase the Licence by one of the nominated prospective purchasers nominated by the Club in accordance with clause 8.1(b) at the sale price determined in accordance with clause 8.1(c)(ii).
- (e) If the Licensee does not receive an offer in accordance with clause 8.1(d) within 10 Working Days of the Licensee receiving notice from the Club under clause 8.1(b) then the Licensee may assign the Licence to any person who otherwise satisfies the requirements of section 9, but the sale price shall not exceed the Maximum Transfer Price.
- (f) The Maximum Transfer Price shall be calculated according to the following formula:

$$\text{Maximum Transfer Price} = A \times \text{Inflation}$$

Where:

- (i) "A" is the total sum paid by the Licensee for the Licence; and
- (ii) "Inflation" is an amount equal to one (1) plus the percentage change in the Consumers' Price Index (All Groups) between the Base Date and the date of the last published figure for the Consumers' Price Index (All Groups) before the date on which the Licensee gave notice under clause 8.1(a).

The Club may from time to time, in its sole and absolute discretion, increase the Maximum Transfer Price to any figure greater than that calculated in accordance with the above formula. Whenever the Club makes such an increase in the Maximum Transfer Price then, in respect of assignments after the date of the Club's resolution increasing the Maximum Transfer Price, the Base Date shall be deemed to be the date of the Club's resolution increasing the Maximum Transfer Price.

9.2 The parties acknowledge that the consideration paid by the Licensee for the Licence was calculated on a cost only basis with no profit to the Club. For that reason the Licensee's right to receive any profit or capital gain from the Licensee's interest in the Licence is restricted. Accordingly, any consideration payable to the Licensee on the assignment of the Licence shall be limited to the Maximum Transfer Price.

10. CONSENT TO ASSIGNMENT

10.1 The Licensee shall not assign the Licensee's interest under this Licence without first:

- (a) Complying with sections 7 or 8;
- (b) Complying with the matters set out in this section 9; and
- (c) Obtaining the Club's consent to the assignment. Subject to the Licensee complying with either sections 7 or 8 and the matters set out in this section 9, the Club shall not unreasonably withhold its consent to an assignment of the Licensee's interest under this Licence.

10.2 The Licensee shall not assign the Licensee's interest under this Licence unless the Club first approves (in its sole and absolute discretion) the amount of any consideration payable in respect of that assignment.

10.3 The Licensee's application for consent to assignment by the Club shall include full particulars of:

- (a) The name, type, beam, length overall and draft of the boat which will occupy the Berth in the event of consent being given by the Club; and
- (b) Where the Licensee proposes to sub-licence this Licence or grant an occupancy right in respect of the Berth, the period of the proposed sub-licence or grant.

10.4 The Club may refuse its consent to any proposed assignment of the Licensee's interest under this Licence if, in its sole discretion, the Club considers:

- (a) That the proposed assignee is not a suitable party to have use of the Berth;
- (b) That the Berth is not suitable for the boat owned by the proposed assignee;
- (c) Where the Licensee proposes to sub-licence this Licence or grant an occupancy right in respect of the Berth, that the period of the sub-licence or grant is unacceptable to the Club, provided that the Club will not withhold its permission on this ground where the proposed period(s) will not exceed twelve (12) months in aggregate; or
- (d) The consideration payable by the assignee to the Licensee exceeds the Maximum Transfer Price.

10.5 The Club may grant its consent to any proposed assignment of the Licensee's interest under this Licence subject to such terms and conditions as the Club, in its sole and absolute discretion, considers appropriate.

10.6 The Club's consent to any assignment by the Licensor shall not extend to any other assignment by the Licensor and in the case of a sub-licensing or grant of occupancy right shall be strictly limited to the period approved.

10.7 Notwithstanding anything contained in this Licence, the maximum number of persons comprising the Licensee at any one time shall not exceed five (5).

10.8 For the purposes of sections 7, 8 and 9, if the Licensee or one of the persons comprising the Licensee is a body corporate any change in effective control of the body corporate (for example, but without limitation, a change in the shareholding of the company) shall be deemed to be an assignment of this Licence.

10.9 The Licensee shall not mortgage, charge, pledge or otherwise encumber its interest under this Licence.

11. GOODWILL

11.1 The Licensee shall not be entitled to any proprietary right or interest in the water space or other facilities of the Marina.

12. WATER SPACE AND ACCESS

12.1 This Licence relates only to the allocated water space of the Berth.

12.2 This Licensee shall have the right, in common with all other licensees of berths in the Marina, to:

- (a) Make fast to the allocated berth structures in the Marina; and
- (b) Access and use the common waterways and pathways of the Marina, in accordance with this Licence and the Rules.

13. RULES

13.1 The Rules and any rules made in addition to or in substitution for the same shall form part of this Licence.

13.2 The Licensee and all agents, employees and invitees of the Licensee shall at all times comply with the Rules.

13.3 The Club may from time to time by a majority of not less than 75% of those of its members who are licensees of berths in the Marina and who are entitled to vote and present in person or by proxy at any general meeting of the Club add to, vary, delete or substitute new rules for the Rules. No change in the Rules shall vary or modify the terms contained or implied in the Licence.

13.4 In the event of inconsistency between the Rules and this Licence the terms of this Licence shall prevail.

14. DEFAULT

14.1 The Club may cancel this Licence without notice to the Licensee in the event of:

- (a) The Licensee failing to remedy any default under the terms of this Licence, whether expressed or implied, for a period of one(1) month from the date on which the Club forwarded to the Licensee, notice of the Licensee's default and requiring that the default be remedied; or
- (b) The Licensee or any one of the persons comprising the Licensee (or in the case of a body corporate or unincorporated body, its nominee), as the case may be, ceases to be a member of the Club.

14.2 The cancellation of this Licence by the Club shall be without prejudice to the rights of the Club against the Licensee in respect of any default on the part of the Licensee prior to such cancellation.

- 14.3 Upon cancellation of this Licence, the Licensee shall immediately remove the Named Boat or any other boat occupying the Berth from the Berth and if the Licensee fails to do so the Club may remove that boat in accordance with the Rules.
- 14.4 Upon cancellation of this Licence the Club may take proceedings against the Licensee for any money then owing to the Club and the money already paid by the Licensee to the Club shall be deemed to be forfeited to the Club as liquidated damages, it being acknowledged by the Licensee that the Club has relied upon the Licensee making all payments in accordance with the terms of this Licence, the Rules and the Agreement for the purpose of developing and maintaining the Marina.
- 14.5 Any action taken by the Club in accordance with clause 13.4 shall be without prejudice to the Club's other rights at law or in equity in respect of this Licence and any default under the Licence by the Licensee.
- 14.6 Upon cancellation of this Licence, the Licensee shall have no right to any payment or compensation from the Club and shall have no claim against the Club.
- 14.7 Upon cancellation of this Licence, the Club shall be at liberty to grant a new licence for the Berth to such person and on such terms as the Club in its sole and absolute discretion determines appropriate.

15. LIABILITY AND INDEMNITY

- 15.1 The Club shall not be liable for the death or any personal injury to the Licensee or other persons using the Marina incurred or suffered within or about the Marina howsoever such death or injury occurs and whether or not such death or injury is directly or indirectly attributable to the acts or defaults of the Club, its employees, agents, contractors, licensees or otherwise.
- 15.2 The Club accepts no responsibility for the adequacy or otherwise of the Marina or the Berth or the facilities of the Marina or for the loss or damage to the Named Boat or any other property of the Licensee or any other persons using the Marina incurred or suffered within or about the Marina howsoever such loss or damage occurs and whether or not such loss or damage is directly or indirectly attributable to the acts or defaults of the Club, its employees, agents, contractors, licensees or otherwise.
- 15.3 The Licensee indemnifies the Club against any loss, expense, liability, claims and costs incurred by the Club arising as a result of the Licensee's acts or omissions or the acts or omissions of others to which the Licensee has contributed or the acts or omissions of any persons invited into the Marina by the Licensee.

16. TAXES AND DUTIES

- 16.1 The Licensee shall pay all duties, taxes and other costs payable in respect of this Licence (which term shall in this section include the Agreement or any other agreement entered into in anticipation hereof), the Berth and/or in respect of any payments, fees or other moneys due under this Licence or in relation to the Berth, including (without limitation) Goods and Service Tax.
- 16.2 The Licensee's obligations under this section 15 shall apply regardless of whether the Club or the Licensee is primarily liable in respect of any such duty, tax or other payment.
- 16.3 The Licensee shall indemnify the Club for any such duties, taxes or other payment paid or payable by the Club in any capacity whatsoever.

17. PAYMENTS

- 17.1 All payments due by the Licensee under this Licence shall be paid to the Club without demand and free of all deductions in the manner and amount notified to the Licensee from time to time by the Club and at the time provided for by the Club.
- 17.2 The Licensee shall pay interest to the Club at the Default Rate on any payment due under this Licence by the Licensee which is more than fourteen (14) days in arrears such interest being calculated from the due date for the payment until the date of actual payment.

18. KERIKERI CRUISING CLUB INCORPORATED

- 18.1 Subject to clause 17.2, all persons comprising the Licensee shall at all times remain fully paid up members of the Club.
- 18.2 Where the Licensee or one of the persons comprising the Licensee is:
- (a) A body corporate or unincorporated body, it shall ensure that at least one person nominated by it remains a fully paid up member of the Club at all times; or
 - (b) A trustee for a trust holding this Licence, they shall ensure that the person who has the principal use of the berth and the Named Boat remains a fully paid up member of the Club at all times.

19. The Club will comply with and observe all covenants, obligations, provisions and conditions contained in this Deed and in the Coastal Permit. Further, the Club will conduct itself and the operation of the Marina in such a manner so as to ensure that it is able to obtain a renewal or extension of the Coastal Permit, if such a renewal is available or offered to the Club. To this end, the Club shall cause a Meeting to be held on or before three (3) years from the expiry of the Coastal Permit with a view to obtaining directions from Licence Holders on the following matters:

- (i) Whether the Club should obtain a renewal or extension of the Coastal Permit or new coastal permits for the Marina;
- (ii) If the Club obtains a renewal or extension of the Coastal Permit or new coastal permit for the Marina, whether the term of the Licences be extended to coincide with the term of the renewed or extended Coastal Permit or new coastal permit (as the case may be) less one Working Day and the other terms and conditions of the Licences be amended to coincide with any consequential changes to the terms of the renewed or extended Coastal Permit or new coastal permit;
- (iii) To determine if any additional Licence payments, beyond those incurred by the Club in obtaining the extension or renewal of the Coastal Permits or new coastal permits, as the case may be, should be paid by the Licence Holders upon the extension of the Licences contemplated at paragraph (ii) above;

the directions of the Licence Holders on the above matters, so long as such directions are passed by Ordinary Resolution at the Meeting, shall be binding on the Club and the Club must act promptly and with all due diligence to give effect to those directions, including complying with all necessary law.

20. KERIKERI CRUISING CLUB MARINA TRUST ('the Trust')

- 20.1 The Trust was established by deed dated 26 September 2017 for the purpose of holding the Refurbishment Account for the benefit of the Berth Licensees and to apply those funds as required for the refurbishment of the Marina not covered by annual maintenance. The Trust will also act as Mediator in disputes between the Club and Berth Licensees.

21. LICENCE NOT LEASE

21.1 The parties acknowledge that this document is a licence and not a lease. The legal right to possession and control in relation to the Berth remains with the Club although the Licensee enjoys the occupation rights granted by this Licence.

22. LAW

22.1 This Licence shall be interpreted in accordance with the laws of New Zealand.

EXECUTION

SIGNED by the LICENSEE

Signature of Licensee

Name of Licensee

in the presence of

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by the LICENSEE

Signature of Licensee

Name of Licensee

in the presence of

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by the LICENSEE

Signature of Licensee

Name of Licensee

in the presence of

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by the **LICENSEE**

Signature of Licensee

Name of Licensee

in the presence of

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

SIGNED by the **LICENSEE**

Signature of Licensee

Name of Licensee

in the presence of

(Signature of Witness)

(Full Name of Witness)

(Occupation of Witness)

(Residential Address)

(City/Town/Locality)

OFFICE USE ONLY

SIGNED

The *common seal* of **KERIKERI CRUISING CLUB INC** was affixed in the presence of

Signature

Name

Signature

Name

SCHEDULE OF DETAILS

The Licensee	Name: Occupation: Address: Ph (Business): Ph (Residential): Email:
The Named Boat	Name: Type: (Yacht / Launch / Multihull) Beam: Overall Length: Draft: Registered Number (if any):
The Berth	Number: Description:
Annual Fee	\$ inc GST
Instalments	\$ inc GST payable by [2 payments in advance on the [1 January & 1 July]
Licensee's Proportion	\$ - plus GST per annum for the balance of the first Financial Year.
Default Rate	A rate of interest per annum which is 4% in excess of the prime residential lending rate from time to time charged by ASB Bank Limited or its successors.

APPENDIX

KERIKERI CRUISING CLUB BERTH LICENCE RULES