



# **MARINA POLICY**

This document is designed to provide Members with all the information they require about the Club's Marina facilities. It will be updated over time.

## **Part 1 of 3 GENERAL INFORMATION**

### **COMMUNICATION**

It is the Board of Directors express wish to communicate with our Members on all issues that relate to the Club's marina facilities.

As we have done for our sub-clubs, one or more Board Director(s) will be nominated by the Board to be a representative of the marina.

It is important that if you have any questions or concerns regarding the marina you do not let them fester. Please email the Club's CEO, at [adrian@stgeorgembc.com.au](mailto:adrian@stgeorgembc.com.au) or the marina manager at [marina@stgeorgembc.com.au](mailto:marina@stgeorgembc.com.au) straight away. They will answer your questions to the best of their ability. Some matters may have to be referred to the Board, but on the whole they will provide you with as much information as possible straight away.

The Member's address and telephone number that is in the Club's Membership system and which has been supplied by the Member will be taken as the current contact details. It is the Member's obligation to maintain the correct contact information. Any correspondence will be considered sent when sent by the Club to the last supplied membership address.

It is important that Members maintain their email address and phone numbers with the Club. Marina newsletters and other information will be communicated via email in the future and Members providing current email and phone numbers will assist them being kept up to date with most issues regarding the marina facilities.

### **MARINA FACILITIES**

The Club's 242 berth floating marina offers various facilities to certain Members. The marina opened in 2003 with the addition of "F" Arm in 2013 and is continually being updated with equipment, services and technology.

The marina is a member's facility and as such, berths must be held by a "Berthing Member", not a company.

Of the Club's various categories of membership only Boating, Veteran and Life members

(called in this marina policy **“Full Members”**) can use some or all of the marina facilities.

The Club offers berthing on its marina, with 24 hour key access to security gates, for Berthing Members.

**“Berthing Members”** are Full Members who hold a current Marine Craft Berthing and Mooring Agreement (called in this marina policy a **“Berthing Licence”**).

The Club’s **marina facilities include:**

- A 242 vessel floating marina and infrastructure
- Water
- Power
- Car parking
- Wheel barrows
- Sewage pump out
- Diesel & premium unleaded fuel
- Fish cleaning bar
- 24/7 shower & toilets
- All weather boat ramp
- Internet
- Gas bottle refilling
- Security patrols
- Ice dispensing machines
- Rubbish bins
- Environmental spill kits
- Visitors wharf
- Swing moorings

**Slipway facilities** are also available with experienced and professional marine mechanical assistance from Aquatic Power, a private business, located directly under the Clubhouse and inquiries can be made by phoning Mark Evans on 9529 8109.

A **vessel sales brokerage** is available with experienced and professional personnel from **MBC Yacht Sales**, located next to the marina office and enquiries can be made by phoning the sales team on **02 8047 0400** or **0486 032 340**.

**“Marina Management”** is comprised of the Club’s CEO, a marina manager and marina supervisors and the marina manager or a marina supervisor is on duty 7 days per week between 8:00am & 6:00pm in summer and 8:00am to 5:30pm in winter.

Only a Full Member can be allocated a berth to keep a vessel and obtain a fuel key (for 24/7 fuel), a trailer label, a marina arm gate key, a swing mooring permit and use the launching ramp and marina facilities.

All marina berths are allocated and charged on size as described on the original marina plans by Bellingham Marine as displayed in the marina office or the size of the vessel as per the vessels registration paper, whichever is the greater. Berths are not necessarily to Australian Standard size.

Applications for berths are made directly to Marina Management, who will issue the Full Member with a Marina Berth Application Form. To be placed on the official waiting list applicants must pay a two month security bond.

Berths are allocated in order of preference according to availability and desired size at the discretion of the Marina Management. No berth will be allocated without a security bond and licence fee being paid, even if the Member does not have a vessel at the time the transaction is made.

Berthing Members may accept a larger berth than required whilst waiting for the appropriate size to become available, however, they will be billed for the size of the berth they are occupying whilst waiting for a smaller berth. Accepting the larger berth is entirely their decision.

Upon agreement of a berth the Berthing Member will receive a welcome pack.

Prior to occupying the berth, the Berthing Member must supply Marina Management with the following:

- a 2 month security bond
- a signed Berthing Licence
- current boat registration
- appropriate current vessel insurance

The bond will be refunded once the Berthing Member vacates their berth and all outstanding monies have been paid.

Before occupying the allocated berth for the first time, Berthing Members will make an appointment to bring their vessel into the marina. Upon arrival they will be welcomed by Marina Management and their vessel will be roped in at the Berthing Member's cost. An estimate of the cost can be obtained upon request of Marina Management during the induction process. Fenders are optional but can be provided by Marina Management at the Berthing Member's cost.

The berth is allocated for a particular vessel and any change of a vessel will require a fresh application for that change to be made to Marina Management who will consider the change on its merits and reallocate the berth or require the member to go back onto the waiting list.

The ultimate decision on the change will be at the discretion of Marina Management.

At least 2 weeks' notice in writing, is required to vacate a berth. Failure to supply the required notice may result in the Berthing Member being billed for two weeks from when notice to vacate is received.

Under no circumstances can marina berths be used to advertise a vessel for sale. No "For Sale" signs are permitted on the Marina with the exception of the Club's resident broker's signs.

No business is to be run from the marina, without the Marina Management's consent.

The marina is not a working marina or anchorage. Accordingly, other than usual engine servicing, and minor repairs and maintenance, no alterations, painting, repairs, servicing or

maintenance is to be carried out in any berth which is likely to cause an unreasonable nuisance or disturbance to other users of the marina facilities or is likely to result in pollution of the marina, and such work is only to be carried out as part of the Slipway Management Plan. Please refer to our “Clean Marina Guidelines” for more information.

Only Marina Management or the Board of Directors of the Club can decide if a vessel is to be removed from the marina. Some of the reasons may include;

- 1) Continual late payment of fuel
- 2) Continual late payment of marina licence fees
- 3) Failing to provide current insurance or registration
- 4) Noise complaints
- 5) Unsafe or unseaworthy or poorly maintained vessel
- 6) Vessel is causing (or in Marina Management’s opinion is likely to cause) damage to the marina
- 7) The relevant Berthing Member being found guilty of conduct unbecoming a member under the Club’s Constitution.

If a Berthing Member is required to leave the marina or remove his vessel from the marina he will receive in writing a direction to leave the marina on a specific date. If the vessel is not removed by that date then on the ensuing day the vessel may be removed by Marina Management or an outside contractor and the Berthing Member can arrange to pay and retrieve the vessel from the Club or relevant contractor.

### **ELECTRICAL TEST AND TAG – SHORE POWER LEADS**

Testing and tagging your shore power lead is regular required maintenance here on the marina. Due to the extreme conditions, multiple moving structures, ropes and water, your shore power lead has to endure excessive stresses. To maintain a safe environment St George Motor Boat Club marina requires your shore power leads be tested annually.

Leads that pass are tagged to show they are safe to use, unsafe and untagged leads require immediate replacement or removal (this can occur at Marina Management discretion), leads that are deemed dangerous will be immediately disabled as per **AS/NZS 3004.1:2014 Electrical installations - Marinas and boats - Standards**.

The Marina Management are certified to test and tag your shore power lead and the power pillars on the marina and unless otherwise advised will automatically test your lead and other marina electrical equipment every 12 months. Testing and Tagging your shore power lead incurs a \$25 fee which will be charged to your account without notice.

### **POWER SUPPLY**

Marina berths are fitted with one 15amp power outlet only. These 15amp power outlets are maintained by the St George Motor Boat Club marina.

If any addition of power supply or outlets is required it must be authorized by Marina Management and appropriate forms signed and filed.

The additional power supplies or outlets fitted can only be done by the Marina’s electrician and is done solely at the berth holder’s expense. This is paid directly to the Marina’s electrician. Once the additional power supply and outlets have been installed they remain the property of the St George Motor Boat Club and cannot be uninstalled or transferred to another berth.

Maintenance of the additional power supplies and outlets is also at the Berthing Members expense and can only be done by the Marina's electrician. This includes general wear and tear, weather damage and heat damage.

### **MARINA FISHING**

Fishing is only permitted off your own vessel. No fishing is permitted in the marina fairways or from any other area of the marina, unless otherwise stated by Marina Management.

### **CRAB POTS / METAL OBJECTS**

Crab Pots or any other metal appliance that may rust the marina arms or fingers (eg metal hose reels, BBQs, stairs) are not permitted on the marina other than when being used.

### **MARINA CLEANLINESS, APPEARANCE AND TRIP HAZARDS**

No loose items including hoses, tenders, or equipment is to be left/stored on the marina arms including finger wharfs between boats when not in use. Berthing Members are responsible for their own possessions which should be stored on board their vessel. Any items left on the marina arms or finger wharf without Marina Management consent may be moved onto the Berthing Members vessel or removed and disposed of by Marina Management.

### **PETS ON THE MARINA**

Dogs are permitted on the marina as long as they are on a leash and under their owner's supervision at all times and do not cause a problem as may be determined by Marina Management.

### **INSURANCE & REGISTRATION**

A copy of the current registration certificate and insurance policy for the vessel for which the berth is hired must be in Marina Management's possession at all times.

Only full comprehensive insurance is permitted and public liability shall be no less than 10 million dollars.

If at the anniversary of the insurance or registration Marina Management has not received the new or updated information Marina Management may notify the Berthing Member in writing, and any or all of the following may occur:

- The Berthing Member's gate keys may be disabled
- The Berthing Member's fuel card may be disabled
- The Berthing Member's membership card may be disabled
- A \$10 reconnection fee may apply to reconnect all of the above, and

the Berthing Member may be asked to remove his vessel from the marina.

## **CONTRACTOR ACCESS TO THE MARINA**

All contractors must obtain access to the marina from Marina Management who will issue them with a key which must be returned to the marina office. Access is only available during Marina Management hours or by prior arrangement with Marina Management. Marina Management should ensure that contractors have insurance, relevant certificates and confirm that the work to be carried out complies with the marina policy. Marina Management should ensure that all contractors on the marina have signed for their numbered keys and they are marked off when returned.

Contractors are required to provide Marina Management with the following before being permitted onto the marina:

- Full business name and address including email address and phone number (including those details for a principal of that business)
- Public Liability Insurance; and where relevant;
- WH&S Certificates
- Water Usage Permits
- Safe Work Method Statement

Neither the Club nor their representatives accept any responsibility for service carried out by third party contractors nor the Club failing to obtain the required information or to follow the marina policy procedures.

## **FUEL CARDS**

Only Full Members may purchase a fuel card which gives 24 hour access to fuel.

Application for a fuel card form must be filled out and the appropriate fee paid, prior to the key being issued.

Allow 3 working days for the fuel card to be set up.

The fuel card, its pin and use, are the responsibility of the Full Member who purchases the fuel card and all fuel purchased using that fuel card will be billed to that Full Member.

Full Members, who pay their accounts within time receive a 10% discount on fuel purchases below 1,000 litres and 15% discount on fuel purchases of 1,000 litres or more at the one time.

Members who have misplaced their fuel card and require fuel to be pumped by Marina Management or cash sales may not receive the discount.

Any problems with the fuel system should be reported to Marina Management immediately.

The Fuel Card purchase price is not refundable. It is the responsibility of the Full Member to notify the Club if the Fuel Card is no longer required and it will be deleted from the system.

## **SECURITY MARINA KEY POLICY**

Proximity keys are issued to each Berthing Member only and are their sole responsibility. The keys will be linked to the Berthing Member's membership card and can be de-activated should the Berthing Member be in breach of their Berthing Licence or fall into arrears with their accounts.

Each Berthing Member is entitled to 2 proximity keys which will give access to all areas of the marina and are not transferable.

Additional keys can be allocated to the Berthing Member's immediate family at a cost of \$10 per key which is not refundable.

A Berthing Member must produce ID to verify their identity to collect a key.

We should soon have available keys which are 20mm wide adhesive disks which can be stuck to phones or inside a wallet etc. If interested, please do not hesitate to ask Marina Management if they are available.

Keys leave an electronic footprint with every use. Please do not change or swap keys as they are electronically numbered to your membership. Unauthorised allocation or distribution of these keys may result in the key being electronically deleted from the system and disciplinary action may be taken against the relevant Berthing Member.

Cameras are used to view each gate on the marina. Unauthorised key use is monitored to maintain the integrity of the system.

## **TRAILER LABELS**

Full Members who wish to launch or retrieve their boats from the marina ramp must purchase an annual trailer label which must be displayed on the left side of the trailer at the nearest lynch point to the vehicle and is renewable every 31 December. Members with trailer labels will be issued with a fob key which will operate the boat launch ramp boom gates. Unfinancial members will have their fob keys disabled until payment is received. To obtain a trailer label Full Members must provide their trailer registration number and it is their obligation to inform Marina Management if they change registration numbers.

Boats must not be left on trailers in the car park other than when the relevant member is using the Club's facilities. Limited trailer parking is available adjacent to the marina.

Failure to adhere to these requirements may result in trailers being clamped and fob keys disabled.

## **SWING MOORINGS**

The Club has a number of swing moorings, which are available to Full Members who purchase an annual mooring permit which must be prominently affixed to their vessel and renewed every 31 December.

Maps showing the location of these moorings and information regarding their use is available from Marina Management.

Extended stays on these moorings is not permitted as they are intended for picnic or overnight use only.

The Club also has some swing moorings available for longer stay licensing under the Berthing Licence.

### **VISITOR / OVERNIGHT & TEMPORARY BERTHING**

Visitor berthing may be available on the visitors berth during the day and/or overnight. Visitors berthing is on a first come first served basis. All visitors must check in with Marina Management on arrival. Marina Management has the right to move or request visitors to move or remove their vessel within or from the Marina. Marina Management may issue the visitor who has paid in advance for their visitor berth with a temporary marina key to access the “B” arm gate. This key will operate for the time for which the visitor has paid.

Overnight temporary or casual berthing may be available on the marina, subject to prior notice and completion of a Casual Berth Booking Form (available from Marina Management).

Unless agreed otherwise with Marina Management, visitor berthing is available for a maximum of three (3) nights and all arrangements must be made through Marina Management.

### **ACCOUNTS**

Unless other arrangements have been made with Marina Management, accounts for marina berthing and fuel purchases during a month are prepared at the end of that month and sent out during the first week of the following month (called **the “following month”**).

Payment is due by the 14<sup>th</sup> of the following month whether an account has issued or not. If payment is not received by the end of the 14th day all fuel discounts may be reversed.

If payment is not received by the end of the following month access through the security gates and fuel keys may be disabled in which case a \$10 reconnection fee may apply (and it may take three (3) days for reconnection), the Member’s membership card may be disabled and the account holder’s details may be reported to the Board of Directors.

If payment has not been received 30 days after the end of the following month, legal action may be commenced which may include taking a “Lien” over the vessel and selling it for fair market value to recoup funds in arrears and the vessel removed from the marina.



## **Part 2 of 3 of the Marina Policy**

### **RULES AND REGULATIONS**

1. Members and visitors shall be responsible for any vessel they operate or bring onto the marina.
2. Members and visitors shall at all times operate and control their vessel or property towed alongside or behind so as not to cause injury to person or damage to property including the marina.
3. Members and visitors shall not bring a vessel onto the marina unless that vessel has current registration and is insured with a reputable well known insurer (as determined by Marina Management in their absolute discretion) which insurance includes not less than \$10 million public liability insurance cover relating to death and injury to persons and damage to property resulting from the vessels condition, operation of and use of the vessel and fluids discharged from the vessel.
4. No person will stay overnight on board a vessel in the marina for more than three (3) consecutive nights nor more than ten (10) nights in any one calendar month.
5. Members and visitors shall at all times comply with the requirements of relevant authorities and in particular shall not dispose of sewage, refuse or garbage into waterways within the marina and vessel users shall not carry on nor permit to be carried on any business activity on any vessel while at a berth in the marina or in the precincts of the Marina except at the direction of or with the consent of Marina Management and no vessel other than a Full Member's vessel shall use the berth allocated to them under a Berthing Licence or casual licence as appropriate.
6. Only Berthing Members and their guests, and visitors authorised by Marina Management shall use and go upon the marina.
7. Berthing Members shall pay and be responsible for all ropes and fenders or additional berthing equipment which shall be provided by the Club to moor the vessel. Berthing Members shall not bring onto and/or affix to any berth any item of whatsoever nature without the written authorisation of Marina Management.
8. Any Berthing Member whose vessel is absent from their allocated berth for a period longer than (3) months without Marina Management's written permission may be obliged to give reasons why their berth should not be declared vacant and their Berthing Licence terminated.
9. By bringing a vessel onto the marina, the Member or visitor in control of that vessel agrees to follow the directions of Marina Management regarding the berthing of that vessel and authorises Marina Management to move or remove that vessel within or from the marina respectively, and the Member or visitor agrees Marina Management will not be liable for any death, injury or damage to the vessel or other property (including for their own negligence) in giving such direction or action.
10. Berthing Members are required to indemnify the Club for damage to the marina facilities and against all actions, suits, claims, demands, debts, obligations or other liabilities arising out

of any act or omission of the Berthing Members or their employees, agents, contractors or invitees use of their vessel.

11. On the termination of a Berthing Licence the Berthing Member shall promptly remove the relevant vessel and all related equipment, goods, chattels and other personal effects (“Goods”) from the marina and shall remain liable for payment of license fees until the vessel and Goods are so removed and in default Marina Management shall be entitled to remove the vessel and Goods from the marina and store the vessel and Goods at the Berthing Member’s cost, risk and liability.

12. In the event of the Berthing Member being in default under the Berthing Licence the Berthing Licence may be terminated and the Club may take a lien over and sell the vessel for any unpaid accounts.

13. The Berthing Member acknowledges that the designated berth is for the use of the designated vessel only and that Marina Management may use the berth whilst temporarily vacant for use by another vessel without releasing the Berthing Member’s liability to pay for that berth.

14. The Berthing Member shall prior to or upon the making of a Berthing Licence provide Marina Management with full particulars of the relevant vessel to be allocated a berth.

15. The address for service of notices on a Berthing Member shall be the address given by the Berthing Member to the Club on his/her membership application unless the Club has received from the Berthing Member written notification of change of address in which case it will be the address on the latest relevant notification.

16. If there is more than one Berthing Member who owns a vessel their liability under the Berthing Licence shall be joint and several and notice to and from one of them shall be deemed notice to and from both of them.

17. The Berthing Member shall advise the Marina Management if his berth is to be vacant for a period of longer than 3 days during which vacancy Marina Management shall be at liberty to allocate such berth for the period of this vacancy to another Member or visitor at a fee to be decided at its absolute discretion and the Berthing Member shall not be relieved of his obligation to pay the licence fee.

18. Berthing Members vessels must be predominantly used for leisure boating activities and participation in Club events. All vessels which are registered by the relevant waterways authority as being in survey are deemed not to be used predominantly for leisure activities and the Berthing Member must expressly make this known to Marina Management prior to making application for a Berthing Licence.

19. No vessel whilst on the marina shall display any advertising or “For Sale” type sign other than the Club’s resident broker’s signs.

20. All vessels shall be berthed in accordance with the directions of the Marina Management. Generally all vessels shall be berthed aft toward the Marina, with the exception of “F” arm.

21. No vessel is to moor at the fuel wharf overnight without the consent of Marina Management. No vessel is to berth at a vacant berth on the marina (other than the berth allocated to that vessel) without the consent of the Marina Management.

22. The marina shore power pillars contain an IP66 outlet and all vessel power leads must contain an IP66 rated plug to comply with AS3000 electrical wiring rules, and AS3004.1 Electrical Installations – Marinas and Recreational Boats.

### **Part 3 of 3 of Marina Policy**

#### **BERTHING LICENCE**

## MARINE CRAFT BERTHING AND MOORING LICENCE AGREEMENT

BERTHING LICENCE	
<b>BETWEEN</b> (Licensee = Name):	
Of (Address):	
Telephone (Home):	(Mobile):
Email:	
Boat Driver's License No:	
<b>AND</b> (Licensor): <i>The St George Motor Boat Limited</i> <b>ACN: 000 020 575</b>	
of <i>2 Wellington Street Sans Souci NSW 2229</i>	
Telephone: <b>02 9529 7276</b>	Marina Mobile: <b>0409 090 712</b>
Email: <a href="mailto:marina@stgeorgembc.com.au">marina@stgeorgembc.com.au</a>	

LICENSEE'S MARINE CRAFT (the "Craft")	
Registration Number:	Name of Craft:
Type:	Model:
Year:	Hull Identification (Boat code) No:
<input type="checkbox"/> Inboard <input type="checkbox"/> Outboard <input type="checkbox"/> Stern Drive <input type="checkbox"/> Sail <input type="checkbox"/> Single <input type="checkbox"/> Twin <input type="checkbox"/> Petrol <input type="checkbox"/> Diesel	
LOA (Length Overall):	Beam:                      Draft:
Insurance Company:	
Policy No:	
Expiry Date:	

### SECURITY BOND

On the signing of this licence, the Licensee shall pay the Licensor the sum of \$.....  
 (being 2months licence fee) as a security bond which shall be refunded to the Licensee on the termination of this licence subject to the right of the Licensor to deduct from the security bond any amounts whatsoever that are due and payable by the Licensee to the Licensor under this licence. Security bonds will not be refunded till the vessel has been removed from the marina or new owners for the vessel have a signed agreement.

### LICENCE FEE

The Licensee shall pay in advance to the Licensor a licence fee of \$..... per week / month / quarter / year (circle) or temporary stay of..... paid by way of cash, credit card, direct debit to the Licensor or its nominated account. If payment is made by credit card or direct debit, then a separate form needs to be completed and provided to the Licensor at the time of signing of this licence. All fees and payments are inclusive of GST and payable whether an invoice has been issued or not.

### LICENCE TERM

The licence term shall be ☐Daily, ☐Monthly, ☐Yearly,

Commencing on (DD/MM/YY) ..... /..... /.....

Terminating on (DD/MM/YY) ..... /..... /.....

unless terminated otherwise under this licence, and thereafter on a periodic rollover monthly.

**LICENSEE'S ACKNOWLEDGEMENT**

On (DD/MM/YY) ..... /..... /..... I, the Licensee, acknowledge that I have received a copy of this licence signed by me below and certify that I have carefully read the licence including the immediately following licence conditions and agree to the conditions as part of the licence, and I am over 18 years of age.

**SEALED AND DELIVERED BY:**

LICENSEE: ..... DATE: .....

WITNESS: ..... DATE: .....

If a small company, pursuant to Section 126 of the Corporations Act 2001 (Oth) and / or Clause11(j) authority herein.

LICENSOR: ..... DATE: .....

WITNESS: ..... DATE: .....

ROLE: .....

If a small company, pursuant to Section 126 of the Corporations Act 2001 (Oth) and / or Clause11(j) authority herein.

**CRAFT BERTH or MOORING DETAILS**

**Marina Berth Number:**

**Swing Mooring number:**

**OFFICE USE ONLY**

<b>Copy of Insurance Received:</b>	YES	NO	(Circle one only.)
<b>Copy of Registration Received:</b>	YES	NO	(Circle one only.)
<b>Security Bond Received:</b>	YES	NO	(Circle one only.)

## LICENCE CONDITIONS

### 1. INTERPRETATION

In this licence agreement (“**this Agreement**”):

- a) “**Berth**” means the berth or mooring area described on the front page of this Agreement or as otherwise designated by Marina Management for the keeping of the craft;
- b) “**Craft**” means the vessel described on the front page of this Agreement and includes its fixtures and fittings, accessories, equipment and contents, as appropriate;
- c) “**Facilities**” means the Licensor’s marina at 2 Wellington Street, Sans Souci including the poles and floating marina infrastructure, berths and fairways, visitors wharf, marina and sales brokerage offices, car parking area, boat ramp, slipway, fuel wharf and equipment, sewerage pump out equipment, fresh water supply, electricity, ice and bail vending machines, wheelbarrows, fish cleaning bar, internet, security systems, 24/7 showers and toilets and marina arm rubbish bins;
- d) “**Marina Management**” means the CEO, Marina Manager or any Marina Supervisor;
- e) “**Marina Policy**” and “**Rules and Regulations**” means the Licensor’s marina policy and rules and regulations respectively for the management, safety, good order and protection of the Facilities, as amended from time to time by the Licensor;
- f) “**Wreck**” means the destruction, sinking or sunken remains or remnants, broken up, ruined, disintegrated, deteriorated, capsized, severely damaged, destroyed, wreckage or debris of a Licensee’s Craft at the Berth or Facilities of the Licensor;
- g) words importing the singular number include the plural and vice versa and words denoting a gender include all other genders;
- h) the word person includes a firm, a body corporate, an unincorporated association and an authority; (the word “person” doesn’t appear in the Agreement. Why would we, as per the old version, say that the “person” includes a term “body corporate, an unincorporated association and an authority”. Isn’t our aim to bind the licensee to the Agreement??? A firm, body corporate or unincorporated association or authority could argue that they are not bound to the Agreement because the licensee didn’t have authority to enter into the Agreement.
- i) headings are for convenience only and do not affect interpretation;
- j) references to a party include the party’s executors, administrators and legally permitted assignees;
- k) if there is more than one Licensee, they shall be jointly and severally liable and responsible for the performance of the Licensee’s obligations and notice to one will be deemed notice to both;

- l) no provision of this Agreement will be construed adversely to a party solely because that party was responsible for the preparation of that provision or this Agreement;
- m) the word “**including**” means without limitation.

## **2. LICENCE TO OCCUPY THE BERTH AND USE FACILITIES**

- a) The Licensor grants to the Licensee a personal, non-exclusive right (“the right”) to use the Berth to keep the Craft and to access and use those parts of the Facilities as reasonably necessary for the leisure use and enjoyment of the Craft. Nothing in this Agreement gives the Licensee any lease rights as a tenant of the Berth or Facilities, nor creates any relationship of landlord and tenant.
- b) “The right” granted by the Licensor to the Licensee is not a bailment, but may become an involuntary bailment in the event that the Licensor exercises its lien pursuant to the provisions of 6 (a) and (b) of this Agreement.

## **3. OBLIGATIONS OF LICENSEE**

The Licensee agrees that:

- a) he shall use the Facilities and store the Craft in the Berth and have control of, operate and maintain the Craft with due care, skill and diligence at his own risk;
- b) he shall at his own risk and expense keep and maintain the Craft and the ropes, lines, chains and tackle of, on or attached to the Craft (which ropes, lines, chains and tackle shall remain the property of the Licensee) in good condition and repair and proper working order;
- c) he shall be responsible for all damage to the Facilities *or* other persons property and for death and injury to persons on or using the Facilities arising from any act, omission, neglect, breach or default by the Licensee or its employees, agents, contractors or invitees;
- d) he shall indemnify and keep Indemnified the Licensor and its employees, agents, contractors and invitees from and against all actions, claims, demands, losses, damages, costs and expenses for which the Licensor, Its employees, agents, contractors or invitees become liable in respect of or arising from loss or damage to property or death or injury to any person arising out of the use of the Facilities or any act, omission, neglect, breach or default by the Licensee or its employees, agents, contractors or invitees;
- e) he shall comply with the Rules and Regulations and the Club's Marina Policy as published from time to time and he acknowledges that a copy of the Marina Policy Including the Rules and Regulations current at the date of execution of this Agreement was given to and read by the Licensee prior to signing this Agreement. The Licensee also acknowledges that a breach of the Marina Policy or Rules and Regulations by the Licensee or his employees, agents, contractors or invitees is deemed a breach of this Agreement;
- f) he shall use the Berth solely for storage use and leisure enjoyment of the Craft and will not run any business from the Berth nor use or permit the Craft whilst in the Berth to be used for overnight accommodation for *more* than 3 consecutive nights or more than 10 nights in any calendar month;

- g) he shall not assign, sub-license or part with possession of the Berth;
- h) he will not during the term of this Agreement and while the Craft is within *the* Facilities including the Berth, attempt to sell the Craft or advertise the Craft for sale without prior notice to Marina Management and will not display "for sale" type signs on the Craft within the Facilities unless through the Licensor's onsite sale brokerage;
- i) he will not during the term of this Agreement and while the Craft is within the Facilities including the Berth, tarty out or have carried out service to or repairs and/or maintenance on the Craft without the prior authority of Marina Management. This clause shall not prevent the Licensee from carrying out routine servicing, repair or maintenance work provided that such work shall be carried out In such a manner as to not pollute the Facilities or cause unreasonable inconvenience and disruption to other users of the Facilities or breaches the Marina Policy or Rules and Regulations;
- j) pursuant to the provisions of relevant legislation, all forms of pollution are prohibited, and any party contravening this legislation, risks prosecution by the relevant authority.
- k) he shall take out and maintain with a reputable Insurer insurance covering at least the market value of the Craft and for public liability insurance for not less than \$10 million (or greater amount as may be set out in the Rules and Regulations) in respect of the Craft and its use by the Licensee, its employees, agents, contractors and Invitees and those authorised to use or move the Craft by the Licensee;
- l) In addition to the insurance referred to at 2. k) above, he shall take out and maintain with a reputable insurer, insurance covering the Licensor's losses, damages, costs and expenses for which the Licensor, its employees, agents, contractors or invitees become liable, in respect of or arising from the Craft becoming a Wreck at the Berth. See definition of "Wreck" at 1. f). All insurance must hold a public liability value of 10,000,000.00 or more.
- m) he shall promptly comply and make sure his employees, agents, contractors and invitees comply with the requirements of all legislation relating to pollution and the use of the Facilities and the operation of the Craft within the Facilities and the Licensee hereby indemnifies and will keep indemnified the Licensor from and against all actions, claims, demands, losses, damages, costs and expenses for which the Licensor shall become liable in respect of or arising from any act, omission, neglect, breach or default by the Licensee; its employee, agents, contractors or invitees in respect of this clause.

#### **4. LIABILITY OF LICENSOR**

The Licensee agrees and acknowledges that the Licensor shall not be liable for the security, care, condition, control or protection of the Craft and shall not be liable for any loss (including consequential or economic loss), or damage to or caused by the Craft or for the death or injury to person however caused, including which may arise directly or indirectly by the movement of the craft or another vessel within the Facilities or due to the design of the Facilities or the Licensor's negligence including the failure by the Licensor to secure, police or maintain the Facilities. The Licensee acknowledges that the Licensor will not be liable for any non-enforcement of this Agreement, the Marina Policy or Rules and Regulations, and not to do so will not be taken as a waiver of the Licensor's rights. To the full extent permitted by law, all implied warranties, terms and conditions are excluded. Where an implied warranty or term cannot be excluded, the liability of the Licensor is limited (to the extent permitted by law) to the resupply of the affected goods or services or the cost of resupply of those goods or services.



## **5. EMERGENCY PROCEDURES**

The Licensee agrees and acknowledges that the Licensors may in the event of any emergency or breach of this Agreement and at the Licensors' sole discretion, move the Craft at the risk and expense of the Licensee.

## **6. LIEN**

- a) The Licensors shall have a lien on the Craft for the payment of all monies due to the Licensors under this Agreement. The Licensee authorises the Licensors to take possession of the Craft on default by the Licensee of payment of an account to the Licensors and irrevocably authorises the Licensors to sell the Craft or any part if the account remains unpaid for 21 days after demand for payment has been made in writing by the Licensors to the Licensee. In the event that the Licensors exercise its lien in accordance with the provisions of this clause, the Licensee irrevocably appoints the Licensors Its attorney for the purpose of the sale of the Craft.
- b) In addition to the remedies and powers the Licensee gives to the Licensors, pursuant to 6. a) above, the Licensee agrees that if the Licensors take possession of the Craft pursuant to 6. a) above, the Licensors then becomes an involuntary Bailee of the Craft within the meaning of the *Uncollected Goods Act 1985 (NSW)* ("the Act"), and the Licensors acknowledges that the Licensee may exercise its rights as an involuntary Bailor thereafter, under the Act.

## **7. ARREARS IN PAYMENTS**

In the event that it becomes necessary for the Licensors to take recovery action against the Licensee in respect of any monies due pursuant to the terms of this Agreement, the Licensee shall be liable to reimburse the Licensors for the cost of such recovery (including legal costs and disbursements, if any), on an indemnity basis. Any such cost will be added as a liquidated amount to the Licensee's account.

## **8. TERMINATION**

- a) Subject to provisions 8b) and c), either party may terminate this Agreement after the expiration of the initial Licence Term, by giving not less than two (2) weeks prior written notice, expiring at the end of that notice period, or any designated time thereafter. Notice of Termination from the Licensee shall be accompanied by payment of all fees and other amounts payable by the Licensee up to the date of termination. On or before termination of this Agreement, the Licensee must remove the Craft from the Facilities, and at the election of the Marina Management, either make good any damage done to the Facilities by the Craft or Licensee, or its employees, agents, contractors or invitees, or pay the cost to make good as reasonably determined by the Licensors;

- b) In the event that the Licensee does not remove the Craft from the Facilities on or before termination of this Agreement in accordance with 7. a) above, the Licensor and Licensee agree that the Licensee becomes the Bailor of the Craft as an involuntary Bailee under the terms of the Act, and is entitled to exercise its rights in respect of the Craft pursuant to that Act.
- c) The Licensor may forthwith terminate this Agreement by written notice to the Licensee:
  - (i) if the Licensee is in breach of any of the provisions of this Agreement, the Marina Policy or the Rules and Regulations;
  - (ii) if in the opinion of the Licensor any of the Facilities become unserviceable; or
  - (iii) if in the opinion of the Licensor any conduct by the Licensee or its employees, agents, contractors, or invitees is prejudicial to the Facilities or the Licensor.
- d) Either party may forthwith terminate this Agreement by written notice to the other if:
  - (i) a receiver, liquidator, trustee In bankruptcy or official manager or administrator of the other party or any of its business or property is appointed;
  - (ii) the other party enters into any dissolution or liquidation proceedings or any event equivalent.

## **9. CASUAL BERTHING. VISITORS BERTH AND FUEL WHARF**

The Licensee agrees he will not use the visitors wharf nor use any berth other than the Berth nor use the fuel wharf (other than for fuel and pump-outs) without the prior consent of Marina Management. The Licensee acknowledges that providing the Craft Is temporarily absent from the Berth at the relevant time, the Licensor can put and charge for a vessel other than the Craft in the Berth on a casual basis without the Licensee being relieved of his obligation to pay for the Berth

## **10. AUTHORITY**

The Licensee warrants it is the legal and beneficial owner or duly authorised agent of the owner of the Craft and the Licensee agrees to be personally liable for all fees, accounts, costs, claims, liabilities and indemnifies of whatsoever nature arising out of this Agreement on the part of the Licensee and the Licensee agrees to pay all such monies on demand.

## **11. LICENSEE'S RELIANCE ON OWN JUDGEMENT**

The Licensee warrants the accuracy of the details of the Craft as set out In this Agreement and that It has examined the Berth and Facilities and relies on its own judgement relating to the suitability and use of the Berth and Facilities.

## **12. NOTICES**

Any notice to be given will be duly given If delivered personally to the other party or sent through the post in a prepaid envelope addressed to that party at Its address set out in this Agreement or any other address later notified by the Licensee to the Licensor in writing as being Its address for notices and any

notice sent through the post shall be deemed to have been given after 2 days. The Licensee agrees to notify the Licensor of any change of address and contact details within fourteen days. In the event that an email address is supplied by the Licensee to the Licensor then any notice may be given by email and will be deemed given when sent unless the sender's server notes the email was not delivered.

### **13. WHOLE AGREEMENT**

This Agreement constitutes the whole agreement between the Licensor and the Licensee in relation to its subject matter and the Licensee warrants that it has not relied upon any statement, representation or warranty made by the Licensor or its employees or agents which is not expressly set out In this Agreement.

### **14. GOVERNING LAW**

This Agreement shall be governed by and construed In accordance with the laws of the State of New South Wales and the Commonwealth of Australia and the parties agree to submit to those jurisdictions.

UPON EXECUTION OF THIS DEED, ALL OF THESE TERMS AND CONDITIONS BECOME LEGALLY BINDING ON ALL PARTIES