

TERMS AND CONDITIONS

Bayswater Marina here-by grants permission to the applicant named in the schedule "the applicant" to occupy the berth "the Berth" nominated in the schedule for the purpose of Stay Aboard and/or Commercial Activity.

The Applicant agrees to accept this agreement to occupy the berth nominated in the schedule for the period stated and under the following terms and conditions

DEFINITION

- For the purposes of this clause the expression "live board" shall mean sleeping overnight for two consecutive nights or more.
- The term "commercial usage" shall mean usage of a berth for storage or operation of a commercial vessel from a berth within Bayswater Marina.
- The expression "Marina" wherever used herein includes the Marina waters, the floating structures, fingers and jetties, all Marina foreshore areas, administration and service areas under the control or administration of the Bayswater Marina and/or the Marina operator.

APPLICATION

The application to Stay Aboard must be made on the attached form Schedule 1 – Stay Aboard / Commercial application which is available from the Marina and must be completed by the vessel owner. The application must include all requested details.

ACCEPTANCE

The Marina Manager has absolute discretion to accept an application. Applications will be accepted dependant upon a number of circumstances including there being space within the applicant's particular 'grouping'. An example of such groupings would include: Long term New Zealand residents, New Zealand Residents who are understood to be 'cruisers', Vessels arriving from overseas that have a defined departure date, and those that do not have a defined departure date.

COMMENCEMENT

This Agreement commences upon the commencement date stated in the schedule and thereafter remains in effect until terminated by the Applicant by giving one month's written notice, and by the Licensee by giving two month's written notice.

TIME RESTRICTION

The Marina Manager may impose a restriction in duration of acceptance. Any restriction will be notified at the time of application.

BOND

The Applicant agrees to pay a Bond should Bayswater Marina choose to impose such a requirement. Provided that the Applicant has complied with the terms and conditions contained within this agreement, the bond shall be refunded to the Applicant on the termination of this agreement.

LEVY

The Applicant agrees to pay the Stay Aboard/Commercial Levy associated with the berth to Bayswater Marina monthly in advance and upon demand by bank Direct Debit bank authority, at the rate set out in the schedule or as may be amended from time to time. Bayswater Marina may alter the Levy by the giving of one month's written notice of the revised Levy. The Levy is intended to cover the additional use of the facilities over and above that expected from a regular recreational berth user. It is further intended that the levy will cover the managing and policing of such an agreement.

RESTRICTION ON USE

The Applicant shall not use the berth other than for accommodating the boat nominated in the schedule.

APPLICANT NOT TO TRANSFER

The Applicant may not transfer an approval to Stay Aboard or Commercial usage of the berth to other third parties.

BYLAWS INSTRUCTIONS AND RULES

The Applicant agrees to comply with all the obligations of the Bayswater Marina Berth Licence, a copy of which is available for inspection by the Applicant, and but not limited to, the marina rules as set out herein.

RULES

- i. The Applicant shall at no time allow any part of any vessel using or moored at the Berth to extend beyond the maximum permitted dimensions of the Berth specified in the schedule, with the length being measured from the Berth face of the walkway.
- ii. Each vessel must have a current Electrical Warrant of Fitness, regardless of whether they intend to use power on a permanent basis. An IP67 fitting must be used by all applicants.
- iii. Each individual on each Stay Aboard vessel must have a marina security card. All cards are issued by Bayswater Marina at the time of acceptance of application. Cards are not to be shared, or passed on or handed to others. Each Stay Aboard applicant will be entitled to have access to the carpark for a maximum of two vehicles and may be required to park in certain areas of the car park as so notified by the Marina Manager. Cars parked in the car park are to be functional and able to be moved at the request of the Marina Manager. Applicants are to provide registration details of all vehicles and must keep the Marina Office informed of any changes.
- iv. The Bayswater Marina shall be at liberty at any time to require the Applicant to vacate the Berth either on a temporary or on a permanent basis, and to take up another berth within the marina if there is a berth available. The Bayswater Marina shall not be liable to pay any compensation in respect of such change of the berth. The terms of this agreement shall apply to such new berth.
- v. The Applicant may apply to bring and have a pet stay with the vessel. Should the pet be identified as causing concern including visiting and fouling other vessels or walking the marina unattended the application will be revoked.
- vi. The Applicant shall not pollute or permit the pollution of the Marina or discharge into the Marina or its waters any poisonous, noxious, dangerous or offensive substance or thing.
- vii. Without prejudice to the generality of the preceding provision, the Applicant shall not discharge any sewerage or otherwise empty any latrines into the Marina waters, or otherwise dispose of any garbage, oil, fuel or other material whatsoever in the Marina, except into containers which may be provided by the Bayswater Marina. The Applicant and all those named in the Application are required to use the on shore facilities that include toilets, showers, and clothes washers. In circumstances where this is inappropriate the person may make use of onboard facilities though the vessel must have proven to the marina that they have a suitable holding tank, or other mechanism for processing both grey and black waste water. In cases where this is occurring the vessel must also prove that the holding tank has been pumped clean at the pump out station or the vessel has left the marina to undertake a similar action. The Marina Manager may require applicants to have an installed sewage holding tank.
- viii. The Applicant shall not permit or allow any children for whom the Applicant is responsible, being children under the age of 12 years, to enter into the Marina unless accompanied by an adult.

TERMS AND CONDITIONS *continued*

- ix. The Applicant shall not engage in any swimming, diving or underwater activities within the Marina, provided that this shall not prohibit maintenance of the nominated boat, subject to such directions as the Bayswater Marina may stipulate from time to time.
- x. The Applicant 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.
- xi. The Applicant 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.
- xii. For the purposes of mooring any vessel to the Berth the Applicant shall use only the standard mooring lines complete with anti-chafe tubes provided by the Bayswater Marina, and shall at all times ensure that these are properly fitted. Any mooring lines damaged as the result of incorrect use or failure to properly position the anti-chafe tubes shall be replaced at the cost of the Applicant.
- xiii. The Bayswater Marina may serve on the Applicant a notice requiring the Applicant, within the time specified in the notice, to repair the fastenings on any such vessel so as to ensure that they will safely secure the said vessel.
- xiv. Commercial Applicants may be required to pick up passengers at a location provided by the Marina Manager other than their allocated berth.
- xv. Each vessel must be maintained to a high standard. The Marina Manager may not accept a vessel that is regarded as being in poor condition. The vessel must be operational and able to be moved under its own power at the request of the Marina Manager.
- xvi. No maintenance is to be undertaken no matter how minor that interferes with the other users of the marina. Work that includes steel grinding or woodworking with the likelihood of grindings/particles etc going into the marina or onto the adjoining vessels.
- xvii. The Applicant shall not permit or allow any property, gear or equipment under the control or direction of the Applicant to be stored on the Marina, including the walkways, fingers or foreshore thereof, without the express permission of the Bayswater Marina. Dingy racks must be used for the storage of dingys and bicycles. No dingys or tenders are to be stored in the water space of the berth. Dingys are to be kept ondeck or placed in a marina approved rack.
- xviii. Alcoholic beverages shall not be consumed within the Marina except on private vessels, or other premises where consumption of alcoholic beverages is not prohibited by law.
- xix. The Applicant shall not use fire fighting equipment supplied by the Bayswater Marina for any purpose other than for fighting fires.
- xx. The Applicant shall not alter or modify the Berth or adjacent structures without the prior written approval of the Bayswater Marina.
- xxi. No applicant may display or hang out laundry or items of clothing at any time.
- xxii. Visitors are expected to park in the public car park. Access through the pier gates for visitors should be achieved by the Applicant meeting the visitor at the gate at the top of the pier.
- xxiii. The Applicant shall in the use of the Marina comply with all bylaws from time to time applicable thereto, and shall also comply with any special instructions from time to time issued by the Bayswater Marina or any of its agents for the efficient, safe and harmonious use of the Marina, and any of its facilities, by any persons entitled thereto.

USE OF SERVICES

The Applicant may use the water, power and other facilities provided in the marina, in common with any other berth licensees. The Levy is intended to cover additional use of such services by the Applicant however when an applicant is identified as a high user of certain services the Marina Manager may require metering of such services, including the installation of such meters by the applicant of which the Marina will not accept any associated costs.

BAYSWATER MARINA NOT TO BE LIABLE

Bayswater Marina shall not be liable, and accept no responsibility, for loss or damage to boats, craft, 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 any Berth, or any other part of the facilities of the marina, and Bayswater shall not be liable to the Applicant or any person for the 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 the Bayswater Marina, or its servants, agents, contractors or otherwise howsoever.

APPLICANT'S INDEMNITY

The Applicant, in addition, shall indemnify Bayswater Marina against any loss, expense, legal liability, claims and costs incurred by the Bayswater Marina arising as a result of the Applicant's acts or omissions, or the acts or omissions of others to which the Applicant has contributed, or the acts or omissions of any persons invited into the Marina by the Applicant.

APPLICANT TO INSURE

The Applicant shall at all times keep all boats, crafts and any other property owned or brought into the Marina by the Applicant and/or invitees of the Applicant 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, and all other usual maritime risks.

DEFAULT

In the event of the Applicant making default in the observance or performance of any obligation on the Applicant's part expressed or implied herein, and such default remaining unsatisfied after 7 days from the date of written notification specifying the default complained of, Bayswater Marina may thereupon, and without the need for any further notice, forthwith cancel and terminate this agreement, and require that the vessel shall be removed from the Marina forthwith. Provided that if the default complained of shall be the non payment of the levy then the provisions of the following clause shall apply.

DEFAULT IN COMPLYING

If having been notified of a default and not having remedied such default shall be for non payment of the levy in accordance with clause 3 hereof, the Bayswater Marina may without incurring any liability for so doing and without further notice, remove the vessel and recover the cost of removal from the Applicant.

BAYSWATER MARINA'S LIEN

Where the Bayswater Marina removes any such vessel it shall be entitled to a lien on the vessel to the extent of the cost of removal and storage.

BAYSWATER MARINA'S RIGHT TO SELL

Should the Applicant fail to claim such vessel within the period of one month after the date of such removal, the Bayswater Marina 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.

NEW ZEALAND LAW TO APPLY

The law to which this agreement is subject is New Zealand law.

