

# Westhaven Marina Berth Rental Agreement

## Summary of updates

This document summarises the main updates made to the Westhaven Marina Berth Rental Agreement (Agreement), when compared against the most recent version of the Agreement.

This summary is provided for information purposes only and does not constitute legal advice. The information contained in this summary is current as at the date of this document but does not limit Auckland Council's ability to amend the Agreement in the future in accordance with its terms.

The full Agreement is comprised of:

The Specific Terms, which is essentially an application form containing details about the Customer, Vessel, insurance, and other berth licence arrangements specific to the individual Customer, and which is signed by the Customer, Guarantor (if applicable), and on behalf of Auckland Council (as Manager); and The General Terms and Conditions.

As is currently the case, the Agreement obliges Customers to comply with the Marina Rules, the A – Z Guide to Westhaven Marina, and other rules and documents published by the Manager from time to time for the purpose of managing the marina.

#	Topic	Summary of Change
1	<b>Berth Rental Agreement, supporting rules and policies</b> <b>Clauses 1.4 to 1.6</b>	<p>The Specific Terms and the General Terms and Conditions clarify that those two documents together comprise the Agreement.</p> <p>There has been a change made to the order of priority, so that the General Terms and Conditions prevail over the Specific Terms and conditions in the case of any inconsistency. While the two documents have been written to work together, this change guards against a situation where the Specific Terms are altered or completed incorrectly in a way that creates an inconsistency between the two documents.</p>
2	<b>Term of Agreement</b> <b>Clause 2.1</b>	<p>Most Agreements currently in place across the Marina are described as 'ongoing'. This means that they have no fixed end date and can be terminated by either the Customer or Manager on 10 working days' notice. A small number of Agreements in the Existing Marina have a specified rental end date, and these will be coming to an end between now and 30 September 2026.</p> <p>Going forward, the term of the Agreement will always be expressed as being 'ongoing' and will continue until terminated. A change has been made to extend the period of notice that each party must give to the other if they wish</p>

		<p>to terminate the Agreement. The Customer will be able to terminate by giving 20 working days' notice (i.e. one month) to the Manager, while the Manager is required to give 60 working days' notice (i.e. three months) to the Customer.</p> <p>For Customers who wish to stay in the Marina for a fixed period of only a few days or weeks, a separate Short-Term Berth Rental Agreement will be available in a similar form.</p>
3	<b>Charges Clause 4.1</b>	<p>'Outgoings' are now referred to as 'Charges'. These include the standard costs charged for shore services like power, and also include the additional fees that the Manager levies for certain activities – such as living aboard. The Agreement has been updated to reflect the current Marina practice that Charges are paid for in the same manner as Rental Fees (i.e. by direct debit).</p>
4	<b>Non-compliant connections to services and other risks to safety Clauses 4.3 and 7.5</b>	<p>The Agreement already gave the Manager the right to disconnect non-compliant power connections, but did not specify a process or require any notice to be given to the Customer in those circumstances.</p> <p>This is now addressed in greater detail in the updated General Terms and Conditions, in a manner consistent with other Auckland Council-owned marinas. If the Manager identifies that a Customer is using shore services in a way that does not comply with requirements, the Manager will notify the Customer and require the issue to be remedied. If the Customer does not remedy the issue within five working days (or a different period if specified in the notice), the Manager may then suspend access to the relevant shore service including (if needed) by disconnecting the vessel.</p> <p>If a Customer breaches the Agreement and causes a material risk to health and safety within the Marina, the updated Agreement also allows the Manager to take any immediate steps reasonably necessary to prevent or mitigate that risk.</p>
5	<b>Nominated vessels and vessel dimensions Clause 6</b>	<p>The Agreement has always been linked to the Customer's specified vessel. However, the previous Agreement permitted the Customer to change their specified vessel for another vessel (of the same or smaller dimensions) by giving a notice to the Manager and providing the applicable information and documents for the new vessel to the Manager. This process was not always followed in practice which created significant administrative issues for the Marina office.</p> <p>To address these issues the updated Agreement will always be specific to the vessel named in the Specific Terms. If a Customer wishes to rent the same berth (or a different berth) for an alternative vessel, the Customer will need to contact the Manager and sign a new Berth Rental Agreement specific to the new vessel.</p> <p>Westhaven Marina is at a high level of occupancy and some berth sizes are in very high demand. The Manager has identified that some Customers have modified or replaced their vessels over time, which has resulted in the vessel exceeding the maximum dimensions of its berth. Some other Customers have vessels that would fit into a smaller</p>

		<p>berth than they are currently using. The updated Agreement permits the Manager to measure a Customer's vessel to verify its dimensions. Customers will always be given at least 30 working days' notice before any measurement is to occur, and may observe the measurement taking place. The Manager has existing powers to take action to move a vessel where that vessel is exceeding the maximum dimensions of its berth. Customers with undersized vessels may also be asked to move to a smaller berth, if one is available.</p>
6	<b>Subletting Clause 8</b>	<p>The Manager has previously permitted subletting of rented berths in the Marina on relatively rare occasions, typically where a long-term rental Customer is travelling overseas but wishes to retain their berth. This has always been (and remains) subject to conditions set by the Manager in its sole discretion.</p> <p>The updated Agreement continues to permit subletting, subject to consent from the Manager. While the Manager was always able to require it as part of the conditions applying to an approved subletting arrangement, the Agreement now explicitly calls out that the Manager may require the person subletting the berth (<b>subletter</b>) to sign a commitment to the Manager to comply with the Customer's obligations under the Agreement. It also clarifies that the Customer remains responsible for the subletter and that the Manager may require the subletting to come to an end if the subletter breaches the Agreement.</p>
7	<b>Liability Clause 11</b>	<p>The liability position under the Agreement has not changed and it remains the case that the Manager does not have any liability for any damage or loss to the Customer's vessel or its contents, however that damage may be caused. The relevant clause has been updated to clarify that this disclaimer extends to any damage or loss relating to the use of shore services by the Customer (including interruptions or disconnection of that service) or to the Manager exercising its rights to move the vessel in accordance with the Agreement.</p>
8	<b>Insurance Clause 12</b>	<p>Customers are required to hold a minimum level of insurance under the Agreement to protect against any damage that they or their vessel might cause. Consistent with the requirements at other marinas, the minimum level of insurance under the new Agreement is being increased to \$10,000,000 per event or claim (from \$5,000,000 under the previous Agreement). The Manager, acting reasonably, may require some Customers to hold a higher level of insurance.</p>
9	<b>Movement of vessels Clause 17</b>	<p>The previous Agreement included several grounds on which the Manager could require Customers to move their vessel, or take action to move the vessel, including in emergencies and to facilitate developments and maintenance in the Marina.</p> <p>The updated Agreement provides further clarity on movements that are required for operational reasons, noting that these movements may be temporary or permanent, that they may be needed for the reconfiguration of the Marina, and that the Customer will be given at least 20 working days' notice prior to any movement of this kind.</p>

		<p>The previous Agreement referred to actions taken in 'extreme emergencies', and it has now been clarified that the Manager may act immediately to move a vessel if an emergency has created an imminent risk to safety. Otherwise, the Manager will first contact the Customer and ask them to move their vessel. In those cases, the Manager will only take steps to move the vessel itself when it is either unable to contact the Customer or where the Customer is unable to move the vessel themselves for any reason (e.g. due to being overseas).</p>
10	<b>Customers and representatives</b> <b>Clause 23</b>	<p>The Agreement has been updated to clarify the basis on which it is entered into by the 'Customer' (who is the owner of the Vessel). Where the Customer is not an individual owner, but instead is a group of persons or a legal entity like a company, a Customer Representative will be named who signs the Agreement on the Customer's behalf.</p> <p>While this was always an expectation, groups of joint owners are now also clearly required to keep the Manager updated on any changes within their group.</p>
11	<b>Standard Contract Wording</b> <b>Clauses 25 and 26</b>	<p>Standard contract wording has been added relating to variation of the Agreement, the waiver of either party's rights, requirements for electronic signing and the interpretation of common words and phrases. Several defined terms have been inserted and updated to reflect the other changes in the document.</p>
12	<b>Specific Terms</b>	<p>The form of the Specific Terms has been updated to reflect the changes above. This includes:</p> <ul style="list-style-type: none"> <li>Clarifying that the Customer is the owner of the relevant vessel, and explaining that where a vessel is jointly owned the names of all joint owners should be included.</li> <li>A new section for Customer Representatives to complete (only if applicable).</li> <li>Removal of the 'rental end date', as all Agreements in the updated form will be ongoing.</li> <li>An updated Insurance section which will indicate where additional insurance is required.</li> </ul>