

# Tairua Marina Offer

(As amended on 21 December 2020)

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**To discuss your application you may contact,**

**Tairua Marine Limited, Telephone 09 373 5750, Facsimile 09 373 5579**

**Or the Marina, Telephone 07 864 9945**

## **SUMMARY OF OFFER – KEY INFORMATION**

### **Offer**

This offer relates to purchase of a marina berth licence in a new marina located in Paku Bay, Tairua Harbour. The Marina has been constructed around the point from the south-western boundary to the north – western boundary of the Land.

The offeror is Tairua Marine Limited, referred to as “we”, “our”, “us” or TML as the context requires, throughout this offer document. We obtained all necessary resource consents for the development of the Marina on 25 September 2011.

Following issue of all the Marina Berth Licences, we will transfer the licensor’s interest under the Berth Licences and the underlying assets of the Marina to Tairua Marine Charitable Trust Board. Accordingly, all references in this offer to our rights and obligations in relation to the completed Marina or the Marina Berth Licences (once issued) should also be read as being references to rights or obligations of the Trust following such transfer.

Once Marina Berth Licences have been issued, they will be able to be transferred by you with our, or following transfer of the marina assets to the Trust, the Trusts prior written consent provided that a transfer fee is paid, certain conditions are met and a specified procedure is followed. There is no exchange for the trading of or register for the listing of Marina Berth Licences for sale, the Marina Berth Licences will be your personal property and you will have to undertake your own enquiry and / or advertising to identify a purchaser of it should you subsequently wish to sell it.

We have undertaken the development of the Commercial Building on the land adjacent to the Marina that will house the Marina offices and complementary activities. The Tairua Marine Charitable Trust Board lease of the Commercial Building will commence once all the marina berths have been sold. Following commencement of the lease for the Commercial Building, Tairua Marine Charitable Trust Board will sublet various tenancies in the Commercial Building to provide the ancillary activities and services for a vibrant marina complex.

To acquire a Marina Berth Licence, you are required to complete the Application Form on page 49 and forward it together with the appropriate initial payment for a specified berth size to us in the manner provided in the Application Form.

### **The Land**

The Land, which is situated on The Marina and Paku Drive, Tairua and is adjacent to the proposed Marina, is owned by Tairua Marine Limited. We have obtained the resource consents but have not yet obtained all building consents for this part of the Marina precinct that we have planned.

Access to the Marina will be by public footpath and vehicular access ways across the Land. The resource consents that have been obtained require that rights of way be created for this access and our agreement with Pacific Paradise Limited requires both them and us to grant these easements. The Consents also require the creation of a 4 metre wide esplanade strip around the shore boundary of the Marina. We have registered these pedestrian and vehicular rights of way and the easement for the esplanade strip on the various Certificates of title to the Land.

## **The Marina**

The Marina has been built to accommodate 95 boats in permanent berths. A berth layout plan is attached as Schedule 2 on page 40 of this offer.

The Marina consists of a sheet pile retaining wall along the Marina boundaries enclosing an area of approximately 2.1ha, the outer wall approximately 480m and the inner wall along the shore line approximately 370m. The berth structures comprise two floating Marina piers with associated finger jetties and gangways along the inner boundary and along the northern outer boundary and contain a mixture of berth sizes from 8.40m to 25.00m in length. A rock lined breakwater and associated walkway has been constructed on the south-western boundary adjacent to the entrance to the Marina alongside which a fuel berth and sewerage pump out facility are located. This boundary wall will also provide access to the ferry landing. Power and water is supplied to the berths. Car parking for you and visitors is provided in parking areas on the Land. You will be issued with parking permits that will, when displayed in the window of your vehicle, entitle you to free use of the designated carparking (subject to availability of carparks).

Within the Marina a series of floating piers and associated finger structures are installed using the design and system developed by Total Marine Services Limited in association with Total Floating Systems Limited. The design and system has been successfully used in a number of recent New Zealand marina developments including the Whangamata Marina, Orakei Marina (Auckland), Motueka Marina, Westhaven X Pier rebuild (Auckland) and the Tutukaka Marina extensions.

## **Fuel Supply Berth**

There is a fuel supply berth located on A Pier at the south eastern end of the Marina, shown on the berth layout plan attached as Schedule 2 on page 39. The fuel berth structure, underground fuel storage tanks and fuel distribution system are not included in the Marina assets to be transferred to the Trust under the Marina Assets Sale and Purchase Agreement. Ownership of the fuel supply berth structure, storage tanks and reticulation will remain with us because the storage tanks and most of the reticulation will be under the surface of land that we will own. The Fuel Facilities will be leased from us by the Trust under the Agreement to Lease and your right to use these facilities is provided for in the Marina Berth Licence.

## **Commercial Building**

The Commercial Building houses Marina facilities and other commercial activities intended to enhance the use and enjoyment of the Marina. The Commercial Building is depicted in the plans in Schedule 3 on pages 40 to 47 and contains ground floor tenancies, a Dive Shop and Marina Laundry and on the First Floor the "Marina Bar & Grill Restaurant", Marina Offices and ablutions. There are 59 carparks for Berth holders.

## **Contractors**

We contracted Watts & Hughes Construction Limited for the construction of the Commercial Building. Watts & Hughes Construction Limited has had more than 30 years' experience in commercial construction developments in New Zealand and overseas. Watts & Hughes Construction Limited is associated with Tairua Marine Limited and Craig John Watts.

Construction was completed on 29 March 2017.

## Risks

The key risks relevant to the offer are:

- New or replacement resource consents not being obtained on expiry of the 35 year term of the Marina Berth Licences and of you not being able to recover the money you have paid for your Marina Berth Licence;
- Future changes to legislation or applicable regulations may affect ownership of the Marina structures;
- A natural disaster may occur that results in the destruction of the Marina and the damage is not covered by the insurance in place or such insurance is inadequate;

## Costs

As an owner of a Marina Berth Licence, you will be required to pay a berth levy quarterly in advance on issue of the Marina Berth Licence, the current annual levies are set out on page 9, and ongoing annual levies that will be set for each subsequent year. These levies will vary depending on berth size and will cover operating expenses including contribution to funds to cover periodic dredging, refurbishment and use of services and facilities on an occasional basis. If you are a permanent or regular user of services, you may be levied additional amounts.

Below is an artist's impression of the Marina, including the Commercial Building, esplanade, floating pontoon and finger jetties.



We reserve the right to modify all or any of the prices, berth dimensions and terms of sale applying to the Marina Berth Licences at any time from the prices, berth dimensions and terms of sale specified in this offer.

## **Manager**

Tairua Marine Limited is the manager of this offer. The name of the sole director of Tairua Marine Limited as at the date of this offer is Craig John Watts. Mr Watts is a founding shareholder and director of Watts & Hughes Construction Limited. He holds an NZ Certificate in Quantity Surveying and has been involved in construction and development projects for approximately 30 years. Mr Watts has been involved in the development of the proposed Marina since 1999, has led the process of acquiring the Consents and will coordinate the development processes.

Tairua Marine Charitable Trust Board is also a Manager of the offer. As stated previously, the Trust will own and operate the Marina following completion of the Marina development and settlement under the Marina Assets Sale and Purchase Agreement. The Trusts registered office and its principal place of business is at Level 4, MasterCard House, 136 Customs Street West, Viaduct Harbour, Auckland.

Tairua Marine Charitable Trust Board was established by Deed dated 4 July 2012 and was incorporated as a board on 13 July 2012. The Trust is a charitable organisation which intends to make profits from its activities so that it can fulfill its charitable purposes. Those purposes include providing and maintaining recreational facilities in and around Paku Bay for members of the public and promoting the safe use and enjoyment of the marine environment by supporting such voluntary or other organisations whose objects or activities promote safety or provide rescue services of marine and beach users.

At the date of this offer, the board members of the Trust are Craig John Watts and Laurence Anthony Flynn. Following the date of settlement under the Marina Assets Sale and Purchase Agreement, the Trust will have 5 board members, 3 of whom will be elected by the Berthholders and 2 of whom will be appointed by Craig John Watts.

## **Names and Addresses**

The names and addresses of the Managers, director of Tairua Marine Limited and Board members of the Trust, given as at the date of this offer, may change after the date of this offer. The names of the directors of Tairua Marine Limited and current Board members of the Trust and the registered address can be obtained by request at any time at the Trust's registered office at Level 4, MasterCard House, 136 Customs Street West, Viaduct Harbour, Auckland.

## **Can the offer be altered?**

### **Offer**

The full terms of the offer are as set out in this offer. However, we reserve the right to modify all or any of the prices, berth dimensions and terms of sale applying to the Marina Berth Licences at any time from the prices, berth dimensions and terms of sale specified in this offer.

### **Charges**

The charges payable by you may be altered as follows:

- (a) The annual levies will vary depending on the Marina's budgeted operating expenses for each year.

- (b) Further sums may be levied during a year to cover any additional operating expenses for the Marina which are not covered by the annual levy for that year.
- (c) If persons or entities associated with TML acquire Marina Berth Licences, further sums may be levied to cover the Marina's operating expenses for the period that the persons or entities associated with TML is the Berthholder.
- (d) The terms of the Marina Berth Licences may be varied as set out below. Accordingly, the amount of the transfer fee may alter during the term(s) of the Marina Berth Licences.
- (e) If your berth is separately metered, you will be responsible for paying relevant utility charges. These charges may be altered at the discretion of the relevant utility companies in accordance with their terms of contract.

## **Licences**

Marina Berth Licences may be varied or added to by us, or following transfer of our interest in the Marina to the Trust, by the Trust, acting reasonably, provided that no such variation shall derogate from your rights under the Berth Licence.

## **Marina Berths**

We or, following transfer of our interest in the Marina to the Trust, the Trust may require you to temporarily or permanently vacate Marina berths to permit construction or maintenance work to be done or for use of your berth in an emergency. No compensation will be payable to you in this event.

If the Marina berth or any part of the Marina is destroyed or damaged, you may be required to vacate the berths for the period necessary to complete any reinstatement. No compensation or refunds will be offered for the vacant period.

## **How do I cash in my marina berth license?**

The Marina Berth Licences issued by us are transferable, subject to our, or following transfer of our interest in the Marina to the Trust, the Trust's consent and compliance with the terms of those Marina Berth Licences. The transfer of a Marina Berth Licence is effected by way of surrender of the existing Marina Berth Licence and issue of a new Marina Berth Licence for the unexpired term to the purchaser. Transfers are subject to a transfer fee equal to the greater of 1% of the payment made by a purchaser for the benefit of a Marina Berth Licence or 1% of the recommended sale price for the Marina Berth Licence (as will be determined by us or the Trust as the case may be from time to time) (plus GST).

## **Who do I contact with enquiries about my marina berth license?**

Enquiries should be directed to Tairua Marine Limited, Level 4, MasterCard House, 136 Customs Street West, Auckland (Phone (09) 373 5750 and Fax (09) 373 5579, Attention: Craig Watts, or Laurence Flynn, or Stephanie Watts).

**Is there anyone to whom I can complain if I have problems with the marina berth license?**

Craig Watts, sole director of Tairua Marine Limited, at Level 4, MasterCard House, 136 Customs Street West, Auckland (Phone (09) 373 5750 and Fax (09) 373 5579).

An annual meeting of each of TML (while it is the owner of the Marina) and the Trust (after it becomes the owner of the Marina) will be held after the end of each financial year. An annual report will be available to Berthholders on request.

Below is another artist's impression of the Marina, including the Commercial Building, esplanade, floating pontoon and finger jetties. There is an additional impression on page 4.



## MARINA BERTH LICENCES

One form of licence will be available for all berths. The Marina Berth Licence will provide for a term that expires on or about 31 May 2048 being the date that is approximately 35 years from the commencement of the 35 Year Consents, or such lesser period as specified in the Marina Berth Licence, subject to the provision for early termination in the Marina Berth Licences. The 35 Year Consents have a maximum statutory term of 35 years from their date of commencement. The date of commencement under the 35 Year Consents is the date that construction works for the Marina commence. Construction works on the Marina commenced during May 2013. The 35 Year Consents are not renewable. TML accordingly cannot offer further rights extending beyond 2048. Marina Berth Licences will therefore terminate on the expiry date of the 35 Year Consents without compensation or any rights of renewal. However, if replacement resource consents are granted, all Marina Berth Licences will be deemed at the option of each Berthholder to have been renewed without payment of a further licence fee, other than additional levies to recover the cost of such replacement resource consents and any replacement or maintenance works that are required under those consents.

Marina Berth Licences will be issued in the form set out in Schedule 1 on page 18. In summary, the Marina Berth Licences will provide for the following:

- (a) Berths may only be used for a nominated vessel that meets the maximum dimension requirements of the particular berth. We reserve the right in certain circumstances to reallocate berths within the Marina.
- (b) Marina Berth Licences will require you to pay an annual levy that will vary according to the size of your berth. Annual levies will cover the operating expenses of the Marina and the establishment of a refurbishment fund to cover the costs of repairs, renovations and maintenance and periodic dredging of the Marina basin. The current Annual Levies are shown in the schedule of prices on page 9 and are net of GST.
- (c) Marina Berth Licences will be transferable by way of surrender and re-grant with our consent upon payment of a transfer fee equal to the greater of 1% of the payment made by a purchaser for the benefit of a Marina Berth Licence or 1% of the recommended sale price for the Marina Berth Licence (as determined by us from time to time) (plus GST). Such fees will not apply where the Marina Berth Licence is transferred to executors, administrators or beneficiaries following your death, to new trustees where you are holding the berth for a trust or between certain joint Berthholders.
- (d) If you do not use the Marina berth continuously, you must make the berth available for placement in the pool of berths for visiting boats. However, you may sublicense the berths provided that the procedure set out in the Marina Berth Licence is followed.
- (e) Further key rights and restrictions on which the Marina Berth Licences are issued are described at page 32 of this offer.

The Trust or an appointed agent will manage the Marina under the Marina Assets Sale and Purchase Agreement. The Trust may appoint a full time manager who will be on site for such time as the Trust considers reasonably necessary for the proper functioning of the Marina.

No agreement has been entered into for persons or entities associated with TML to acquire any of the unsold Berth Licences, but depending on public demand and in order for us and the Trust to complete settlement under the Marina Assets Sale and Purchase Agreement, we may make such arrangements. In the event that persons or entities associated with TML do acquire the unsold Berth Licences, it is anticipated that it will be on the basis that we waive certain requirements of the Marina Berth Licences (relating to payment of levies and transfer fees) for such time as those Marina Berth Licences are held by those person or entities. If this



occurs, you and all other Berthholders will pay a disproportionate amount of the total operating expenses for the Marina for the relevant period.

## PRICING

Berth Length	Type of Berth	Berth Issue Price (assuming a term expiring on about 31 May 2048)	Current Annual Levy (4 July 2018)
8.4 metre	Monohull	\$110,000.00 (inc GST)	\$2,400.00 (plus GST)
9.0 metre	Monohull	\$120,000.00 (inc GST)	\$2,700.00 (plus GST)
10.0 metre	Monohull	\$130,000.00 (inc GST)	\$3,000.00 (plus GST)
12.0 metre	Monohull	All sold out	
13.0 metre	Monohull	\$180,000.00 (inc GST)	\$3,900.00 (plus GST)
15.0 metre	Monohull	All sold out	
16.0 metre			
17.0 metre	Monohull	\$228,000.00 (inc GST)	\$5,000.00 (plus GST)
20.0 metre	Monohull	All sold out	
22.0 metre	Monohull	\$288,000.00 (inc GST)	\$6,500.00 (plus GST)
25.0 metre	Monohull	All sold out	

We reserve the right to modify all or any of the prices, berth dimensions and terms of sale at any time from the prices, berth dimensions and terms of sale applying to the Marina Berth Licences specified in this Berth Offer Document.

## CONSENTS

The following statutory consents have been obtained to enable the proposed Marina development to proceed:

### Coastal Permits

#### Marina Basin

- (a) Resource Consent No. 116390: Coastal Permit, granted to us by WRC authorising us to occupy and use coastal space for two sheet pile retaining walls enclosing an area of 2.1ha for the purpose of creating a 95 berth marina for the maximum term of 35 years.
- (b) Resource Consent No. 116391: Coastal Permit, granted to us by WRC authorising us to occupy and use coastal space including:
  - (i) two floating marina piers, finger jetties and gangways along with piles; and
  - (ii) ancillary structures and facilities including a 30 metre rock wall at the Marina entrance and the provision of utility services

for the purpose of operating a 95 berth marina for the maximum term of 35 years.

- (c) Resource Consent No. 116392: Coastal Permit, granted to us by WRC authorising us to dredge and excavate approximately 32,000m<sup>3</sup> of material, predominantly sands, within 2.1ha of the Marina basin for the maximum term of 5 years.
- (d) Resource Consent No. 116393: Coastal Permit, granted to us by WRC authorising us to undertake maintenance dredging of the Marina basin of up to 5,000m<sup>3</sup> annually for the maximum term of 35 years.
- (e) Resource Consent No. 116394: Coastal Permit, granted to us by WRC authorising us to occupy coastal space with a temporary coffer dam for the maximum term of 5 years.
- (f) Resource Consent No. 116395: Coastal Permit, granted to us by WRC authorising us to dam and divert with a temporary coffer dam to exclude sea water to enable marina construction for the maximum term of 5 years.
- (g) Resource Consent No. 116396: Coastal Permit, granted to us by WRC authorising us to deposit clean sand from capital dredging/excavation works for beach nourishment of foreshore areas within Tairua Harbour for the maximum term of 5 years.
- (h) Resource Consent No. 116397: Coastal Permit, granted to us by WRC authorising us to occupy and use coastal space with temporary pipes over the seabed to enable seawater and clean sands dredged to be pumped to the foreshore areas and to enable the discharge of seepage water into the coastal marine area for the maximum term of 5 years.
- (i) Resource Consent No. 116399: Coastal Permit, granted to us by WRC authorising us to take and discharge seepage water in the coastal marine area for the purpose of dewatering the marina basin during construction activities for the maximum term of 5 years.

### **Marina Facilities**

- (j) Resource Consent No. 116400: Coastal Permit, granted to us by WRC authorising us to occupy and use coastal space for a pontoon at the southern end of the marina basin for ferry landing purposes for the maximum term of 35 years.
- (k) Resource Consent No. 116401: Coastal Permit, granted to us by WRC authorising us to erect, use and maintain refueling and sewerage pump-out facilities in the coastal marine area on the southern side of the southernmost pontoon within the marina for the maximum term of 35 years.
- (l) Resource Consent No. 116402: Coastal Permit, granted to us by WRC authorising us to occupy and use coastal space for installation of trash screen/filter/weir to existing stormwater outfalls for the maximum term of 35 years.
- (m) Resource Consent No. 116404: Coastal Permit, granted to us by WRC authorising us to discharge treated surface water from car parking areas and access roads to the coastal marine area for the maximum term of 35 years.
- (n) Resource Consent No. 116405: Coastal Permit, granted to us by WRC authorising us to reclaim approximately 1,100m<sup>2</sup> of foreshore and seabed for open space and picnic area for unlimited duration.

- (o) Resource Consent No. 116416: Coastal Permit, granted to us by WRC authorising us to erect and occupy coastal space for all ancillary structures and facilities including handrails, markers and navigation aids for the maximum term of 35 years.
- (p) Resource Consent No. 116417: Coastal Permit – Restricted Coastal Activity, granted to us by WRC authorising us to place clean sand along the exterior of the proposed marina outer sheet pile wall to a maximum height of 0.65 metres above mean sea level and a maximum volume of 1000 m<sup>3</sup> for the maximum term of 5 years.
- (q) Resource Consent No. 116418: Coastal Permit, granted to us by WRC authorising us to deposit clean sand within the coastal marine area and in so doing reclaim approximately 400m<sup>2</sup> of the coastal marine area for the purpose of creating a beach outside the sheet pile wall adjacent to the northern end of the proposed carpark for unlimited duration.
- (r) Resource Consent No. 116419: Coastal Permit, granted to us by WRC authorising us to undertake earthworks and other land disturbance activities on land above mean high water springs associated with construction of footpaths and a car parking area for the maximum term of 5 years.
- (s) Resource Consent No. 116870: Coastal Permit, granted to us by WRC authorising us to use vehicles in the coastal marine area for the purpose of sheet pile wall construction and sand contouring at beach nourishment sites. Granted for the period expiring on 31 December 2013.
- (t) Resource Consent No. 116871: Coastal Permit (Restricted Coastal Activity), granted to us by WRC authorising us to reclaim approximately 198m<sup>2</sup> of the coastal marine area between the line of mean high springs and the proposed inner sheet pile wall for unlimited duration.

### **Access Channel**

- (u) Resource Consent No. 117354: Coastal Permit, granted to us by WRC authorising us to remove approximately 10,000m<sup>3</sup> of natural marine material from the bed of the Tairua Harbour as part of the construction of an access channel to the marina and to remove approximately 5,000m<sup>3</sup> as part of an ongoing dredging programme for channel maintenance purposes for the maximum term of 35 years.
- (v) Resource Consent No. 117355: Coastal Permit, granted to us by WRC authorising us to deposit up to approximately 10,000m<sup>3</sup> of excavated clean marine material on beaches within the Tairua Harbour as part of the construction of an access channel to the marina and to deposit approximately 5,000m<sup>3</sup> as part of an ongoing dredging programme for channel maintenance purposes for the maximum term of 35 years.

### **Marina Walls**

- (w) Resource Consent No. 119958: Coastal Permit – Restricted Coastal Activity, granted to us by WRC authorising us to erect outer sheet pile retaining wall of 559m enclosing an area of 2.1ha for the purpose of creating a 95 berth marina for the maximum term of 5 years.
- (x) Resource Consent No. 117583: Coastal Permit, granted to us by WRC authorising us to erect inner sheet pile retaining wall of 284m enclosing an area of 2.1ha for the purpose of creating a 95 berth marina for the maximum term of 5 years.

### **Pauanui Deposition**

- (y) Resource Consent No. 118436: Coastal Permit, granted to us by WRC authorising us to place approximately 40,000m<sup>3</sup> of material from capital dredging of the Tairua Marina to the south ebb tide delta offshore of the entrance to the Tairua Harbour for the maximum term of 5 years.
- (z) Resource Consent No. 118437: Coastal Permit, granted to us by WRC authorising us to place approximately 7,000m<sup>3</sup> per year of material from maintenance dredging of the Tairua Marina to the south ebb tide delta offshore of the entrance to the Tairua Harbour for the maximum term of 35 years.

### **Grahams Stream re-alignment and bird roost area**

- (aa) Resource Consent No. 119266: Coastal Permit – Restricted Coastal Activity, granted to us by WRC authorising us to divert and re-direct the channel of Grahams Stream within Paku Bay to follow the historic channel alignment including excavation of approximately 3,000 m<sup>3</sup> of material thereby creating a channel of approximately 1,130 metres in length for the maximum term of 5 years.
- (bb) Resource Consent No. 119266A: Coastal Permit, granted to us by WRC authorising us to undertake vehicle use associated with the diversion and redirection of the channel of Grahams Stream within Paku Bay as authorised by consent number 119266 for the maximum term of 5 years
- (cc) Resource Consent No. 119267: Coastal Permit, granted to us by WRC authorising us to deposit approximately 2,000m<sup>3</sup> of natural marine material into the existing channel of Grahams Stream within Paku Bay, for infilling purposes associated with the re-alignment of Grahams Stream and associated vehicle use for the maximum term of 5 years.
- (dd) Resource Consent No. 119268: Coastal Permit, granted to us by WRC authorising us to deposit approximately 400m<sup>3</sup> of natural marine material within Paku Bay to raise an area of approximately 231m<sup>2</sup> to a level of 0.7 metres above the level of mean high water springs and in so doing reclaim an area of approximately 775 m<sup>2</sup> of Paku Bay, for the purpose of creating an all tide bird roost and associated vehicle use for the maximum term of 35 years.

### **Land Use Consents**

Various statutory consents to enable the proposed site works and the Commercial Building development to proceed, including the works associated with the installation of the fuel tanks on the Land are required in order for us to provide the re-fuelling facility to Berthholders have been obtained:

- (a) Resource Consent granted by TCDC under Application Number: RMA2007/76 authorising us to carry out site works associated with the construction of the Marina; and
- (b) Resource Consents granted by TCDC under Application Numbers: RMA2010/84 and RMA2014/98 to construct and operate the Commercial Building, provide parking and develop an esplanade strip / public walkway on the Land.

### **Transfer of Consents**

As specified in the Marina Assets Sale and Purchase Agreement, on settlement all interest that we will have acquired in the Transferring Consents, will be transferred to the Trust.

## **Resource Consent Conditions**

Each of the Resource Consents is given subject to a range of detailed conditions that must be complied with in the construction and operation of the Marina. In addition, various of the Resource Consents granted by the WRC provide that the conditions may be reviewed by the WRC at various specified intervals to:

- (a) deal with any significant adverse effect on the environment which may arise from the exercise of the relevant Resource Consent and which was not apparent at the time of granting of such Resource Consent;
- (b) require us to adopt the best practicable option (as defined by section 108(8) of the Resource Management Act 1991) to remove or reduce any adverse effect on the environment; and
- (c) to alter the monitoring requirements in light of previous monitoring results and/or changed environmental and/or hydrological knowledge.

**SIGNED** by **Tairua Marine Limited** by:



Director

**SIGNED** by **Craig John Watts**

as director of Tairua Marine Limited



and as board member of Tairua Marine Charitable Trust Board



**SIGNED** by **Laurence Anthony Flynn**

as board member of Tairua Marine Charitable Trust Board



**SIGNED** by **Tairua Marine Charitable Trust Board** by affixing its common seal in the presence of:



Trustee



Common Seal



Trustee

## **DIRECTORY**

<b>Offeror</b>	
Tairua Marine Limited	Level 4, MasterCard House, 136 Customs Street West, Auckland
<b>Director of Offeror</b>	
Craig John Watts	Level 4, MasterCard House, 136 Customs Street West, Auckland
<b>Managers</b>	
Tairua Marine Limited	Level 4, MasterCard House, 136 Customs Street West, Auckland
Tairua Marine Charitable Trust Board	Level 4, MasterCard House, 136 Customs Street West, Auckland
<b>Directors and Board Members of Managers</b>	
Craig John Watts (Tairua Marine Limited and Tairua Marine Charitable Trust Board)	Level 4, MasterCard House, 136 Customs Street West, Auckland
Laurence Anthony Flynn (Tairua Marine Charitable Trust Board)	Level 4, MasterCard House, 136 Customs Street West, Auckland

## **DEFINITIONS**

The following initially capitalised terms that are used in this offer have the meanings specified below:

<b>35 Year Consents</b>	The 12 resource consents (Numbers 116390, 116391, 116393, 116400, 116401, 116402, 116404, 116416, 117354, 117355, 118437 and 119268) granted by the WRC authorising occupation and use of the Marina area, dredging, deposition and discharge of stormwater.
<b>5 Year Consents</b>	The 14 resource consents (Numbers 116392, 116394, 116395, 116396, 116397, 116399, 116417, 116419, 119958, 117583, 118436, 119266, 119266A and 119267) granted by the WRC authorising erection of Marina walls, dredging, deposition and discharge of stormwater in the Marina area.
<b>Unlimited Duration Consents</b>	The 3 resource consents (Numbers 116405, 116418 and 116871) authorising reclamation and deposition in the Marina area.
<b>Short Duration Consent</b>	Resource consent Number 116870 granted by WRC authorizing occupation and use of the coastal Marina area expiring on 31 December 2013.
<b>Transferring Consents</b>	The 35 Year Consent numbers 116390, 116391, 116393, 116400, 116401, 116404, 116416, 117354, 117355 and 119268.
<b>Agreement to Lease</b>	The Agreement to Lease dated 8 August 2012 which provides for TML to construct and lease to the Trust the Commercial Building incorporating tenancies for Marina offices, wash facilities, dive shop and restaurant utilising the services of the main contractors.
<b>Applicant(s)</b>	A person or persons who have completed and submitted an Application Form for the purchase of a Marina Berth Licence, which has been accepted by TML.
<b>Application Form</b>	The application form for a Marina Berth Licence set out in Schedule 4 to this offer on page 48.
<b>Berthholder</b>	A holder of a Marina Berth Licence, and Berthholders has a corresponding meaning.
<b>Commercial Building</b>	The Marina Hub facilities building constructed on Lot 308 (as depicted in the plans attached as Schedule 3 to this offer) containing ground floor tenancies, a Dive Shop and Marina Laundry and on the First Floor the Marina Bar & Grill Restaurant, Marina Offices and ablutions. There are 59 carparks for Berth holders.



<b>Fuel Facilities</b>	The fuel supply berth structure located on A Pier at the south eastern end of the Marina development, the underground fuel storage tanks to be located on Lot 308 and the fuel distribution system located on Lot 308 and A Pier.
<b>Land</b>	Part Lots 1, 2 ,3 and 4 DPS16584 Lots 310, 311 and 312 DPS21843
<b>Land Use Consents</b>	The resource consents granted by TCDC under Application Numbers: RMA2007/76, RMA2010/84 and RMA2014/98 authorising us to carry out site works, construct and operate the Commercial Building, provide parking and develop an esplanade strip / public walkway on the Land.
<b>Lot 308</b>	Lot 308 DPS13433.
<b>Managers</b>	Tairua Marine Limited (875305); and  Tairua Marine Charitable Trust Board incorporated under the Charitable Trusts Act 1957 (2562803).
<b>Marina</b>	The marina facilities comprising approximately 95 marina berths developed by TML as described in this offer.
<b>Marina Assets Sale and Purchase Agreement</b>	The agreement for sale and purchase dated 8 August 2012 which provides for TML to sell to the Trust a completed Marina including the Transferring Consents, the licensor's interest in the Marina Berth Licences and the underlying Marina assets of this offer.
<b>Marina Berth Licence</b>	A licence for a berth in the Marina in the form set out in Schedule 1 to this offer, and Marina Berth Licences has a corresponding meaning.
<b>TCDC</b>	Thames Coromandel District Council.
<b>Resource Consents</b>	The various statutory consents described on pages 9 to 13 of this Offer that have been sought and obtained to allow the Marina development to proceed.
<b>TML</b>	Tairua Marine Limited (875305).
<b>Trust</b>	Tairua Marine Charitable Trust Board incorporated under the Charitable Trusts Act 1957 (2562803).
<b>Trust Deed</b>	The deed of trust constituting the Tairua Marine Charitable Trust dated 4 July 2012.
<b>Working Day</b>	A day other than a Saturday or Sunday or public holiday
<b>WRC</b>	Waikato Regional Council

## SCHEDULE 1

Tairua Marine Limited

### MARINA BERTH LICENCE

Date:

20

#### Parties

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1. **TAIRUA MARINE LIMITED (875305)**
2. **THE PERSON(S) NAMED IN THE FIRST SCHEDULE (INCLUDED IN THE TERM "BERTHHOLDER")**

#### Background

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- A. Tairua Marine Limited grants to the Berthholder a licence to use, occupy and enjoy the berth in Tairua Marina which is described in the First Schedule ("the Berth") upon the following terms and conditions.

#### This deed records

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##### 1. Licence

###### Grant

- 1.1 In consideration of the Berthholder adopting the obligations imposed on the Berthholder by this Licence, the Licensor hereby grants, to the Berthholder only, except as authorised by the Licensor in the case of a transfer or sublicense, the rights to:
  - a. Berth the Nominated Vessel in the Berth;
  - b. Use the Structures and Facilities; and
  - c. Navigate the Nominated Vessel within the Marina.

###### Rights of Third Parties

- 1.2 The Berthholder acknowledges that the rights granted pursuant to subclauses 1.1b and 1.1c are subject to:
  - a. The rights of public access provided for in the Resource Consents; and
  - b. The rights of other Berthholders in the Marina and all other persons authorised by the Licensor from time to time.

###### Nominated Vessel

- 1.3 The Berthholder may at any time by notice in writing, nominate a different Nominated Vessel provided that the vessel so nominated does not exceed the dimensions of the Berth specified in clause 4 and the Berthholder personally and beneficially owns not less than one half share in the substituted Nominated Vessel.

##### 2. Term

- 2.1 The term of this Licence shall be 35 years less *[the number of days will be determined by length of time from commencement of the development works for the Marina until the date of issue of the berth licence]* days commencing on the Commencement Date stated in the First Schedule and unless previously surrendered

or otherwise lawfully terminated, and subject to clauses 13.7 and 16.1 expires on the Expiry Date stated in the First Schedule.

- 2.2 Commencing at a reasonable time prior to the Expiry Date (such time to be determined by the Licensor in its absolute discretion), the Licensor shall take all reasonable steps available to it to procure the renewal of the Resource Consents and permits of other Authorities.
- 2.3 Subject to clause 2.2 on the commencement of renewals of the Resource Consents or the grant of new or replacement Resource Consents, this Licence shall be deemed at the option of the Berthholder to have been renewed on the same terms and conditions as this Licence subject to any amendments made necessary by the terms or conditions of the renewed or replacement Resource Consents.
- 2.4 During any period between the Expiry Date and the grant of new or replacement Resource Consents the Licensor shall hold the Berth upon trust for the Berthholder according to the terms of this Licence and the Berthholder shall continue during such period to pay to the Licensor all rental and other charges payable hereunder and to comply with all of the Berthholder's obligations under this Licence as if it remained in full force and effect.
- 2.5 Upon renewal of this Licence in accordance with clause 2.3 the Licensor may Levy the Berthholder such reasonable sum as shall be fixed by the Licensor as a proportionate recovery of any legal, consent, reconfiguration, maintenance or other costs whatsoever incurred by the Licensor. The renewed Licence will not issue to the Berthholder until such sum is paid.

### **3. Operating Expenses And Other Charges**

- 3.1 The Berthholder shall on the date of the issue of this Licence pay the Initial Levy for Operating Expenses specified in the First Schedule for the period from the Commencement Date until the following 31 March.
- 3.2 Thereafter an annual Levy shall be paid quarterly in advance by direct debit authority. In each year for the year ending on the following 31 March the annual Levy shall be set by the Licensor by notice in writing to the Berthholder and shall cover the Berthholder's Proportion of the budgeted Operating Expenses for the Marina.
- 3.3 Where a vessel uses a Berth for commercial purposes, the Licensor shall be entitled to charge an additional Levy, of an amount to be determined in the sole discretion of the Licensor, taking into account the additional Services and the additional use of Facilities that may result from that use.
- 3.4 If, at any time during the period 1 April to 31 March, the Licensor considers that Operating Expenses have been, or will be, incurred which exceed the budgeted Operating Expenses for that year, the Licensor shall be entitled to charge additional Levies, in amounts to be determined in the sole discretion of the Licensor and to be levied in accordance with the Levy, by notice in writing to the Berthholder.
- 3.5 Not less than 7 days prior to each annual general meeting of the Licensor, the Licensor shall notify the Berthholder of the estimated Berthholder's Proportion for the next financial year.
- 3.6 As soon as practicable after the end of each financial year, the Licensor will supply the Berthholder with a statement giving reasonable particulars of the actual Operating Expenses for that year and estimated amounts for the next year.

- 3.7 The Berthholder shall pay interest at the Default Rate on Levies or other moneys payable under this Licence which remain unpaid 14 days after the due date for repayment. Interest shall be calculated on a daily basis from the due date for payment until the actual date of payment and shall be payable on demand. The right of the Licensor to recover interest shall be without prejudice to any other rights, powers and remedies of the Licensor.
- 3.8 Where power provided for a Berth is metered, the Berthholder shall pay the difference between the uniform charge for power and the metered cost for power supplied to the Berth in addition to the Levy. Any such charges shall be paid quarterly in arrears by direct debit authority. The provisions of clause 3.7 shall apply in relation to such charges which remain unpaid 14 days after the due date for payment.

#### **4. Maximum Dimensions**

- 4.1 The Berthholder shall at no time allow any part of a vessel moored in the Berth to extend onto or over any walkway forming part of the Marina or to extend beyond any poles delineating the outer end of the Berth, unless otherwise agreed to by the Licensor.

#### **5. Transfer of Licence**

- 5.1 This Licence is personal to, and at all times shall be held beneficially by the Berthholder. The Berthholder shall not assign, transfer or otherwise dispose of this Licence, or any interest in this Licence, whether legal or beneficial unless the written consent of the Licensor is obtained and in the case of proposed assignment, transfer or other disposition of this Licence or any interest in this Licence:
- a. The Berthholder has provided to the Licensor the name, address, and occupation (or in the case of a corporation the registered office and details of business) of the proposed purchaser or assignee and the name and dimension of the proposed Nominated Vessel (which must comply with the requirements of clause 4) together with such other evidence as the Licensor may require, including:
    - i. That such purchaser is respectable, responsible and solvent; and
    - ii. Confirming the terms and conditions upon which the Berthholder intends to assign or transfer its interest in this Licence;
  - b. The Levy for the time being due or payable by the Berthholder under this Licence shall have been paid, and the Berthholder shall have observed and performed all the other obligations of the Berthholder under this Licence up to the date of such transfer;
  - c. The Berthholder shall have paid the costs of and incidental to the obtaining of the Licensor's consent; and
  - d. The Berthholder shall have paid to the Licensor a transfer fee equal to the greater of 1% (plus GST) of the payment made by the purchaser for the benefit of the Licence, or 1% (plus GST) of the recommended sale price of the Marina Berth as set by the Licensor from time to time.
  - e. The Berthholder has signed a surrender of this Licence and the proposed purchaser or assignee has signed a new licence for the Berth for the

unexpired residue of the term of this Licence but otherwise on the terms and conditions set out in the Licensor's then current Marina Berth Licence.

- 5.2 For the purpose of clause 5.1 if the Berthholder is a company any change in the company's shareholder or structure which alters the effective management or control of the company shall be deemed to be an assignment of this Licence.
- 5.3 The Licensor shall not unreasonably or arbitrarily withhold, or consent to an assignment transfer or other disposition of this licence pursuant to clause 5.
- 5.4 A transfer fee shall not be payable in the event of a transfer of a Licence:
  - a. To the Berthholder's executors or administrators following the death of a Berthholder; or
  - b. To the beneficiaries of the Berthholder's will or letter of administration following the death of the Berthholder; or
  - c. Where the Licensor is satisfied that the Berthholder is holding the Berth as a trustee of a trust and a new trustee or trustees are appointed for such trust; or
  - d. Where there are existing joint holders (holding the Berth with the consent of the Licensor) and the transfer is to a lesser number of the same holders.

## 6. **Sublicensing and Continuous use**

- 6.1 The Berthholder shall:
  - a. Use the Berth continuously; or
  - b. Make the Berth available to the Licensor for letting to visiting vessels upon such conditions as determined from time to time by the Licensor; or
  - c. Sub-licence the Berth for any period providing that the following conditions and restrictions are first satisfied:
    - i. Before entering into any sub-licensing arrangement, the Berthholder shall give prior written notice to the Licensor setting out the full name, address and contact telephone numbers of the proposed sub-berthholder and full details of the proposed sub-berthholder's vessel (which must comply with the maximum dimensions as set out in clause 4) and shall specify the term of the proposed sub-licensing; and
    - ii. Such sub-license shall be subject to the approval of the Licensor, that approval shall not be unreasonably or arbitrarily withheld; and
    - iii. It shall be a term of the sub-licence that the sub-berthholder shall comply with the terms and conditions of this Licence and all references to the Berthholder in this Licence shall be read, as necessary, as references to the sub-berthholder; and
    - iv. The Licensor's approval of any specific sub-licensing arrangement shall not extend to any other sub-licensing arrangement and shall be strictly limited to the period and vessel approved by the Licensor. If the Berthholder wishes to extend the period of sub-licensing beyond the initial period or substitute a different vessel from that approved, the Berthholder shall make further written application to the Licensor,

which may grant or withhold its approval, in its absolute discretion;  
and

- v. Should an approved sub-berthholder vacate the Berth for any period of time, the sub-berthholder shall notify the Licensor of the times that the Berth is expected to be vacant and the Berth shall then be let for use by visiting vessels.

## **7. Water Space and access**

- 7.1 This Licence relates only to the Berth. In common with others, the Berthholder shall have the right of making fast to the allocated Berth Structures and access and use rights over the Structures of the Marina.
- 7.2 The Berthholder shall not alter or modify the Berth or adjacent Structure and any addition such as fendering shall first be approved by the Licensor.
- 7.3 The Berthholder, and any other person permitted by the Licensor, may use water, power, sewage pump-out, and any other Facilities provided on the Structures provided charges for such services are paid at such rates and at such times as required by the Licensor.

## **8. Appointment of Manager**

- 8.1 The Licensor shall be entitled to appoint and remove from time to time, a Manager to perform the obligations of the Licensor under this Licence. Such Manager shall act for and on behalf of the Licensor, and shall have all rights and powers of the Licensor under this Licence.
- 8.2 The Berthholder shall obey all lawful directions of the Manager whether or not the specific instruction is covered by the terms of this Licence or not.

## **9. Marina Rules and Alteration of Marina Rules**

### **Compliance**

- 9.1 The Berthholder shall at all times comply with the Marina Rules and with any special instructions issued by the Licensor in the case of emergencies.

### **Variation**

- 9.2 The Licensor may vary the Marina Rules by written notice to the Berthholder from time to time as may reasonably be necessary or desirable provided that no such variation shall derogate from the rights of the Berthholder under this Licence. If there is any inconsistency between the provisions of this Licence and the Marina Rules the provisions of this Licence shall prevail.

## **10. Maintenance of Vessels**

- 10.1 The Berthholder shall keep any vessel occupying the Berth in good serviceable condition and repair so as not to obstruct, interfere with or endanger other vessels navigating or berthed in the Marina.
- 10.2 Should the Berthholder default in compliance with the provisions of clause 10.1, the Licensor may serve notice on the Berthholder requiring the Berthholder to repair any vessel occupying the Berth as required by clause 10.1 within a specified time.
- 10.3 Should the Berthholder fail to comply with notice given under clause 10.2 within the time specified in the notice, the Licensor may (but without any obligations to do so),

and without further notice, remove any vessel occupying the Berth and recover the cost of removal from the Berthholder.

- 10.4 Should the Berthholder fail to make satisfactory arrangements for the repair of any vessel removed pursuant to clause 10.3 within the period of one month after the date of such removal the Licensor may at any time thereafter offer the vessel for sale by public auction or private contract and:
- a. apply such of the proceeds of any resultant sale first in satisfaction of the Licensor's expenses incurred in the removal and storage including administrative expenses and the cost of providing custodians, and
  - b. secondly in or towards satisfaction of any debts or liabilities owed by the Berthholder to the Licensor and thirdly to the Berthholder.

The Berthholder hereby irrevocably appoints the Licensor to be the attorney of the Berthholder to execute all documents and do all things as are necessary to give effect to such sale.

- 10.5 The Licensor may (but shall not be obliged to) appoint a custodian for the care of such vessel pending any sale and the cost of doing so may be treated as a cost incurred in the course of sale.
- 10.6 The Licensor shall have the power and entitlement to move a vessel in an emergency or where a vessel needs to be moved to allow work to be done or for any other reasonable purpose.

## 11. Relocation of Berth

- 11.1 The Licensor may at any time require the Berthholder to vacate the Berth either on a temporary or permanent basis and to take up another suitable Berth within the Marina.
- 11.2 If the Licensor requires the Berthholder to permanently vacate the Berth:
- a. The Licensor shall take such steps as are reasonably practicable to provide a replacement Berth similar in size, value and location to the previous Berth.
  - b. The Licensor will not be liable to pay any compensation in respect of the change of Berth.
  - c. This Licence shall be cancelled and a new Licence for the balance of the term of the cancelled Licence shall be issued for the replacement Berth.
- 11.3 The Licensor may use the Berth in case of emergency and may require the Licensee to vacate the Berth to enable the Licensor to carry out repairs or maintenance and in either such case the Licensor shall not be obliged to provide an alternative Berth.
- 11.4 The terms of this Licence shall continue to apply to any Berth to which the Berthholder is relocated whether on a temporary or permanent basis.

## 12. Indemnity

- 12.1 The Berthholder indemnifies the Licensor from and against all actions, claims, demands, losses, damages, costs, expenses and liabilities which they may suffer or incur, or for which the Licensor may become liable in respect of or arising from:
- a. Loss, damage or injury from any cause to property or persons within or outside the Marina caused or contributed to by the use or misuse of the Berth

or Nominated Vessel or by any act, omission, neglect, breach or default by the Berthholder or by the condition of the Berth or any part of it.

- b. Any alteration or addition made to the Berth by the Berthholder in contravention of any of this Licence.
  - c. Any failure by the Berthholder to comply with any obligation imposed on him/her under this Licence or by law.
  - d. The Licensor exercising their rights, remedies and powers under this Licence.
- 12.2 For the purposes of the preceding sub-clause the term Berthholder includes any person formally or informally authorised by the Berthholder, whether lawfully or otherwise, to use the Berth or the Nominated Vessel, whether alone or with others, or preparing to do so, or having done so.
- 12.3 The Berthholder shall at all times hold and maintain sufficient insurances, including in respect of the Nominated Vessel, third party insurance and public liability insurance.
- 12.4 The Licensor shall not be liable and accepts no responsibility for, loss or damage to vessels, Nominated Vessels, 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 the Berth or any part of the Facilities of Marina and the Licensor shall not be liable to the Berthholder or any person for any loss or damage to property, or death or personal injury incurred or suffered within the Marina however the same occurs and whether or not such happening is attributable to the acts or defaults of the Licensor, or its servants or agents of contractors or otherwise howsoever.

### 13. Insurance

#### **Berthholder's Insurance**

- 13.1 The Berthholder shall at all times keep all vessels, craft and any other property owned or brought into the Marina by the Berthholder and/or any sub-berthholder or invitee fully insured while in or near the Marina. Such insurance shall cover loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, Act of God and all other reasonably insurable risks.
- 13.2 The Berthholder shall also effect adequate liability insurance against death and/or bodily injury to persons and loss or damage to the property of others arising out of the use of water craft within the Marina or occupation of the Berth. The amount of such public liability insurance shall be as specified by the Licensor from time to time.
- 13.3 The Berthholder shall, if requested by the Licensor, provide the Licensor with copies of policies effected pursuant to this clause together with a certificate of currency for such policies.

#### **Licensor's Insurance**

- 13.4 The Licensor will take all reasonable steps to insure the Structures within the Marina to their full reinstatement value against loss, damage, or destruction by fire, earthquake, fire subsequent upon earthquake, flood, lightning, storm or other natural events, the premiums for which shall form part of the Operating Expenses.
- 13.5 The Berthholder will not do or allow anything to be done to render void or voidable any policy of insurance effected by Licensor.



- 13.6 If the Berthholder shall do, permit or fail to do anything which may result in any increased or extra premium becoming payable in respect of such insurance, the Berthholder will forthwith on demand from the Licensor pay to the Licensor such increased or extra premium or premiums.
- 13.7 If the Berth or any material part of the Marina is destroyed or damaged and the Licensor determines in its sole discretion that it is not feasible (for any reason) to proceed with the reinstatement, then the Licensor may elect to terminate this License from the date of the rights of occurrence of such destruction or damage. Such termination shall be without prejudice to the parties in respect of any prior breach. Where the Licensor has received any insurance proceeds, those proceeds shall be applied as follows:
- a. first, in payment of all costs incurred by the Licensor on complying with any Acts of parliament, regulations or resource consents and removing any destroyed or damaged Structures from the Marina;
  - b. secondly, any surplus proceeds shall be paid to the Berthholders of the Marina on the basis determined by the Licensor, acting reasonably.
- 13.8 If the Berth or any material part of the Marina is destroyed or damaged and the Licensor decides to proceed with reinstatement of such damage or destruction, then:
- a. the Licensor shall be entitled to require the Berthholder to vacate the Berth for the period necessary to effect such reinstatement;
  - b. the Berthholder shall not be entitled to any refund of Levies or to any compensation for the lack of availability of the Berth or otherwise;
  - c. The Licensor shall be entitled to complete such reinstatement using such materials and form of construction, and in such manner, as the Licensor deems appropriate;
  - d. The Berthholder shall continue to be liable for all Levies.

#### **14. Protection of Resource Consents**

- 14.1 The Licensor shall:
- a. Pay moneys payable under the Resource Consents as and when the same are due; and
  - b. Observe and perform all of the conditions in the Resource Consents; and
  - c. Not surrender the Resource Consents at any time during the term of the Licence.

#### **15. Compliance with Statutes**

- 15.1 The Berthholder shall, at all times, in its use of the Berth and the Nominated Vessel, comply with statutes, ordinances, regulations, bylaws, planning decisions, the Resource Consents and associated conditions, or other lawful requirements effecting or relating to the Berth and the Nominated Vessel, or the use or occupation of the Berth and the Marina.

#### **16. Default**

- 16.1 If at any time during the Term:

- a. The Berthholder breaches irremediably any obligation under this Licence;
- b. The Levy or other money payable by the Berthholder to the Licensor under this Licence is in arrears for one month whether or not formal demand for payment had been made;
- c. The Berthholder fails to comply with any obligation imposed on it under this Licence and such failure continues for one month after the date written notice has been given to it by the Licensor requiring the failure to be remedied;
- d. The Berthholder becomes insolvent, bankrupt or goes into liquidation (otherwise than for a solvent restructuring which has been previously approved in writing by the Licensor (at its absolute discretion)), or if the Berthholder, being a corporation, enters into or seeks to enter into any composition with its creditors;

then notwithstanding any prior waiver or failure to take action by the Licensor or any indulgence granted by the Licensor to the Berthholder in respect of any such matter or default, whether past or continuing, it shall be lawful for the Licensor, or for any person duly authorised by the Licensor, without further notice to do any one or more of the following, namely,

- i. Cancel and terminate this Licence;
- ii. Remove the Nominated Vessel or any other vessel from the Berth;
- iii. Proceed against the Berthholder for any moneys then owing or incurred by the Licensor in remedying any default of the Berthholder;

all without prejudice to the rights of either party against the other.

- 16.2 If the Berthholder fails to comply with any obligation imposed on it under this Licence for 14 days after notice is given by the Licensor to the Berthholder to remedy such default, the Licensor may (without prejudice to its right under the preceding sub-clause, or the Licensor's other remedies under the Licence) do anything, including paying money necessary to remedy the default, but shall not be obliged to take any such action.
- 16.3 For the purposes of this clause the Licensor, or any person on its behalf, may enter and remain on the Berth and board and remain so long as may be suitable on the Nominated Vessel or any other vessel on the Berth, with all persons, equipment or materials necessary, and remove the Nominated Vessel or such vessel to any other mooring or other location. All money paid and expenses incurred by the Licensor for such purposes shall be a debt due from the Berthholder to the Licensor and may be recovered by the Licensor accordingly.
- 16.4 The Licensor shall be at liberty to grant a new Licence in respect of the Berth to such person and in such manner as the Licensor in its sole discretion may determine. The Licensor shall be entitled to retain any Levies obtained from any new Berthholder.
  - a. The Berthholder hereby irrevocably appoints the Licensor, any manager appointed by the Licensor and their nominees (severally) as the attorney of the Berthholder to execute all documents and do all such things as are necessary to give effect to such grant. Any new Berthholder shall not be required to see the application of the Levies paid by the new Berthholder nor shall the new Berthholder's title be effected by any irregularity of invalidity in the sale proceedings.

- b. The proceeds of sale shall be received by the Licensor and applied first in payment of the costs of sale, secondly in or towards satisfaction of any monies owing to the Licensor, and thirdly to the Berthholder. If the proceeds of sale of Licence are not sufficient to pay the costs of sale and all monies owing to the Licensor in full, the Berthholder shall remain personally liable to the Licensor for the amount which remains unsatisfied.

## **17. Essentiality of Payments**

- 17.1 Failure to pay the Levy or any other moneys payable under this Licence shall be a breach going to the essence of the Berthholder's obligations under this Licence. The Berthholder shall compensate the Licensor and the Licensor shall be entitled to recover damages from the Berthholder for such breach. Such entitlement shall subsist notwithstanding any default transfer and shall be additional to the Licensor's other rights and remedies. The acceptance by the Licensor of any arrears of Levy's or other moneys payable under this Licence shall not constitute a waiver of the Berthholder's continuing obligation to pay the Levy and such other moneys.

## **18. Address**

- 18.1 The Berthholder shall at all times keep the Licensor informed of any change of its current physical and mail addresses and phone numbers by which the Licensor may contact the Berthholder for both oral and written communications. Alternatively, the Berthholder may provide the name and address of a duly authorised agent to whom the Berthholder has granted unlimited authority to act in all matters concerned with or arising out of this Licence, in which event the Licensor shall be entitled to deal with that agent in all respects as if the agent was the Berthholder and the Berthholder shall be bound accordingly. In the event that there is more than one Berthholder, then all Berthholders' shall appoint one of their number or some other person to be their agent for the purposes of this provision.

## **19. Notices**

- 19.1 Wherever in this Licence any notice or request or other communication with the Licensor is called for, the same shall be made in writing to the Licensor and, if not so made, shall be deemed of no effect whatsoever.

## **20. Acknowledgements by Berthholder**

- 20.1 The Berthholder acknowledges that:
  - a. The Licensor has been granted Resource Consents to enable development and operation of the Marina and, in turn, under this Licence grants to the Berthholder the right to enjoy that part of the Resource Consents relating to the Berth; and
  - b. Pursuant to the common law and to the terms of the Resource Consents, Waikato Regional Council and Thames-Coromandel District Council may terminate the Resource Consents if the terms of the Resource Consents have been breached; and
  - c. Should the Resource Consents be revoked or determined, the Berthholder shall have no right or claim against the Licensor or their successors or assigns whatsoever.

## 21. Definitions and Interpretation

### Definitions

"**Authority**" means any Territorial Authority, Government or other authority or department having jurisdiction or authority, over or in respect of, the Marina or its use or occupation;

"**Berth**" means the berth in Tairua Marina as described in the First Schedule;

"**Berthholder**" means the person named in the First Schedule as the Berthholder and includes the Berthholder's executors, administrators, successors and permitted assigns;

"**Berthholder's Proportion**" means the proportion specified in the First Schedule;

"**Commencement Date**" means the date specified in the First Schedule;

"**Default Rate**" means the Licensors' bank overdraft interest rate plus a further 4% per annum;

"**Expiry Date**" means the expiration date specified in the First Schedule;

"**Facilities**" means the foreshore areas, footpaths, parking areas, driveways, landscaped areas, toilets, wash rooms, club rooms, sewage pump out handling and disposal on A Pier, the fuel supply facility on A Pier and the laundry facility;

"**Goods and Services Tax**" and "**GST**" means tax levied pursuant to the Goods and Services Tax 1985 and includes any tax levied in substitution for such tax;

"**Levy**" means that levy specified in the First Schedule for the first year of the term of the Licence and thereafter such sum as is determined by the Licensor pursuant to clauses 3.2, 3.3 and 3.4 of this Licence;

"**Licence**" means the licence recorded in this Deed;

"**Licensor**" means Tairua Marine Limited;

"**Manager**" means such person as is from time to time appointed to manage the Marina by the Licensor;

"**Marina**" means the area approximately 2.1ha of water contained within the sheet pile inner and outer walls, the rock wall and marina zone 1 boundaries of the Tairua Marina situated at Paku Bay, Tairua shown on the plan attached as the Fourth Schedule and includes the Structures, the Facilities and the Services;

"**Marina Rules**" means the rules and regulations described in Tairua Marina's Berth Licence Rules, a copy of which is annexed in the Second Schedule to this Licence and includes any variations to such rules;

"**Nominated Vessel**" means the vessel specified in the First Schedule or any other vessel nominated by the Berthholder by notice in writing to the Berth Manager in substitution for that vessel and which complies with the provisions of clause 1.3;

"**Operating Expenses**" include, without limitation the costs and expenses listed in the Third Schedule;

"**Purchaser**" means a proposed purchaser of the Berthholder's interest in this Licence, nominated by the Berthholder;

"**Resource Consents**" means the various consents essential to the use and occupation of the Marina as listed in Decision No. [2011] NZEnvC 218 of the Environment Court;

"**Services**" means the power, water and other services provided for the benefit of the Berthholder;

**“Structures”** means the sheet pile wall, the rock wall, fingers, jetties, fueling jetty, piles and other structures constructed or placed on or in the Marina;

**“Term”** means the period commencing on the Commencement Date and ending on the Expiry Date;

**“Working Day”** means any day of the week other than a Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign’s Birthday, Labour Day, Waitangi Day, and Auckland Anniversary Date; and a working day shall be deemed to commence at 9:00am and terminate at 5:00pm.

### **Interpretation**

21.1 In this Deed unless the context otherwise requires:

- a. A reference to a person includes any other entity or association recognised by law and vice versa.
- b. Words referring to the singular include the plural and vice versa.
- c. Any reference to any of the parties includes that party's executors, administrators or permitted assigns, or if a company, its successors or permitted assigns or both.
- d. Everything expressed or implied in this Deed which involves more than one person binds and benefits those people jointly and severally.
- e. Words importing any gender will include the other gender.
- f. Clause headings are for reference purposes only.
- g. References to clauses and schedules are references to clauses of and schedules to this Deed.
- h. References to money will be deemed to be references to New Zealand currency.
- i. Expressions referring to “writing” will be construed as including references to words printed, typewritten or otherwise visibly represented, copied or reproduced (including by facsimile).
- j. A reference to a statute includes:
  - i. all regulations under that statute; and
  - ii. all amendments to that statute; and
  - iii. any statute substituting for it which incorporates any of its provisions.
- k. All periods of time or notice exclude the days on which they are given and expire.

**Executed**

---

**SIGNED** by \_\_\_\_\_ )  
 [ \_\_\_\_\_ ] )  
 as Berthholder in the presence of: \_\_\_\_\_ ) X \_\_\_\_\_

Witness: .....

Occupation:.....

Address:.....

Signed by Tairua Marine Limited as  
 Licensor by its sole director in the  
 presence of:

Craig John Watts

Signature of witness

Name of witness

Occupation

Address

**First Schedule**

---

Berth Licence

Full names and address of Berthholder/s:

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---



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Phone: Bus: \_\_\_\_\_

Home: \_\_\_\_\_

---

 Phone: Bus \_\_\_\_\_

Home: \_\_\_\_\_

---

Name of Nominated Vessel:

---

Type of Nominated Vessel: Yacht / Launch / Multihull

Overall Length: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_

---

Registered Number (if any):

---



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**All information below to be completed by Berth Manager only:**

Maximum Permitted Dimensions:

Length: \_\_\_\_\_ Beam: \_\_\_\_\_ Draft: \_\_\_\_\_

Berthholder's Proportion:

---

Initial Levy:

---

Length of Berth Licensed:

---

Commencement Date:

---

Expiration Date: 31<sup>st</sup> May 2048

## Second Schedule

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### Berth Licence Rules

#### Tairua Marina

Tairua Marine Limited ("the Licensor") has adopted the following rules for the regulation of activities in the Tairua Marina. These rules come into effect immediately on the completion of the Marina.

#### 1. Use of Services and Facilities

- 1.1 The Berthholder may use the water, power and any other Services or Facilities provided by the Marina in common with any other Berthholder's from time to time but on an occasional basis only.
- 1.2 If the Berthholder requires permanent or regular use of Services or Facilities the Berthholder shall advise the Licensor accordingly. The Licensor shall have full discretion as to the provision to be made and shall be entitled to charge as it considers appropriate for such use.
- 1.3 The Licensor's decision as to what constitutes permanent or regular use shall be final.
- 1.4 No person shall leave on any pier or walkway anything that restricts the passage of pedestrians.

#### 2. Pollution

- 2.1 The Berthholder will not pollute or permit the pollution of the Marina or the waters of the Marina.
- 2.2 In particular (but not by way of limitation of 2.1) the Berthholder shall not discharge or dispose of any sewage, garbage, oil, fuel, contaminated bilge water, chemicals, grey water or other material on the Marina or into its waters or into the water near the Marina. Grey water includes discharges from boat galley sinks and showers. Washing down decks with chemicals or to remove fish waste is also prohibited.
- 2.3 If the Licensor provides containers suitable for the disposal of contaminants or pollutant materials (e.g. hazardous wastes such as antifreeze, batteries, oil, paint solvents) the Berthholder must use such containers. If the Licensor does not provide such containers the Berthholder shall be responsible for safe removal of the material from the Marina. The Licensor is not under any obligation to provide such containers.
- 2.4 Only antifouling products approved by the Environmental Risk Management Authority ("ERMA") shall be used on boats using the Marina (e.g. tributyl tin antifouling paints are prohibited in New Zealand and the use of Irgarol antifouling paint will not be permitted in the Marina).

#### 3. Living on board

- 3.1 The Berthholder shall not without the prior written consent of the Licensor live on board any vessel at the Berth or permit anyone else to do so.
- 3.2 For the purpose of this clause the expression "live on board" means sleeping overnight on any vessel for 3 consecutive nights or more. Attention is drawn to the requirements set out in 2.2 prohibiting the discharge of grey water into the Marina.



#### **4. Animals**

- 4.1 Animals in the charge of the Berthholder or guests of the Berthholder shall while on the Marina or on any vessel in the Marina be restrained by a sufficient chain, strap or lead.

#### **5. Children**

- 5.1 The Berthholder shall not permit or allow children under the age of 12 years for whom the Berthholder or guests of the Berthholder are responsible to enter the Marina unless accompanied by an adult.

#### **6. Swimming or Fishing**

- 6.1 The Berthholder and guests of the Berthholder shall not fish, swim, dive or engage in any underwater activities within the Marina.
- 6.2 The provisions of 6.1 above shall not prohibit the underwater inspection of vessels or minor repairs in accordance with such reasonable directions as are stipulated by the Licensor from time to time but the Berthholder shall not clean the hull of any vessel in the Marina.

#### **7. Control of Vessels**

- 7.1 All vessels entering the Marina are subject to the over-riding general jurisdiction of the Licensor and the Berthholder or other persons in charge of such vessels must at all times comply with the directions of the Licensor.
- 7.2 The Berthholder shall not within the Marina moor, anchor, sail or manoeuvre the vessel so as to create a danger, obstacle or inconvenience to other Marina users. Speed is to be limited to minimum safe manoeuvring speed with a maximum of 5 knots and the vessel must be operated so that any wake does not cause nuisance or danger to other vessels or their occupants or to the structure of the Marina.
- 7.3 The vessel must be maintained in good, safe and seaworthy condition at all times.
- 7.4 Advertising or soliciting is not permitted on any pleasure craft within the Marina. No "FOR SALE" signs may be posted on any pleasure craft, or any pile or piers, nor shall any other signs be posted or erected without the written approval of the Licensor.
- 7.5 Berthholders may not use the Marina address, for the purposes of mail delivery without the written approval of the Licensor.
- 7.6 Small tenders and rowboats are permitted to be moored or stored within the Berth provided they are kept clear of walkways and pier fingers. Dinghy racks of approved design and construction may be erected on fingers provided no obstruction is created.
- 7.7 No person shall Berth or knowingly permit to be berthed any vessel in the Marina unless the vessel is licenced to occupy such Berth or otherwise has permission in writing from the Manager; or is temporarily berthed during daylight hours in a Berth allocated by the Manager from the letting pool.
- 7.8 No person shall, except in case of emergency, sail in the Marina.
- 7.9 No person shall anywhere within the Marina, or from any vessel, operate any model boats, hang any laundry, navigate any vessel on the water at a speed greater than 5 knots or in such manner that the vessel's wake causes damage or discomfort to

other property or persons, engage in any conduct that adversely affects the peace, enjoyment or privacy of Berthholders, or moor any vessel other than at a Marina Berth pursuant to an authorisation lawfully given under a Licence or pursuant to these rules.

7.10 The Berthholder, owner or the other person in charge of any vessel in the Marina shall obey the directions of the Manager made for the management of the Marina.

7.11 Any person who is involved in any incident within the Marina precinct whereby any damage is done to any property whatever not owned by the person causing such damage shall report damage to Manager as soon as possible.

## **8. Letting Pool**

8.1 The Manager will keep a detailed list of Berths available for visiting vessels.

8.2 The Manager may charge a fee not exceeding 7% of the rental income collected by the Manager for such temporary use.

## **9. Noise Nuisance**

9.1 The Berthholder shall ensure that all halyards, lines, ropes, rigging and sheets on any vessel using the Berth or otherwise berthed in the Marina and under the control of the Berthholder are secured so that they do not create any unreasonable noise or other nuisance.

9.2 The Berthholder shall ensure that all mechanical devices and entertainment systems on the Berthholder's vessel are operated within guidelines that may be established by the Licensor from time to time or failing such guidelines at reasonable and respectable volume and so as not to cause nuisance or disturbance to other persons in the Marina.

## **10. Storage**

10.1 The Berthholder shall not permit or allow any property under the control of the Berthholder or guests of the Berthholder to be stored on the Marina (including walkways, piers, fingers or foreshore) without the prior written consent of the Licensor.

## **11. Alcohol**

11.1 Neither the Berthholder nor the guests of the Berthholder shall consume alcoholic beverages within the Marina except when actually on board the vessel or within licensed premises.

## **12. Safety Restrictions**

12.1 The Berthholder shall not store motor spirit, petroleum products, fuel, oil, liquefied petroleum gas, compressed natural gas, kerosene or goods of a similarly dangerous or flammable nature on any vessel within the Marina or on any Marina structure or in any area under the control of the Licensor including the Berth, without the prior written approval of the Licensor.

12.2 The Berthholder 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 flammable nature without the prior written approval of the Licensor.

- 12.3 Nothing in clauses 12.1 or 12.2 shall prevent the Berthholder from carrying those materials in the vessel's usual fuel tank and having small quantities of those materials on board in safe containers.
- 12.4 The Berthholder shall not refuel the vessel within the Marina other than at a dedicated fuel jetty or as otherwise permitted in writing by the Licensor.
- 12.5 The Berthholder shall ensure that the vessel has a current electrical warrant of fitness or any other regulatory requirement before being connected to the electricity supply of the Marina.
- 12.6 No person shall permit to be on any vessel or elsewhere in the Marina any plant, equipment, fuel or other material or substance in such condition that it could constitute a hazard or menace to the health or safety of other Marina users or their property.

### 13. **Car parks**

- 13.1 The Berthholder will be issued with parking permits to authorise the parking of vehicles in the Marina parking area. This must be displayed in the vehicle window at all times.
- 13.2 It is further acknowledged by the Berthholder that parking may not be available at all times.

### 14. **Hours of Operation**

- 14.1 The Berthholder shall be entitled to 24 hour access to the vessel on such terms and conditions as the Licensor from time to time determines.
- 14.2 The Licensor may make rules as to when and how public access (if any) is available to all or part of the Marina.

### 15. **Detail on any penalty provisions that the Licensor may impose for inappropriate actions.**

- 15.1 In the event of non compliance with any of the Marina rules the Licensor will give formal notice to the alleged offender to comply within an appropriate time frame. If the non compliance continues beyond the time within which the non compliance should have been rectified, the Licensor shall give notice to the berth owner that if the non compliance continues for a further appropriate period (not exceeding two weeks) the Manager will initiate lawful enforcement action against the Berthholder.
- 15.2 In the event of non compliance with the provisions of all statutes, regulations and bylaws of government, local and other public authorities, the Manager will support enforcement by the authority whose regulations have been breached.
- 15.3 In the event of a breach of these Berth Licence Rules relating to pollution, the Licensor has the right to suspend or cancel any Berthholder's licence.

## Third Schedule

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### Operating Expenses

“Operating Expenses” means (to the extent to which the same are not separately payable from time to time by any occupant of any part of the Marina under the terms of such occupancy or use thereof) all costs incurred by the Licensor in the operation and maintenance of the Marina, including but not limited to the following expenses:

- All rates, charges, duties, levies and fees of any local authority or government body, authority or department, including (without limitation) all fees payable in relation to any resource consent or other consent, levies payable by the Licensor under the Injury Prevention Rehabilitation and Compensation Act 2001 or any Act in substitution therefore in respect of the Marina.
- Insurance premiums, valuation fees and other charges payable by the Licensor for the insurance of such items and against such risks as the Licensor shall in its sole discretion from time to time determine.
- Compliance costs relating to any resource or similar consent or permit.
- Charges for utilities and other services or requirements whatsoever supplied to or used by the Marina, including uniform charges for utilities (if any) not separately metered.
- 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 Licensor for such purpose.
- Costs of maintenance, repairs, painting, dredging (including dredging of berths, fairways or access channels), repiling, renovation and replacements of and to the Marina.
- Costs and expenses associated with the repair and maintenance of common public facilities, parking areas, fencing, direction and information signs and drains, and the care and maintenance of lawns and planted areas including the replacement of plants, shrubs and trees.
- All costs and expenses (including, but not limited to taxes, levies and assessments of every kind) incurred in the operation of 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 plus where appropriate an amount necessary for the amortisation of the Licensor’s initial capital investment in such equipment, vessels, vehicles and other facilities over the expected life thereof.
- The cost of cleaning the Marina area including the common public facilities, parking areas, landscaped areas and the cost of garbage collection and disposal and any charges or remuneration paid to contractors for any such purpose.
- All costs (including wages, remuneration and professional or other fees) of management, 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 Licensor may actually and reasonably incur.
- Rental for associated buildings and related operating costs and expenses.
- All bank fees and other financial costs.

- Such other costs and expenses including professional fees as may from time to time be incurred by the Licensor in relation to the ownership, management and maintenance of the Marina.
- A sum not exceeding 15% of the aggregate of the items referred to above, to form a contingency reserve.
- Such sum as the Licensor shall annually determine to be placed in a reserve fund to cover prospective works to the Marina of a substantial but infrequent or irregular nature provided that nothing in this clause shall preclude the Licensor from calling for additional payments in respect of such items from Licensee's if in the opinion of the Licensor the reserve fund is insufficient for such purposes or it is inappropriate to use the reserve fund for such purposes.

**Fourth Schedule**

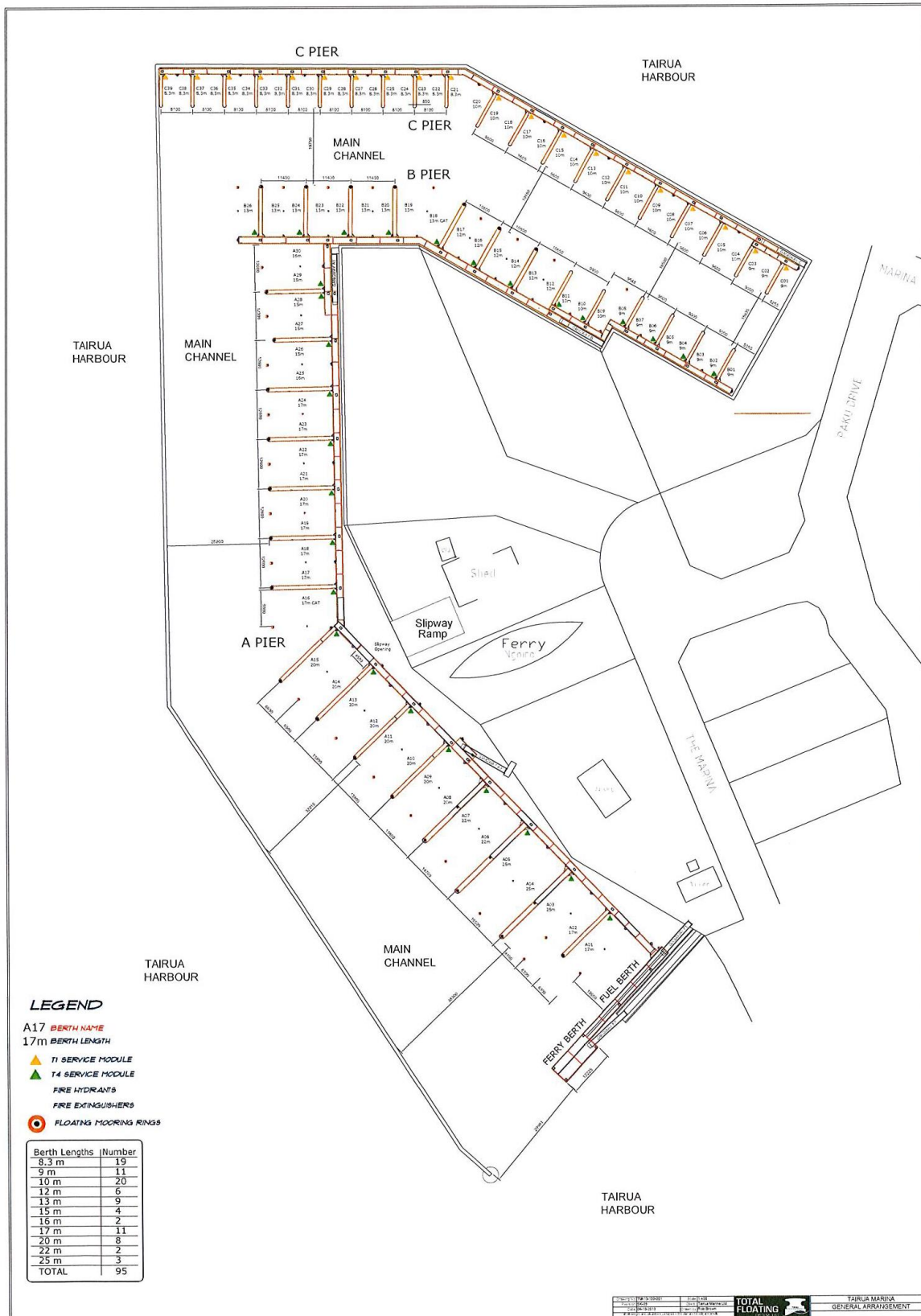
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[plan of marina – to be inserted in Berth Licence when issued]

## SCHEDULE 2

Tairua Marine Limited

### BERTH LAYOUT PLAN



## BUILDING CONSENT





[illegible]

THE MARINA, TAIRUA

Arcube

Product: **PROPOSED MARINA CLUE  
FACILITIES BUILDING**

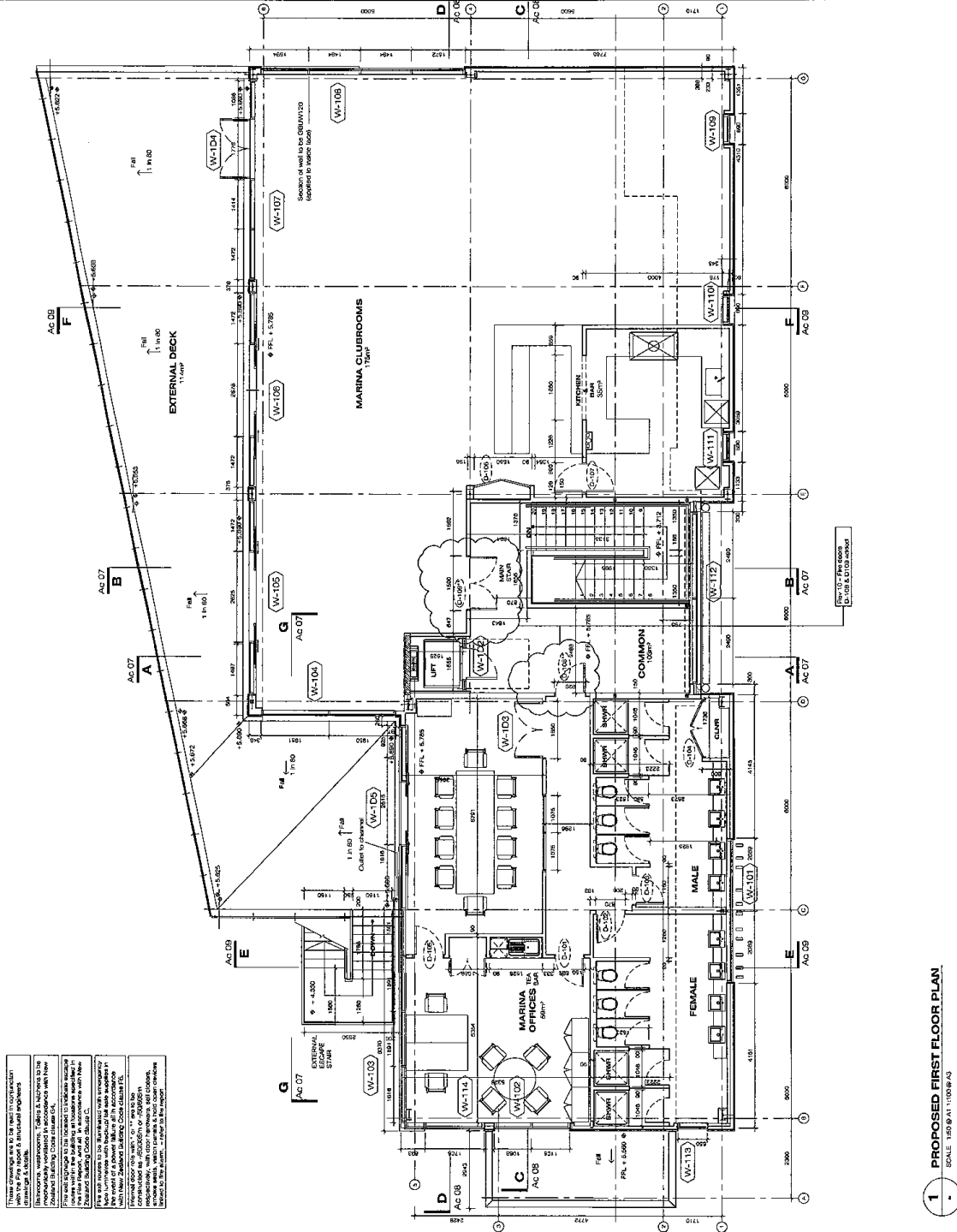
AL: THE MARINA TAIRUA

For: **TAIRUA MARINE LTD**

Drawing Title:  
**GENERAL ARRANGEMENT  
PLAN - FIRST FLOOR**

Drawn: SPK  
Checked: - Date: 17.03.14  
Project name: WTAL Project No: 2051  
Scale A1: 1 : 50 Scale A3: 1 : 100  
SHEET: AC 04 REV: 10

**BUILDING CONSENT**



**1 PROPOSED FIRST FLOOR PLAN**

### NOTES

- Title information on this drawing is, in English.
- It is feared to you in consequence and must not be retransmitted or disseminated to third parties without the prior permission of Arcelor Arcelor.
- This drawing is the property of Arcelor Arcelor.
- The drawing is to be used only for the purpose of providing technical assistance, general information and drawings and specifications.
- The drawing is not to be used for the purpose of reproduction or distribution of drawings or details or for other than those drawings should be drawn to the satisfaction of Arcelor Arcelor.
- All dimensions are in millimetre unless noted.
- Any technical information incorporated within this drawing cannot be questioned as accurate unless confirmed by final dimensions and should be checked on final dimensions.

checked on site

APPROVED	SIGNED _____	DATE :
		NAME :

[illegible]

Acube2 Ltd  
PO Box 39161, Honeysuckle  
Auckland 2145, NZ  
P + 64 9 534 0040  
WWW.ACUBE2.CO.NZ

Project: **PROPOSED MARINA CLUB  
FACILITIES BUILDING**

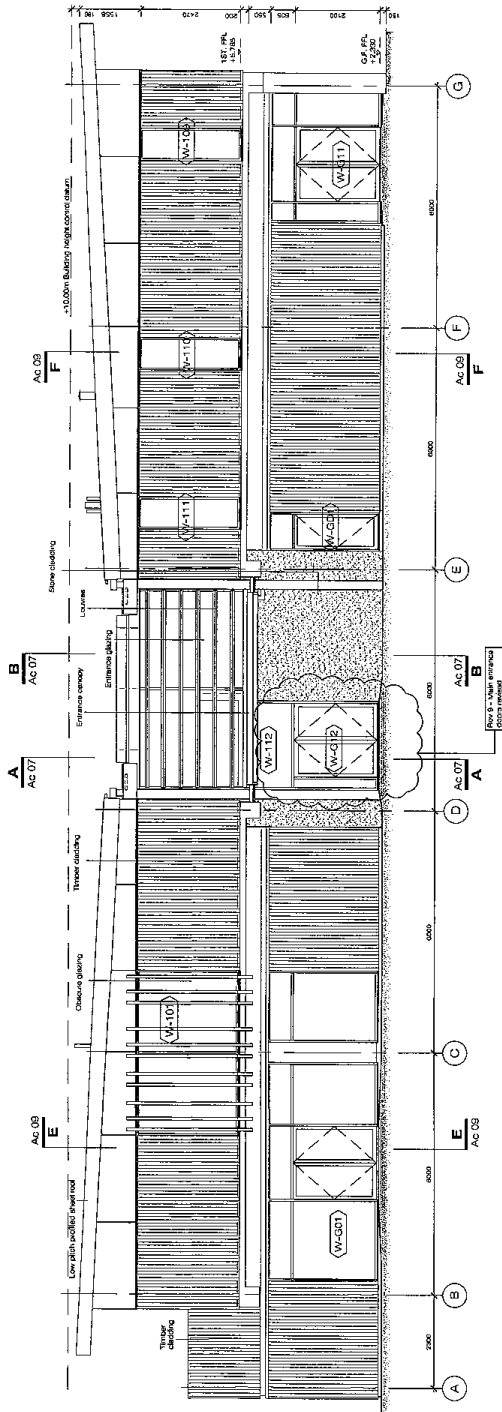
Alt:  
THE MARINA  
TAIRUA

For: **TAIRUA MARINE LTD**

Drawing Title:  
**ELEVATIONS**  
**- SHEET 1**

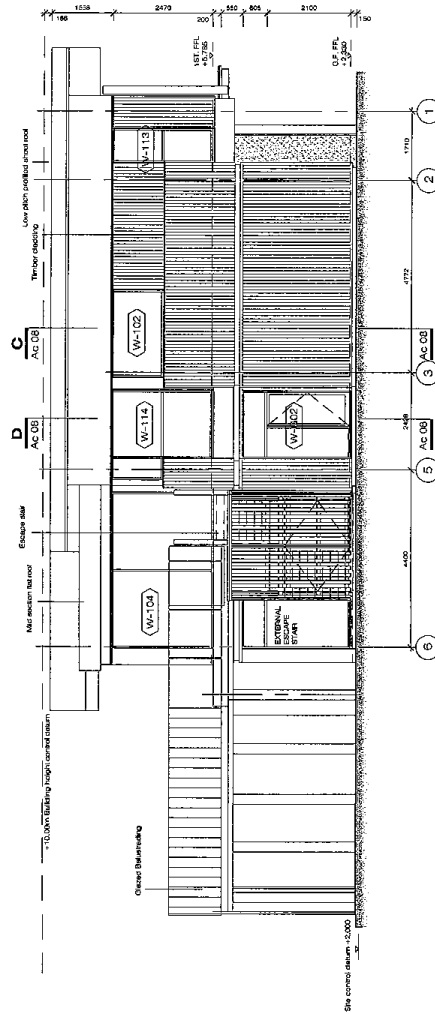
Drawn: SPF  
 Checked: - Date: 17.03.14  
 Project name: WTAL Project No: 2061  
 Scale A1: 1:50 Scale A3: 1:100  
 Sheet: **AC 05** 9  
 Status:

## BUILDING CONSENT



**PROPOSED  
EASTERN ELEVATION**

1  
AC03



**PROPOSED  
SOUTHERN ELEVATION**

2  
Ac03

1803004-112738-A-1

NOTES:

- 1. All dimensions are in millimeters unless otherwise stated.
- 2. The building is to be constructed in accordance with the Building Code of Australia (BCA) and the National Construction Code (NCC).
- 3. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for wind loading.
- 4. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for snow loading.
- 5. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for seismic loading.
- 6. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for fire loading.
- 7. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for acoustic loading.
- 8. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for thermal loading.
- 9. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for vibration loading.
- 10. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for radiation loading.
- 11. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for electromagnetic interference loading.
- 12. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for lightning loading.
- 13. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for pollution loading.
- 14. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for noise loading.
- 15. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for heat stress loading.
- 16. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for air quality loading.
- 17. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for water quality loading.
- 18. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for soil quality loading.
- 19. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for climate loading.
- 20. The building is to be constructed in accordance with the Australian Standard AS/NZS 1170:2002 for environmental loading.

APPROVED

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME: \_\_\_\_\_

NO.	DATE	REVISION	BY	CHKD
1	15.05.14	Issue for Building Council		
2	15.05.14	Issue for Building Council		
3	15.05.14	Issue for Building Council		
4	15.05.14	Issue for Building Council		
5	15.05.14	Issue for Building Council		
6	15.05.14	Issue for Building Council		
7	15.05.14	Issue for Building Council		
8	15.05.14	Issue for Building Council		
9	15.05.14	Issue for Building Council		
10	15.05.14	Issue for Building Council		



THE MARINA, TAIRUA  
100 COUNCIL ROAD, TAIRUA  
TAIRUA, NEW ZEALAND  
06 866 1111  
www.arcube.co.nz

PROPOSED MARINA CLUB  
FACILITIES BUILDING

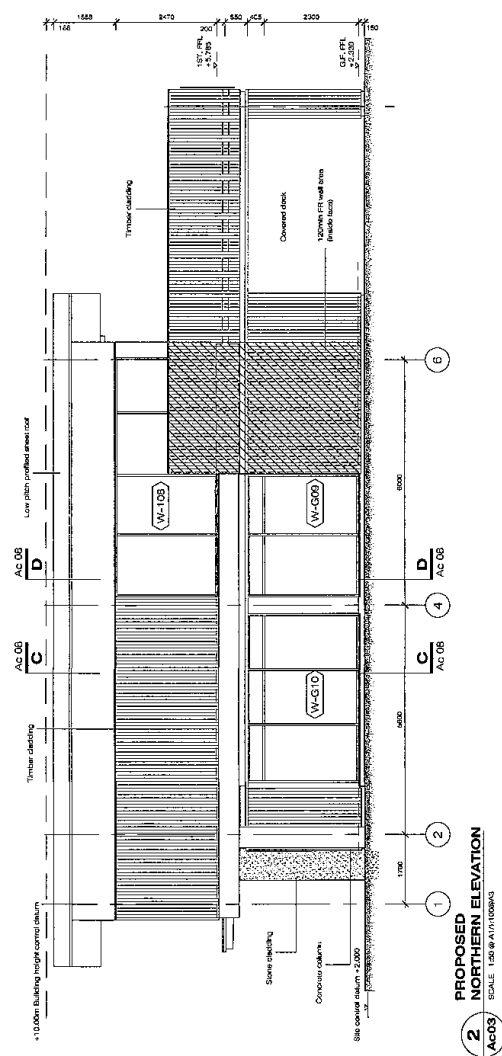
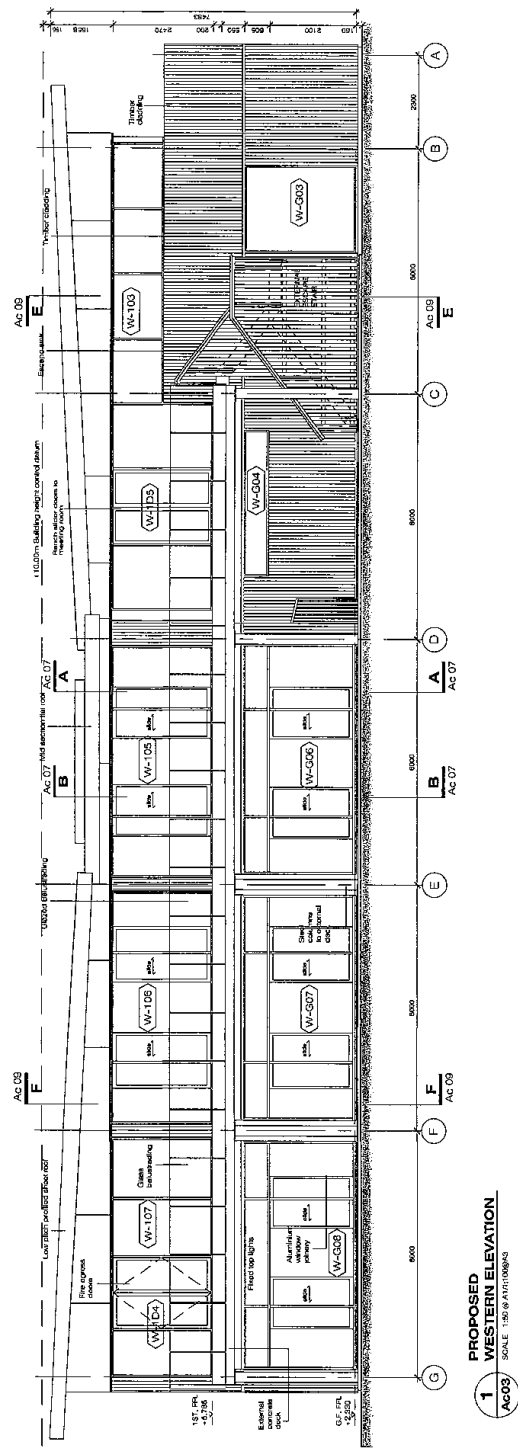
AT  
THE MARINA  
TAIRUA

FOR:  
TAIRUA MARINE LTD

DRAWING TITLE:  
ELEVATIONS  
- SHEET 2

Drawn: SPF  
Checked: SPF  
Project name: VTAJ Project No: 2051  
Scale A1: 1:50 Scale A2: 1:100  
SHEET: AC 06 REV: 8  
DATE: 17.05.14

BUILDING CONSENT











ELEVATIONS  
scale 1:200

WG Wattys Group Ltd

PROPOSED MARINA DEVELOPMENT  
THE MARINA • TAIRUA

mga innovation

Wattys Group Ltd  
100 The Terrace, Auckland  
0612 344 444  
www.wattysgroup.co.nz

## SCHEDULE 4

### APPLICATION

#### Instructions for completing Marina Berth Licence Applications

##### Parties and Signatures

- ☐ Full names of all natural persons must be completed.
- ☐ Applications may be executed by an attorney acting under a power of attorney. If the Application is signed under a power of attorney, the attorney must supply a copy of the Power of Attorney and complete the certificate of non-revocation attached.
- ☐ Company Applications must give the full name of the Company and its Companies Office registered number.
- ☐ Company Applications must be signed on behalf of the company in accordance with its constitution. If the company has a sole director then that director's signature must be witnessed and the witness must add his/her address and place of residence.
- ☐ Company Applications must be guaranteed by the company's principal shareholders and directors.
- ☐ Applications by Trusts must be made in the name of and be signed by all trustees. The reason for this is that Tairua Marine Limited is not able to record a Berth Licence in the name of a trust or to recognise any berth holder as holding a licence on trust.
- ☐ Applications by Trusts must be guaranteed by the trustees of the Trust.
- ☐ Natural persons should sign where indicated.
- ☐ Joint and partnership Applications must be signed by all Applicants or Partners in person.

##### Payments

- ☐ Cheques should be crossed Not Transferable and made payable to Tairua Marine Limited. Your remittance should be forwarded together with the completed Marina Berth Licence Application / Purchase Agreement form to Tairua Marine Limited, PO Box 68530, Wellesley Street, Auckland 1141.
- ☐ If you wish to make your Final Payment by electronic funds transfer. The account details for Tairua Marine Limited are:  
BNZ, 02 0466 0357386 000.



## MARINA BERTH LICENCE APPLICATION/PURCHASE AGREEMENT

Before applying you must read the Instructions for Completing Marina Berth Licence Applications on the previous page. Applications which do not fully comply with the instructions are likely to be rejected.

### SCHEDULE

**ISSUER:** Tairua Marine Limited (875305) ("Issuer")

**APPLICANT:** INDIVIDUAL/JOINT/PARTNERSHIP/TRUST

Applicant #1 \_\_\_\_\_

Joint Applicant # 2 \_\_\_\_\_

Joint Applicant # 3 \_\_\_\_\_

### **COMPANY**

Company Name \_\_\_\_\_

Contact Person \_\_\_\_\_

**GUARANTOR (if Applicable):**

Guarantor # 1 \_\_\_\_\_

Guarantor #2 \_\_\_\_\_

### **APPLICANTS ADDRESS AND CONTACT DETAILS**

Street Address \_\_\_\_\_

Suburb \_\_\_\_\_ City \_\_\_\_\_ Post Code \_\_\_\_\_ Country \_\_\_\_\_

PO Box / Private Bag \_\_\_\_\_

Business Phone \_\_\_\_\_ Home Phone/Mobile Phone \_\_\_\_\_

Facsimile \_\_\_\_\_ Email \_\_\_\_\_

Applicants IRD No\* \_\_\_\_\_

Tax Rate                      10.5%                      17.5%                      28%                      30%                      33%                      (Delete  
four)

\* IRD numbers must be supplied for all Applicants (only the IRD number for the trust is required where applicants are trustees).

### **BERTH AND PRICE DETAILS**

Marina Berth Size Applied for: \_\_\_\_\_ *(select size from details at page 21 of the Investment Statement and Prospectus)*

Marina Berth Licence Issue Price: \$\_\_\_\_\_ (inclusive of GST) (*select relevant price from details at page 10 of the Berth Offer Document*)

Following receipt of your fully completed Application Form and the Initial Payment, you will be advised of the Berth Number and location of the berth for which you will be issued a Marina Berth Licence in accordance with this agreement. Upon receipt by you of this notice, you will be deemed to have accepted the specific Marina Berth allocated to you.

## **PAYMENT TERMS**

1. Initial Payment of \$\_\_\_\_\_ (20% of the Issue Price) (*your cheque for this amount made payable to "Tairua Marine Limited" must accompany your completed Application Form*)
2. A Final Payment of \$\_\_\_\_\_ (80% of the Issue Price) for the issue of the Marina Berth Licence (*payment of this amount must be made by bank cheque or electronic transfer of cleared funds to Tairua Marine Limited on the settlement date*)

Settlement date; \_\_\_\_\_

I/We hereby offer to subscribe for the issue of the Marina Berth Licence for the berth in the Tairua Marina specified in this Application on the terms and conditions set forth in the attached offer dated 1 March 2016.

And, I/we agree that all information about me/us disclosed in this Application may be used and disclosed by Tairua Marine Limited for the purposes set out in the offer, and for the purposes of administering Marina Berth Licences and the Marina generally.

## **AGREEMENT**

### **Background:**

- A. The offeror has developed the Tairua Marina and has offered to issue to the Applicant a Marina Berth Licence in respect of the specified marina berth within the Marina.
- B. The Applicant has agreed to subscribe for a Marina Berth Licence at the Purchase Price and upon the terms specified in the Schedule.
- C. The Guarantor(s) has / have agreed to guarantee the performance of this agreement by the Applicant.

### **Terms:**

1. The Issuer shall issue and the Applicant shall accept the issue of the Marina Berth Licence for the specified Marina Berth at the price and upon the terms specified in the Schedule.
2. The Applicant acknowledges that the Applicant has been provided with has had the opportunity to peruse a copy of the form of the Marina Berth Licence including the Berth Licence Rules and is purchasing the Marina Berth Licence upon the basis that this Agreement, the Marina Berth Licence and the offer set out all of the terms of the sale, and the Applicant is not relying upon any representation or warranty which is not contained in this Agreement, the Marina Berth Licence or the offer.
3. Upon payment of the total Issue Price the Issuer and the Applicant shall execute a Marina Berth Licence in the form set out in the offer and the Issuer shall at the Issuer's expense forward to the Applicant an original copy of the Marina Berth Licence. The Applicant shall abide by the terms of the Marina Berth Licence.

4. If the Applicant fails to pay an instalment of the Issue Price in accordance with the Schedule, the Issuer may, without prejudice to its other remedies hereunder, charge to the Applicant interest on any such amount not paid at the rate of 5% per annum above the Westpac Prime Lending rate from time to time, calculated from the date upon which the instalment was due, to the date upon which payment of such instalment is actually made.
5. If the Applicant is in default under this Agreement and fails within 14 days of service (at the address specified in this Application) of a notice of default to remedy the default then without prejudice to any rights or remedies available to it at law or in equity the Issuer may:
  - a. Forfeit and retain for its own benefit the Initial Payment and any further moneys paid by the Applicant but not exceeding twenty per cent (20%) of the Issue Price.
  - b. Claim from the Applicant damages, but in that event the Issuer shall be required to give credit for any moneys retained by it.
  - c. Resell the Marina Berth Licence whether by auction or by private contract and either for cash or on credit and upon such other terms and conditions as it may think proper with power to vary any contract for sale and buy in at any auction.

On any resale the Issuer shall be entitled to retain for its own benefit all proceeds of sale without being required to account to the Applicant for any such proceeds.
6. The parties agree that the Purchase Price is the cash price for the Marina Berth Licence and that there is no element of credit or interest included in the Purchase Price.
7. The Applicant acknowledges that the Applicant is not entitled to any of the benefits under the Marina Berth Licence unless and until the Applicant has paid to the Issuer all of the instalments of the Issue Price referred to in this Application and any other moneys owing hereunder and has signed the Marina Berth Licence.
8. The Applicant irrevocably agrees with the Issuer that the Initial Payment and the Final Payment payable under this Agreement shall be payable to Tairua Marine Limited.
9. The Applicant acknowledges that the rights and obligations of the Applicant under this Agreement are personal to the Applicant and may not be transferred or assigned to any other person.
10. Except as otherwise expressly set forth in this Agreement no error, omission or misdescription shall annul the sale but compensation, if demanded in writing before the final instalment of the Issue Price is paid but not otherwise, shall be made or given as the case may require.

#### **Guarantee**

11. In consideration of the Issuer entering into this agreement at the request of the Guarantor, the Guarantor agrees, and where there is more than one Guarantor, the Guarantors agree jointly and severally:
  - a. to irrevocably and unconditionally guarantee by way of continuing obligation to the Issuer the due and punctual payment of the Initial Payment, the Further Payment, the Final Payment price and other moneys required to be paid by the Applicant under this agreement and performance by the Applicant of all of the Applicant's other obligations under this agreement;
  - b. that, if the Applicant fails to pay punctually any amount owing to the Issuer under this agreement, or fails to perform punctually and properly any of its other obligations under this agreement, then the Guarantor shall, immediately after receiving written notice from the Issuer specifying such failure(s), pay the amount or perform the obligations (as the case may require) in terms of this agreement;
  - c. that no release, delay or other indulgence given by the Issuer to the Applicant or other variation of the terms of this agreement, or any other thing whatsoever whereby

the Guarantor would have been so released had the Guarantor been a surety only, shall release, prejudice or affect the Guarantor's liability as Guarantor;

- d. that as between the Guarantor and the Issuer, the Guarantor may, for all purposes, be treated as a principal party and not merely a surety, and the Issuer will be under no obligations to take any action or proceedings against the Applicant before taking any action or proceedings against the Guarantor. The liability of the Guarantor under this clause is in addition to and not in substitution for any other security or rights the Issuer may have in respect of any amount payable or obligation to be performed by the Applicant; and
- e. to pay the Issuer, upon receipt of written demand from the Issuer for such payment, all costs and expenses reasonably incurred by the Issuer in enforcing any of the provisions of this clause.

**Dated** \_\_\_\_\_ 20\_\_\_\_

Signed by or on behalf of the Applicant(s):-

FOR INDIVIDUALS OR PARTNERSHIPS AND TRUSTS:

_____ Signature	_____ Signature	_____ Signature
_____ Name	_____ Name	_____ Name

FOR COMPANIES:

Name of Company: \_\_\_\_\_

Names of Directors: \_\_\_\_\_  
\_\_\_\_\_

Note: If the company has only one director his/her signature must be witnessed

Witness Signature: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Occupation: \_\_\_\_\_

Witness Residence: \_\_\_\_\_

Signed by the Guarantor(s):-

_____ Signature	_____ Signature
_____ Name	_____ Name

Attorneys: Please note you must complete the Certificate of Non-Revocation on the back of this page

**CERTIFICATE OF NON-REVOCATION OF POWER OF ATTORNEY**

I, \_\_\_\_\_ hereby  
certify:

1. That by Power of Attorney dated the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_/20\_\_\_\_

\_\_\_\_\_

appointed me his/her/its attorney on the terms and subject to the conditions set out in the said  
Power of Attorney.

2. That at the date hereof I have not received any notice or information of the revocation of the  
appointment under the said Power of Attorney by the death of the said

\_\_\_\_\_

or otherwise.

**Signed at** \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**Signature:** \_\_\_\_\_