

Terms and conditions for sublicense of an approved berthing area

These terms and conditions are to be used as a template for use when sublicensing an approved berthing area.

This agreement forms a sublicense to licence _____ [licence number] for the purpose of a berthing area, issued under the *Crown Land Management Act 2016*.

1. Definitions

- Owner** The head licensee who holds a licence directly with the Department of Industry–Lands & Water (the department) for a domestic waterfront facility and who has authorisation to sublicense their approved berthing area.
- Occupant** The sublicensee who enters into an agreement with the Owner (head licensee) to occupy the approved berthing area for a defined term.
- Berthing area** An area of water allocated for the on-water storage of boats adjacent or attached to a jetty or pontoon facility allowing for walk-on access to the boat. An approved berthing area will be marked on the plan attached to the head licence.
- Sublicense** The licence between the Owner and the Occupant described in clause 3.
- Head licence** The licence held by the Owner with the Division for a domestic waterfront facility.

2. Identification

Parties to agreement

The agreement is made between the Owner and Occupant of the berthing area.

Owner: _____

Residential address: _____

Postal address: _____

Phone number: _____ email: _____

Occupant: _____

Residential address: _____

Postal address: _____

Phone number: _____ email: _____

3. Berthing area

The Owner gives the Occupant the right to occupy the berthing area identified in licence _____

[licence number] at _____

_____ [residential address of property].

The size of the berthing area is:

Length: _____ metres

Width: _____ metres

4. Rental

- The berthing area occupancy fee payable to the Owner is \$ _____ per annum.
- The berthing area occupancy fee is payable in weekly / fortnightly / monthly / quarterly / annual instalments of \$ _____ commencing on _____ [commencement date].
- The Occupant agrees to pay the occupation fees in advance and on time.
- The berthing area occupancy fee may be paid to the Owner in the following ways: cash / eftpos / cheque / money order / other _____.

5. Term

This agreement is for a fixed term and cannot be less than one year or more than five years. The term of the agreement cannot exceed the balance of the term remaining on the Head licence, if less than five years.

Sublicence agreement term: _____

Beginning on: _____

Expiring on: _____

6. Essential terms and conditions

Indemnity

- a. The Occupant indemnifies and will keep the Owner indemnified from and against all actions, suits, claims and demands of whatsoever nature and all damages, costs, charges and expenses in respect of any accident or injury to any person or property which may arise out of:
 - i. the use or occupation of the berthing area
 - ii. the construction, installation, repair, replacement or maintenance of works as may be authorised under this agreement
 - iii. any failure by the Occupant to comply with the terms of this agreement.
- b. Extent of indemnity: The indemnity still applies even though the Occupant has observed and performed the conditions of this agreement or that any such accident or injury arises from any act or thing, which the Occupant may be authorised or compelled to do under this agreement.
- c. The obligations of the Occupant under this clause continue after this agreement expires or is otherwise ended in respect of any act, deed, matter or thing happening before the expiry or end of this agreement.
- d. To the extent that any such claims and demands arise from any negligence or wilful act or omission on the part of the Owner the indemnities under this clause do not apply.

Termination of sublicence agreement

This agreement will terminate upon the transfer or termination of the Head licence, by agreement between the parties, or upon the end date of this agreement.

Prohibition on assignment or transfer

The Occupant will not, during the term of this agreement, transfer or create any interest in this agreement or authorise or permit any person to occupy the berthing area.

Rights and responsibilities

The Occupant agrees:

- a. to use the berthing area for the domestic berthing of their vessel
- b. to not use the berthing area for a commercial purpose
- c. to not reside or permit any person to reside on any vessel within the berthing area
- d. to not use the waterfront facility or cause or permit the waterfront facility to be used for any illegal purpose
- e. to not cause or permit a nuisance
- f. to keep the berthing area reasonably clean
- g. to notify the Owner as soon as practicable of any damage to the adjoining structure
- h. to not intentionally or negligently cause or permit any damage to the berthing area or any other part of the jetty structure
- i. to not attach any structure or renovate, alter or add to the berthing area or adjoining structure
- j. to be responsible to the Owner for any act or omission by any person the occupant allows on the site, who breaks any of the terms of this agreement
- k. to not access the berthing area via private property unless consent has been given
- l. to ensure that the vessel being moored within the berthing area is insured for damage to third party property and public liability
- m. when this agreement ends, to leave the site as near as possible in the same condition (fair wear and tear excepted) as when this agreement started.

The Owner agrees:

- a. to make sure the berthing area is vacant so the Occupant can use the berthing area for the term of the agreement
- b. the Occupant will have use of the berthing area without undue interruption by the Owner
- c. to make sure the berthing area and everything provided for use by the Occupant are reasonably clean and fit to use
- d. to gain appropriate authorisation from the Minister of Lands to sublicense the berthing area

Ending this agreement

The Owner and the Occupant agree that this agreement can be terminated if the Owner or the Occupant gives at least one months notice of termination.

The Owner and the Occupant agree that a notice of termination must:

- a. be in writing
- b. state the address of the berthing area
- c. be signed by the person giving it
- d. be dated
- e. allow the required period of time
- f. give the date the occupant intends to, or is required to, stop berthing the vessel at the berthing area.

Additional terms and conditions

Please attach any additional terms and conditions to be included in the agreement, as agreed between the Occupant and the Owner.

Terms of head licence

The Occupant will abide by the terms of the head licence.

7. Execution

Owner's Signature: _____

Owner Name: _____ Date: _____

Occupant's Signature: _____

Occupant Name: _____ Date: _____

Witness Signature: _____

Witness Name: _____ Date: _____

Disclaimer

In providing this Berthing Area Sublicence Terms and Conditions, the Department of Industry–Lands & Water does not provide any legal advice to any person. It is the responsibility of the Owner and the Occupant to ensure that the terms and conditions of the sublicence are satisfactory for them and to obtain any legal advice that is needed in relation to this matter. Furthermore, any disputes between the Owner and Occupant will be a matter solely between the Owner and Occupant.

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