

Sublicence berthing area occupancy agreement

This agreement forms a sublicence to licence no. _____ for the purpose of waterfront structure and berthing area issued under the *Crown Lands Act 1989*, (this 'agreement').

1. Definitions

- Jetty owner** The head licensee who holds tenure directly with LPMA 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 jetty owner (head licensee) to occupy the approved berthing area for a defined term.
- Berthing area** A berthing area is an area of water allocated for the on-water storage of boats adjacent or attached to a fixed or floating facility allowing for walk-on access to the boat. An approved berthing area will be marked on the plan attached to the head domestic waterfront licence.
- Head licence** The licence between the jetty owner and the occupant described in clause 3.

2. Identification

Parties to agreement

This agreement is made between: the jetty owner and the occupant of the berthing area.

Jetty owner (name in block letters): _____

Residential address: _____

Postal address: _____

Contact phone number: _____ Email: _____

Occupant (name in block letters): _____

Address: _____

Postal address: _____

Contact phone number: _____ Email: _____

3. Berthing area

The jetty owner gives the occupant the right to occupy the berthing area identified in licence _____ (insert licence number) at: _____

_____ (insert adjoining residential address of the 'head licence' berthing area)

The size of the berthing area is (fill in the dimensions of the site or its area in square metres)

Length: _____ metres Width: _____ metres

Attach copy of diagram from original head licence if available or accurate sketch of site indicating location of the approved berthing area.

4. Rental

a) The berthing area occupancy fee payable is \$ _____ per annum.

b) The berthing area occupancy fee is payable in weekly fortnightly monthly quarterly annually instalments of: \$ _____ commencing on (insert date) ____/____/____

c) The occupant agrees to pay the occupation fees in advance and on time.

d) The occupation fees may be paid in the following ways: EFT Cheque Money Order Other

The method of paying and amount payable may be changed during the term of this agreement if both the jetty owner and the occupant agree.

5. Term of agreement

This agreement is for a fixed term and may not be less than one year or more than five years. The term of the agreement cannot exceed the balance remaining on the original head licence, if less than 5 years.

Sublicensing agreement duration: _____ Beginning on: ____/____/____ Ending on: ____/____/____

6. Essential conditions

The occupant indemnifies the jetty owner.

- a) The occupant indemnifies and will keep indemnified the jetty owner 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 in clause 6 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 jetty owner the indemnities under this clause do not apply.

7. Termination of sublicence agreement

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

8. 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.

9. Rights and responsibilities

The occupant agrees:

- a) to use the berthing area for domestic berthing of their vessel
- b) to not use the berthing area for a commercial purpose
- c) to not use the waterfront facility or cause or permit the waterfront facility to be used for any illegal purpose
- d) to not cause or permit a nuisance
- e) to keep the berthing area reasonably clean
- f) to notify the jetty owner as soon as practicable of any damage to the adjoining structure

- g) to not intentionally or negligently cause or permit any damage to the berthing area or any other part of the jetty structure
- h) to not attach any fixture or renovate, alter or add to the berthing area or adjoining structure
- i) to be responsible to the jetty owner for any act or omission by any person the occupant allows on the site, who breaks any of the terms of this agreement
- j) to not access the berthing area via private property unless consent has been given
- k) to make sure that the vessel being moored within the berthing area is insured for damage to third party property and public liability
- l) 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 jetty 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 jetty owner;
- c) to make sure the berthing area and everything provided for use by the occupant are reasonably clean and fit to use; and
- d) to gain appropriate authorisation from the Minister of Lands to sublicense the berthing area.

10. Ending this agreement

The jetty owner and the occupant agree that this agreement can be terminated if the jetty owner or the occupant gives at least one month's notice of termination.

The jetty 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.

11. Additional terms and conditions

Please attach any additional terms and conditions to be included in the agreement, as agreed between the occupant and the jetty owner.

12. Terms of head licence

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

Signatures to this agreement

Jetty owner: _____

Name (in print): _____ Date: _____

Occupant: _____

Name (in print): _____ Date: _____

Disclaimer

In providing the berthing occupancy agreement template, LPMA does not provide any legal advice to any person. It is the responsibility of the jetty owner and occupant to ensure that the terms of the sublicence are satisfactory for them and to obtain any legal advice that is needed in relation to this matter.

Checklist

Did you:

- complete the berthing area occupancy agreement and deed poll?
- obtain the signature of the parties to the agreement?
- attach an accurate sketch or diagram of the berthing area?
- provide the appropriate fee to the authority when submitting this agreement?

Office use:

Reviewed by: _____ TRIM reference: _____

Essential conditions met: _____ Payment received: _____

Approved by: _____ Minister's authority to sublicense granted: _____