

# **NELSON MARINA BERTH HOLDER LICENCE**

**NELSON CITY COUNCIL  
(LICENSOR)**

**AND**

**THE PERSON(S) DESIGNATED AS THE LICENSEE IN SCHEDULE 1  
(LICENSEE)**



## Contents

<b>1</b>	<b>LICENCE OF BERTH</b> .....	<b>4</b>
	Use of Berth by Nominated Boat .....	4
	Ownership of Nominated Boat.....	4
	Change of Nominated Boat.....	4
	Evidence of ownership and compliance.....	5
	Warranties .....	5
	Pile moorings .....	5
<b>2</b>	<b>TERM</b> .....	<b>5</b>
	Term.....	5
<b>3</b>	<b>MAXIMUM DIMENSIONS OF BOAT</b> .....	<b>5</b>
	Maximum dimensions.....	5
<b>4</b>	<b>RECREATIONAL BOATS ONLY</b> .....	<b>6</b>
	Recreational boats only .....	6
	Charter Boats.....	6
	Impact of Charter Boat.....	6
<b>5</b>	<b>MARINA MANAGER</b> .....	<b>6</b>
<b>6</b>	<b>FEES AND CHARGES</b> .....	<b>7</b>
	Fees .....	7
	Agreement to pay fees.....	7
	Bank authority.....	7
	Payment for a part month.....	7
	No set off or deductions .....	7
	User pays for Services.....	8
	Charges payable in addition to fees .....	8
	Failure to pay .....	8
	Remain liable .....	8
<b>7</b>	<b>OCCUPATION OF BERTH</b> .....	<b>8</b>
	Temporary subletting of Berth.....	8
	Credit where Berth sublet.....	9
	Default.....	9
<b>8</b>	<b>NO TRANSFER OF LICENCE</b> .....	<b>9</b>
	Personal to Licensee.....	9
	Assignment of Licensor’s interest.....	10
<b>9</b>	<b>TEMPORARY VACATION OF BERTH</b> .....	<b>10</b>
	Temporary vacation of Berth .....	10
	Licence terms apply .....	10
	No compensation.....	10
<b>10</b>	<b>RELOCATION OF BERTH</b> .....	<b>10</b>
	Relocation of Berth permanently .....	10
	Licence terms apply .....	11
	No compensation.....	11

<b>11</b>	<b>LIVE ABOARDS .....</b>	<b>11</b>
<b>12</b>	<b>MAINTENANCE OF VESSELS .....</b>	<b>11</b>
	Maintenance .....	11
	Hull cleaning .....	11
	Repair or clean notice.....	12
<b>13</b>	<b>INDEMNITY .....</b>	<b>12</b>
	Licensor not liable for loss.....	12
	Indemnity .....	12
<b>14</b>	<b>LICENSEE'S INSURANCE .....</b>	<b>13</b>
	Licensee to insure vessels and property .....	13
	Licensee to obtain other insurance .....	13
	Certificates of currency .....	13
	Licensee not to invalidate insurance .....	13
	Liable for increased costs.....	13
<b>15</b>	<b>DESTRUCTION OR DAMAGE TO STRUCTURES.....</b>	<b>14</b>
	Reinstatement if insurance money sufficient .....	14
	Insufficient insurance money .....	14
	No rebuild .....	14
	Fees and expenses continue .....	14
	Damage by Licensee .....	15
	No obligation to reinstate to original plan.....	15
<b>16</b>	<b>BREACH OF THIS LICENCE .....</b>	<b>15</b>
	Breaches .....	15
	Previous breaches.....	16
	Removal of vessel on termination.....	16
	Fees and charges continue.....	16
	No compensation payable .....	16
	Licensor may remedy .....	16
	Seizing and/or removal of vessel .....	16
	Lien .....	17
	Return of vessel.....	17
	Sale of vessel.....	17
<b>17</b>	<b>COMPLIANCE WITH MARINA RULES, ACTS, REGULATIONS, BYLAWS AND INSTRUCTIONS.....</b>	<b>18</b>
	Compliance with laws .....	18
	Compliance with Marina Rules and other instructions .....	18
	Compliance with navigation rules.....	18
<b>18</b>	<b>GOODS AND SERVICES TAX AND OTHER DUTIES .....</b>	<b>19</b>
	GST .....	19
	Default GST .....	19
	Other duties and taxes .....	19
<b>19</b>	<b>SERVICE OF NOTICES .....</b>	<b>19</b>
	Notices .....	19
	Change of contact details .....	20

	Multiple Licensees .....	20
<b>20</b>	<b>DISPUTE RESOLUTION.....</b>	<b>20</b>
	Amicable resolution .....	20
	Mediation .....	20
<b>21</b>	<b>AMENDMENTS .....</b>	<b>21</b>
	Amendment on 30 days' notice .....	21
	Other amendments .....	21
<b>22</b>	<b>GENERAL.....</b>	<b>21</b>
	Joint and several liability .....	21
	Time of the essence.....	21
	Law and Jurisdiction .....	22
	Use of electronic technology and mobile phones.....	22
<b>23</b>	<b>GLOSSARY AND INTERPRETATION.....</b>	<b>22</b>
	Definitions.....	22
	Interpretation.....	23
	Prevailing terms .....	24
	<b>EXECUTION: .....</b>	<b>24</b>
	<b>SCHEDULE 1 - NELSON MARINA - SCHEDULE OF LICENCE DETAILS:.....</b>	<b>25</b>
	<b>SCHEDULE 2 – NELSON MARINA RULES .....</b>	<b>26</b>
	<b>SCHEDULE 3 - NELSON MARINA AREA OF OPERATIONS:.....</b>	<b>31</b>
	<b>SCHEDULE 4 - NELSON MARINA BERTH LAYOUT AS AT JULY 2021: .....</b>	<b>32</b>
	<b>SCHEDULE 5 – DIRECT DEBIT PAYMENT FORM.....</b>	<b>34</b>

**Parties:**

**Nelson City Council (Licensor)**

and

**The Person(s) designated as the licensee in Schedule 1 (Licensee)**

For the definitions of terms used in this Licence, please refer to the Glossary at the end of this Licence.

**1 LICENCE OF BERTH**

**Use of Berth by Nominated Boat**

- 1.1 Berths are allocated by the Licensor depending on the number of berths available and the type of Nominated Boat.
- 1.2 The Licensee can only use the allocated Berth described in Schedule 1.
- 1.3 The Berth can only be used by the Licensee for berthing the Nominated Boat, (except as authorised by the Licensor in the case of subletting or a transfer under clauses 7 or 8). If the Licensee uses the Berth for berthing any vessel other than the Nominated Boat, without authorisation of the Licensor under this Licence, then it will be deemed terminated and the Nominated Boat must be removed from the Berth in accordance with clause 16.4.

**Ownership of Nominated Boat**

- 1.4 Unless the Licensor (at its discretion) expressly approves otherwise in writing, the Nominated Boat must be legally and beneficially owned by the Licensee.
- 1.5 This clause does not prevent the Licensee from jointly owning the Nominated Boat with another person or persons at the time this Licence is issued, provided the ownership requirements set out in clause 1.4 are complied with at all times. Where the Nominated Boat is jointly owned (including joint ownership by trustees of a trust or shareholders of a company), the Licensee warrants that it has the power to enter into this Licence and perform all of its obligations under it, that the provisions of this Licence are legally binding and enforceable on it, including clauses 11 and 16.4 in relation to the Nominated Boat, notwithstanding the joint ownership of the Nominated Boat.

**Change of Nominated Boat**

- 1.6 The Licensee may, by notice in writing to the Licensor, seek approval for a different boat to occupy the Berth, provided that it complies with clause 3.1 (regarding dimension requirements) and the ownership requirements set out in clause 1.4. The Licensor has absolute discretion whether to approve the substitution. From the date of the Licensor's approval, Schedule 1 is deemed amended to reflect the replacement of the Nominated Boat.

**Evidence of ownership and compliance**

- 1.7 The Licensor may require, and the Licensee must, within the timeframe required by the Licensor, provide a statutory declaration and any other documents and materials reasonably required by the Licensor to confirm the ownership of the Nominated Boat or any other matters relating to any of the terms of this Licence.

**Warranties**

- 1.8 As at the Commencement Date and throughout the Term the Licensee warrants that:
- 1.8.1 the Nominated Boat is seaworthy and in sound working order;
  - 1.8.2 the Licensee is fit and able to operate the Nominated Boat at all times; and
  - 1.8.3 the Nominated Boat will at all times be securely, properly and safely moored to the Berth.

**Pile moorings**

- 1.9 Where the Berth is a pile mooring the Licensee agrees that it will not have the use of power or water services at the pile mooring. With the prior approval of the Licensor, the Licensee may store a dinghy in the Marina Area in a place advised by the Licensor.

**2 TERM**

**Term**

- 2.1 The Licence is for a Term of 3 years commencing on the Commencement Date, unless terminated earlier in accordance with the terms of this Licence.
- 2.2 The Licence may be surrendered by the Licensee prior to the end of the Term by giving the Licensor 30 days' notice in writing. The time for giving notice may be reduced or waived by the Licensor at its discretion.
- 2.3 The Licensor has the discretion to renew the Licence for any further term on request by the Licensee, for a duration agreed by Licensor.

**3 MAXIMUM DIMENSIONS OF BOAT**

**Maximum dimensions**

- 3.1 The Licensee must not allow any part of any vessel using or moored in the Berth (including spars, equipment or accessories of any kind) to extend beyond the dimensions of the Berth as specified in Schedule 1 (with the length of the Berth being measured from the berth face of the adjacent walkway).

## **4 RECREATIONAL BOATS ONLY**

### **Recreational boats only**

4.1 Subject to clause 4.2 the Licensee must:

- 4.1.1 only use the Berth for berthing the Nominated Boat while the Nominated Boat is being used for recreational boating purposes;
- 4.1.2 not use the Berth for berthing any commercial fishing boats, Charter Boats, boats for hire or instruction, work boats, service vessels, commercial freight or passenger carriers, or boats used for any other commercial or industrial purpose; and
- 4.1.3 ensure that use of the Nominated Boat is restricted to non-commercial and non-industrial purposes.

### **Charter Boats**

4.2 The Licensee may, with the prior written approval of the Licensor, use the Berth for berthing a Charter Boat. The Licensor's approval may be given or withheld at its absolute discretion and subject to whatever terms and conditions it deems appropriate, including meeting the following obligations:

- 4.2.1 the Licensee paying the fees and charges set by the Licensor for Charter Boats under clause 6;
- 4.2.2 the Licensee only undertaking the loading and unloading of passengers, goods and/or supplies at the Facility or Structure nominated from time to time by the Licensor within the Marina; and
- 4.2.3 the Licensee complying with any request by the Licensor for the Licensee to surrender its existing Berth and move to another specified berth in the Marina that is within any area that may be designated by the Licensor for Charter Boats from time to time. The terms of this Licence will continue to apply in all respects except that all references to the "Berth" shall be references to the substitute berth.

### **Impact of Charter Boat**

4.3 In determining whether or not to approve the use of the Berth for a Charter Boat, the Licensor will have regard to the potential impact on other Licensees' use and enjoyment of the Marina Area, including wear and tear on Marina assets (including Structures and Facilities), and may specify as a condition of approval the permitted uses of the Charter Boat.

## **5 MARINA MANAGER**

5.1 The Licensor has appointed a Marina Manager to carry out its obligations under this Licence. The Marina Manager acts for and on behalf of the Licensor, and has all the rights and powers of the Licensor under this Licence.

- 5.2 All persons in, on or using the Marina and Marina Area and every vessel in the Marina is under the control, and must at all times obey the orders and directions, of the Licensor and/or the Marina Manager.
- 5.3 The Marina Manager is the first contact for the Licensee on all matters relating to the Marina and this Licence, and any complaint, issue or dispute must first be raised with the Marina Manager.

## **6 FEES AND CHARGES**

### **Fees**

- 6.1 Fees payable by a Licensee are set annually by the Licensor. Fees can be set for annual, short term and daily licences and may be chargeable for the whole or part of a Berth.
- 6.2 For annual licences, fees will be charged monthly in advance, and the Licensee will be invoiced on the 20<sup>th</sup> day of the month prior. Payment is due no later than the due date stated on the invoice or the first day of the month following the invoice, whichever is the later.
- 6.3 For short term and daily licences, fees will be charged and payable in advance at the time of booking the Berth.
- 6.4 A Licensee may pay an annual licence fee in advance for a full year, by agreement with the Licensor.

### **Agreement to pay fees**

- 6.5 The Licensee agrees to pay all fees to the Licensor throughout the term of this Licence as they become due.

### **Bank authority**

- 6.6 If required by the Licensor, the Licensee must set up and authorise a direct debit bank authority in favour of the Licensor for the payment of all amounts payable to the Licensor under this Licence.

### **Payment for a part month**

- 6.7 Where a licence is issued part way through any year and the Licensee has not held a licence for the preceding year (or any part of it) fees will be charged for the portion of the year remaining at the date the Licence is issued.
- 6.8 Fees for any period of less than one month that the Licensee occupies a Berth prior to surrender or termination of this Licence will be charged on a daily basis.

### **No set off or deductions**

- 6.9 All amounts due to the Licensor under this Licence must be paid by the due date in full and without any withholding, deduction or set off. For the avoidance of doubt, the Licensee is not entitled to withhold, make any deduction from, or set off any amount payable by the Licensor to the Licensee against, any amount payable by the Licensee to the Licensor under



this Licence without the express written approval of the Licensor, including if there is an unresolved dispute between the Licensor and the Licensee relating to this Licence.

**User pays for Services**

- 6.10 The Licensor may implement any systems and/or infrastructure that it considers necessary or desirable to enable it to charge the Licensee fees on a 'user pays' basis for some or all of the Services provided to the Licensee.

**Charges payable in addition to fees**

- 6.11 Without limiting clause 18, the fees and charges referred to in this clause 6 are exclusive of any taxes, duties, assessments, impositions, levies of every kind which during the Term are imposed or become payable, and any such fees and charges must be paid by the Licensee in addition to the fees payable under this clause 6.

**Failure to pay**

- 6.12 Any failure to pay fees or charges due under this clause 6 shall be deemed to be a breach of this Licence for the purposes of clause 16.1.1.

**Remain liable**

- 6.13 Notwithstanding the surrender or termination of this Licence, the Licensee shall continue to be liable for the fees and charges referred to in this clause 6 until the Termination Date, or surrender of this Licence, whichever is sooner.

**7 OCCUPATION OF BERTH**

- 7.1 If the Berth has been vacant for more than 3 months without the consent of the Licensor, then the Licence will be deemed to have been terminated.

- 7.2 On termination of the Licence under clause 7.1, the Berth can no longer be used by the Licensee and the Nominated Boat must be removed from the Berth in accordance with clause 16.4.

**Temporary subletting of Berth**

- 7.3 The Licensee must not enter into a private subletting arrangement. Any private subletting arrangement entered into by the Licensee will be a breach of this Licence entitling the Licensor to terminate this Licence for the purposes of clause 16.1.4.

- 7.4 Subletting of a Berth by the Licensor is permitted, on request of the Licensee. The Licensee must notify the Licensor at least two weeks in advance of any period in excess of a week where the Licensee does not require use of the Berth and wishes the Licensor to sublet the Berth to another person. On receiving such notice, the Licensor may in its discretion permit the subletting of the Berth to another person, or persons, on whatever terms and conditions the Licensor considers appropriate.

- 7.5 Notwithstanding clause 7.4 above, a Licensee may nominate to the Licensor in writing a person to use the Berth during the Licensee's period of absence. The Licensor will in its

discretion decide whether or not to temporarily sublet the Berth to the person nominated by the Licensee and, if so, what terms and conditions will apply.

- 7.6 Any person who is authorised to use a Berth under clauses 7.4 or 7.5 shall pay the Licensor in advance for all fees and charges charged by the Licensor under clause 6, and otherwise comply with all of the terms and conditions required by the Licensor.
- 7.7 In the event that the Licensor declines to permit the subletting of the Berth under clauses 7.4 or 7.5, this Licence is deemed terminated in accordance with clause 7.1 on the expiry of any 3 month period during which the Berth has been vacant without the Licensor's consent. On termination, the Nominated Boat must be removed from the Berth in accordance with clause 16.4.

#### **Credit where Berth sublet**

- 7.8 Where the Licensor sublets a Berth under either of clauses 7.4 or 7.5, a credit for the fees and charges which the Licensee would otherwise be liable to pay for the Berth will be made to the Licensee's account monthly in arrears. There is no entitlement to any credit or any reduction of fees or charges payable if the Berth is not sublet by the Licensor.

#### **Default**

- 7.9 If the Licensee breaches the spirit or intent of this clause 7 or enters into any practice, scheme or device that is intended to avoid compliance with this clause (in each case as determined by the Licensor, acting reasonably), such action shall be deemed to be a breach of this clause 7 for the purposes of clause 16.1.4.

## **8 NO TRANSFER OF LICENCE**

#### **Personal to Licensee**

- 8.1 This Licence is personal to, and at all times held legally and beneficially by, the Licensee. The Licensee must not assign, transfer or otherwise dispose of this Licence or any interest in this Licence, whether legal or beneficial, to any other person.
- 8.2 If the Licensee is a company, any change in the company's shareholding or structure which alters the effective control of the company or, which, after a series of changes, alters the effective control of the company, in each case from that existing when the company first took the Licence, will be deemed to be an assignment of this Licence for the purposes of clause 8.1.
- 8.3 If the Licensee is a trust, a change of trustees will not be deemed to be an assignment of this Licence for the purposes of clause 8.1, provided that the Licensee provides evidence to the Licensor's reasonable satisfaction that the underlying beneficiaries of the trust remain the same.
- 8.4 The Licensor reserves the right to permit a transfer of a licence in accordance with its policy on transfers, and on such terms and conditions, as apply from time to time.

### **Assignment of Licensor's interest**

- 8.5 The Licensor is entitled to assign or transfer its interest in this Licence to:
- 8.5.1 a related entity of the Licensor;
  - 8.5.2 a purchaser of the Marina; or
  - 8.5.3 a solvent and suitable assignee or transferee capable of performing the Licensor's obligations under this Licence.

## **9 TEMPORARY VACATION OF BERTH**

### **Temporary vacation of Berth**

- 9.1 The Licensor may:
- 9.1.1 require the Licensee to vacate the Berth for any period or periods as may be necessary to allow repairs, maintenance or upgrades to be carried out; and
  - 9.1.2 use the Berth in cases of emergency,

and in both cases, where possible, will provide an alternative mooring or berthage within the Marina for the use of the Licensee during the period involved.

### **Licence terms apply**

- 9.2 Where the Licensee occupies another Berth as a result of clause 9.1, the terms of this Licence will apply for the duration of that occupation, with only such modifications as are absolutely necessary.

### **No compensation**

- 9.3 The Licensor is not liable to pay any compensation to the Licensee for any vacation of the Berth and temporary relocation under this clause.

## **10 RELOCATION OF BERTH**

### **Relocation of Berth permanently**

- 10.1 The Licensor may require the Licensee to permanently vacate the Berth to permit construction, reconstruction, reconfiguration, alteration or any development within the Marina Area (including in respect of the berths, the Structures, or any land based Facilities), or to facilitate or accommodate any other alteration to the scheme or layout of berths or Structures in the Marina and, where possible, will provide an alternative berth within the Marina for the use of the Licensee. For the avoidance of doubt, the Licensor may undertake any such activities at any time.

**Licence terms apply**

- 10.2 Where the Licensee relocates to another berth as a result of clause 10.1, the terms of this Licence shall continue to apply in all respects except that all references to the "Berth" shall be references to any relocated berth.

**No compensation**

- 10.3 The Licensor is not liable to pay any compensation to the Licensee for the vacation and relocation of the Berth under this clause, including where a replacement berth is not available.

**11 LIVE ABOARDS**

- 11.1 The Licensor may permit the Licensee to live on board the Nominated Boat in accordance with its policy on Live Aboards.

**12 MAINTENANCE OF VESSELS**

**Maintenance**

- 12.1 The Licensee must keep the Nominated Boat seaworthy and in sound working order so as not to obstruct, interfere with or endanger other vessels navigating or berthed in the Marina or damage any Structures. If a dispute over the seaworthiness of a vessel arises the opinion of a qualified independent marine surveyor may be obtained by the Licensor at the Licensee's expense. If a determination is made by the Licensor that a vessel is unseaworthy:

12.1.1 The Licensee shall have 90 days from notification of the Licensor's determination to undertake necessary repairs to make the Nominated Boat seaworthy.

12.1.2 If after 90 days the Nominated Boat is still not determined to be seaworthy by the Licensor, the Berth shall be forfeited to the Licensor. This is a deemed termination and the Nominated Boat must be removed from the Berth in accordance with clause 16.4. Clauses 16.5-16.7 will also apply.

12.1.3 An extension of up to an additional 90 days to complete repairs may be granted by the Licensor if the Licensee has, in the sole opinion of the Licensor, made substantial progress toward completion of repairs.

12.1.4 In cases where determination of operability and/or seaworthiness is in dispute, the Licensor's decision will be final.

**Hull cleaning**

- 12.2 The Licensee must keep the Nominated Boat's hulls clean of designated marine pests and free of conspicuous bio-fouling, and undertake regular cleaning and antifouling in accordance with the Licensor's requirements as advised at any time.

- 12.3 Designated marine pests means any unwanted organism declared by the Ministry for Primary Industries or named in the current Tasman/Nelson Regional Pest Management Plan.

- 12.4 Conspicuous bio-fouling means more than 16% of the hull surface below the waterline covered in macro-fouling organisms (does not include slime) or any other level specified by the Licensor at any time.

**Repair or clean notice**

- 12.5 Where the Licensee fails to comply with either of clauses 12.1 or 12.2, the Licensor may give notice to the Licensee requiring it to repair or clean the Nominated Boat, within a specified time of not less than 30 days.

**13 INDEMNITY**

**Licensor not liable for loss**

- 13.1 Neither the Licensor (nor the Marina Manager) will be liable, and accept no responsibility for, loss or damage to boats, craft, third party property or persons using them within the confines of, or near to the Marina Area, nor for the adequacy or otherwise of the Marina or of the Berth or any other part of the Facilities. The Licensee agrees that neither the Licensor (nor the Marina Manager) will be liable to the Licensee or any person for any loss or damage to property, or death or personal injury incurred or suffered within the Marina however that occurs and whether or not it is attributable to the acts or defaults of the Licensor (or the Marina Manager), or its servants or agents or contractors or otherwise.

**Indemnity**

- 13.2 The Licensee indemnifies the Licensor and the Marina Manager, and their respective directors, employees, officers and agents (each an **Indemnified Person**) against all losses, expenses, legal liability, claims and costs incurred or suffered by the relevant Indemnified Person (to the extent the relevant Indemnified Person is not able to fully recover such amounts under its insurance) arising from:

- 13.2.1 the misuse of the Marina by the Licensee or by its invitees, guests or visitors, or by any other persons under the Licensee's control;
- 13.2.2 any breach of the terms of this Licence by the Licensee or by its invitees, guests, or visitors, or by any other persons under the Licensee's control;
- 13.2.3 any actions taken by the Licensor that are authorised by this Licence (for example, seizure, removal, return and/or storage under clauses 16.8-16.12); or
- 13.2.4 any other act or omission of the Licensee or its invitees, guests, or visitors, or any other person under the Licensee's control; or
- 13.2.5 the recovery of any amounts payable by the Licensee under this Licence that are unpaid by the due date.

**14 LICENSEE'S INSURANCE****Licensee to insure vessels and property**

- 14.1 The Licensee must at all times keep all boats, craft and any other property owned or brought into the Marina Area by the Licensee and/or its invitees, fully insured while in the confines of, or near to, the Marina and Marina Area against loss or damage by fire, explosion, storm, tempest, typhoon, earthquake, accident or damage, burglary, act of God and all other usual maritime risks.

**Licensee to obtain other insurance**

- 14.2 The Licensee must also hold and maintain during the Term adequate public liability insurance against death and/or bodily injury to persons and loss or damage to property of others (including the Licensor) arising out of the use of watercraft and/or use or occupation of the Marina. The minimum amount of such liability insurance shall be as specified by the Licensor from time to time.
- 14.3 Where the Licensee uses the Nominated Boat as an approved Charter Boat, the Licensee must also hold and maintain during the Term statutory liability insurance for at least an amount per event or claim as specified by the Licensor from time to time, and any other insurance cover that the Licensor may reasonably require having regard to the nature of the Licensee's commercial operations.

**Certificates of currency**

- 14.4 The Licensee must provide the Licensor with copies of the policies held pursuant to this clause 14 together with a certificate of currency for each policy at the beginning of the Term and on an annual basis until Termination

**Licensee not to invalidate insurance**

- 14.5 The Licensee will not do anything or allow anything to be done which may render void or voidable any policy of insurance held by the Licensor or by the Licensee. The Licensee will not approach or communicate with the Licensor's insurer in relation to any matter, including in circumstances where the Licensor may have a claim or potential claim under the Licensor's insurance policies (provided that nothing in this clause shall prevent the Licensee from communicating with the Licensee's own insurer about matters relating directly to the Licensee's insurance matters).

**Liable for increased costs**

- 14.6 If the Licensee does anything or allows anything to be done which may result in the Licensor paying an increased or extra premium payable for its insurance, the Licensee will pay to the Licensor on demand such increased or extra premium or premiums.

**15 DESTRUCTION OR DAMAGE TO STRUCTURES****Reinstatement if insurance money sufficient**

- 15.1 Subject to clause 15.3, if during the Term the Structures are destroyed or damaged, whether remaining partially available for use by the Licensee or incapable of use, and if sufficient insurance money to repair and reinstate them fully is available, the Licensor will proceed with all reasonable speed to repair and reinstate the Structures and will apply all available insurance money to such works.

**Insufficient insurance money**

- 15.2 If there is insufficient insurance money to repair and reinstate the Structures fully, then the Licensor will elect, by giving written notice to the Licensee within three months of the date of such damage or destruction, either:
- 15.2.1 to proceed (subject to clause 15.3) with all reasonable speed to repair and reinstate the Structures in which event it will apply all available insurance money to repair and reinstate the Structures as soon as practicable, and will meet the cost of such repair and reinstatement to the extent that such costs exceed the available insurance money; or
- 15.2.2 elect to terminate this Licence in which event this Licence shall be at an end and the insurance money will be payable in accordance with clause 15.3.

**No rebuild**

- 15.3 If any necessary permit or consent to rebuild the Structures cannot reasonably be obtained by the Licensor, or in the event of the Licensor electing to terminate this Licence pursuant to clause 15.2.2, then:
- 15.3.1 the available insurance money will be applied first towards meeting the cost of compliance with any acts or regulations and the costs of clearing the damaged Structures from the Marina;
- 15.3.2 any surplus insurance money after payment of the costs referred to in clause 15.3.1 will be retained by the Licensor; and
- 15.3.3 this Licence shall be deemed to have ceased and terminated as from the date the damage occurred, but without prejudice to the rights of either party against the other in respect of any breach of any of the covenants, conditions or agreements contained or implied in this Licence occurring after the date of the damage.

**Fees and expenses continue**

- 15.4 During repairs or reinstatement under this clause, and until their completion, the Licensee will be relocated to another berth, if one is available, and will continue to pay the fees and charges payable under clause 6. Where relocation is not possible the Licensor may suspend payment of any such fees and charges.

**Damage by Licensee**

- 15.5 The Licensee is liable for any damage, excluding normal wear and tear, where that damage is caused by the Licensee. The cost of the repair of such damage will be as determined by the Licensor's insurers and, subject to clause 15.6 below, there will be no right of relocation pursuant to clause 15.4 and any fees and charges under clause 6 will remain payable.
- 15.6 Notwithstanding clause 15.5, if requested by the Licensee the Licensor will make reasonable endeavours to relocate the Nominated Boat to another berth if one is available while repairs are carried out.

**No obligation to reinstate to original plan**

- 15.7 Any repair or reinstatement under this clause 15 will be carried out by the Licensor using such materials and forms of construction and according to such plan as will be reasonably determined by the Licensor. The Licensee acknowledges that the Licensor will be under no obligation to undertake the repairs or reinstatement strictly in accordance with the original materials, form of construction and plans.

**16 BREACH OF THIS LICENCE**

**Breaches**

- 16.1 If any of the following occur:
- 16.1.1 any fees or charges payable under clause 6 or any other amount payable by the Licensee to the Licensor under this Licence is in arrears and unpaid after any of the due dates for payment and remains unpaid for a period of one month following notice to the Licensee that this Licence will be terminated should payment not be made;
  - 16.1.2 this Licence or any interest in this Licence, whether legal or beneficial, ceases to be held by the Licensee (other than as permitted by this Licence);
  - 16.1.3 the Licensee provides false or misleading information to the Licensor or fails to provide full and accurate disclosure for the purposes of clauses 7 (subletting) or 8 (transfer) of this Licence; or
  - 16.1.4 the Licensee breaches any of the other terms contained in this Licence and to be complied with by the Licensee, and such default remains unremedied (if capable of remedy) after one month from the date of written notification from the Licensor to the Licensee, specifying the default complained of,
- the Licensor may, by giving written notice to the Licensee and, where applicable, any sub-licensee (and with effect from the date of that notice) terminate this Licence.
- 16.2 The Licensee irrevocably appoints the Licensor to be the attorney of the Licensee to execute all documents and do all such things as are necessary to terminate any sub-licence and to give effect to the provisions of clauses 16.4 to 16.7 below (inclusive).



**Previous breaches**

- 16.3 Any termination under this clause will be without prejudice to the rights of the Licensor against the Licensee in respect of any previous breach of any of the provisions of this Licence.

**Removal of vessel on termination**

- 16.4 Upon the Licence being terminated, the Licensee must remove the Nominated Boat or any other vessel from the Berth, failing which the Licensor may do so and the provisions of clauses 16.8 to 16.12 will apply with all necessary modifications.

**Fees and charges continue**

- 16.5 Notwithstanding termination under this clause, the Licensee will remain liable to pay any fees and charges payable under clause 6 and any other amounts payable under this Licence until a new Licence has been granted for the Berth.

**No compensation payable**

- 16.6 The Licensee will have no rights to any compensation or claim against the Licensor arising from termination under this clause. The Licensee will remain personally liable to the Licensor for any fees and charges which remain unsatisfied and the Licensee shall promptly pay such amounts to the Licensor upon demand.

**Licensor may remedy**

- 16.7 In the case of any default by the Licensee under this Licence, and in addition to any other rights and powers of the Licensor under this Licence, and without prejudice to any other right or remedy the Licensor may have (including under any relevant Bylaws), the Licensor may at its discretion (but is not obliged to) remedy any such breach or consequence of it at the Licensee's cost and the Licensee will be deemed to have irrevocably appointed the Licensor and its nominee or nominees to be the true and lawful attorney or attorneys of the Licensee for such purpose. Any costs incurred by the Licensor in remedying such breach or consequence shall be payable to the Licensor promptly upon demand.

**Seizing and/or removal of vessel**

- 16.8 If the Licensee fails to comply with a notice given under clause 12.5 within the time specified in the notice or fails to pay overdue fees and charges after the notice referred to in clause 16.1.1, the Licensor may (but is not obliged to) seize (this can include leaving the Nominated Boat in the Berth, secured, with signage displayed saying it is seized) and/or remove and store the Nominated Boat and recover the cost of seizing, removal and storage and any overdue fees and charges from the Licensee. Before the Licensor is entitled to seize and/or remove the Nominated Boat under this clause 16.8 the Licensor must first:

- 16.8.1 use reasonable endeavours to inform the Licensee of its intention to seize and/or remove the Nominated Boat; and
- 16.8.2 without limiting clause 16.8.1, provide the Licensee with written notice given in accordance with clause 19.1 stating the Licensor's intention to seize and/or remove the Nominated Boat and specifying a date that is not less than 5 Working Days

after the date of the notice, which is the earliest date that the Licensor may seize the Nominated Boat and/or remove the Nominated Boat from the Berth.

Provided the Licensor has acted carefully in seizing and/or removing and storing the Nominated Boat it shall not be liable for any damage caused to it.

### **Lien**

- 16.9 Where the Licensor seizes and/or removes any Nominated Boat under clause 16.8, it is entitled to a lien on the Nominated Boat to the extent of the costs of seizing and/or removal and storage, and any outstanding debts or liabilities owed by the Licensee to the Licensor (including outstanding fees and charges under clause 6).

### **Return of vessel**

- 16.10 The Licensee may request the return of any Nominated Boat that has been seized and/or removed and/or stored by the Licensor within 6 months of written notice being given under clause 16.8. The Licensor will return the Nominated Boat if it is satisfied it is not likely to result in a further breach of the Licence term for which it was seized and/or removed and prior payment of the costs associated with seizing, removing and or storing the Nominated Boat and any outstanding debts or liabilities owed by the Licensee to the Licensor (including outstanding fees and charges under clause 6) are made to the Licensor.

### **Sale of vessel**

- 16.11 If the Licensor seizes and/or removes a Nominated Boat under clause 16.8 and it has not been returned within 6 months of written notice being given under clause 16.8, the Licensor may offer the Nominated Boat for sale by public auction or private contract and apply such of the proceeds of any resulting sale first in payment of the Licensor's expenses incurred in seizing and/or removal, storage and sale of the Nominated Boat (including administrative expenses, the cost of providing custodians, and brokerage fees), and second in payment of any outstanding debts or liabilities owed by the Licensee to the Licensor (including outstanding fees and charges under clause 6), and third to the Licensee. The Licensee irrevocably appoints the Licensor to be the attorney of the Licensee to execute all documents and do all things as are necessary to give effect to the sale of the Nominated Boat under this clause 16.11.
- 16.12 Before the Licensor is entitled to sell the Nominated Boat under clause 16.11, the Licensor must:
- 16.12.1 use reasonable endeavours to inform the Licensee of its intention to sell the Nominated Boat; and
  - 16.12.2 without limiting clause 16.12.1, provide the Licensee with written notice given in accordance with clause 19.1 stating:
    - (a) the Licensor's intention to sell the Nominated Boat and specifying a date that is not less than 15 Working Days after the date of the notice, which is the earliest date that the Licensor may offer the Nominated Boat for sale; and

- (b) that, if the Nominated Boat is not able to be sold, then it may be disposed of in accordance with clause 16.13.

16.13 If after following the process in clauses 16.11 and 16.12, the Licensor is not able to sell the Nominated Boat, it may dispose of it in any manner it sees fit. This may include, but is not limited to, destruction of the Nominated Boat. If that occurs, the Licensee shall be liable for all of the Licensor's expenses incurred in seizing and/or removal, storage and attempted sale of the Nominated Boat (including administrative expenses, the cost of providing custodians, and brokerage fees) and any costs associated with the destruction or any other means of disposal and the Licensee remains liable for any outstanding debts or liabilities owed by the Licensee to the Licensor (including outstanding fees and charges under clause 6).

## **17 COMPLIANCE WITH MARINA RULES, ACTS, REGULATIONS, BYLAWS AND INSTRUCTIONS**

### **Compliance with laws**

- 17.1 The Licensee must, in the use of the Berth and the Nominated Boat, comply with all Acts, Ordinances, Regulations, Bylaws, planning decisions and associated conditions, or other lawful requirements affecting or relating to the Berth and the Nominated Boat or the use or occupation of the Berth and the Marina Area, and must also comply with the provisions of all licences, requisitions, notices or orders made or given by any authority having jurisdiction over the Berth and the Nominated Boat or the use and occupation of the Berth and the Nominated Boat and will keep the Licensor indemnified for any non-compliance by the Licensee with the Licensee's obligations under this clause.
- 17.2 Nothing in this Licence limits any powers or functions of the Nelson City Council under any Acts, Ordinances, Regulations, Bylaws or the common law. For the avoidance of doubt, a breach of this Licence may be enforced by Nelson City Council under the Nelson City Navigation Safety Bylaw and in accordance with the enforcement powers in Subpart 2 of Part 8 of the Local Government Act 2002.

### **Compliance with Marina Rules and other instructions**

- 17.3 The Licensee must comply with (and be responsible for ensuring that the Licensee's passengers, guests and visitors comply with) the Marina Rules and any other specific instructions from time to time issued by the Licensor for the efficient, safe and harmonious use of the Marina and any of its facilities. The Licensor may vary the Marina Rules by giving written notice to the Licensee as may reasonably be necessary or desirable. If there is any inconsistency between the provisions of this Licence and the Marina Rules the provisions of this Licence will prevail.

### **Compliance with navigation rules**

- 17.4 The Licensee must, in its use of the common waterways within the Marina, comply with the provisions of the Maritime Transport Act 1994, the Maritime Rules, the Maritime Protection Rules, the International Regulation for Preventing Collision at Sea 1972, the Nelson City Navigation Safety or other Bylaws and any other applicable laws, or any provisions passed

in substitution for, or in succession to, the above Acts, Regulations and Bylaws passed after the Commencement Date relating to the use of the common waterways.

## **18 GOODS AND SERVICES TAX AND OTHER DUTIES**

### **GST**

- 18.1 The Licensee will pay to the Licensor upon demand all GST on any money payable by the Licensee under or by virtue of this Licence and the use by the Licensee of the Berth.

### **Default GST**

- 18.2 If any GST is not paid by the Licensee upon demand it will be recoverable without prejudice to any other remedies available to the Licensor, and in addition the Licensee will pay any additional tax that has become chargeable pursuant to the Goods and Services Tax Act 1985.

### **Other duties and taxes**

- 18.3 Without limiting clauses 18.1 and 18.2, the Licensee must pay all duties, taxes and other imposts in respect of this Licence and/or in respect of the payments, fees and other money due under this Licence including (without limitation) GST. The Licensee's obligations under this Licence apply regardless of whether the Licensor or the Licensee is primarily liable in respect of any such duty, tax or other impost or is liable for charging it or otherwise to the intent that, without prejudice to the foregoing, the Licensee shall indemnify the Licensor for any such duties, taxes and other imposts paid or payable by it in any capacity whatever.

## **19 SERVICE OF NOTICES**

### **Notices**

- 19.1 Any notice issued under this Licence must be given in writing and delivered personally, fixed to the Nominated Boat (if to the Licensee), posted, or sent by email or text message using the contact details specified in Schedule 1 or such other contact details notified to the Licensor in accordance with clause 19.2. A notice is deemed to be received:
- 19.1.1 if delivered personally, when delivered;
  - 19.1.2 if fixed to the Nominated Boat (if to the Licensee), 5 Working Days after it is so fixed;
  - 19.1.3 if posted, 5 Working Days after it is posted, or in the case of international post, 10 Working Days after it is posted; or
  - 19.1.4 if sent by email or text message, on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause 19), provided that no automatically generated 'out of office' response from the addressee is received,

provided that any notice received or deemed received after 5.00pm or on a day which is not a Working Day in the place to which it is delivered, fixed to, posted or sent will be deemed not to have been received until the next Working Day.

### **Change of contact details**

- 19.2 The Licensee must provide to the Licensor written notice of any change to the Licensee's contact details from those stated in Schedule 1 (this must include a mobile phone number and an email address) or alternatively the name, contact mobile phone number, email and postal address of any agent to whom the Licensee grants unlimited authority to act for the Licensee in all matters concerned with, or arising out of, this Licence. In the event of the appointment of an agent the Licensor will be entitled to deal with that agent in all respects as if the agent were the Licensee and the Licensee will be bound accordingly. The Licensor may update its contact details by giving the Licensee written notice.

### **Multiple Licensees**

- 19.3 In the event that there is more than one Licensee, or the Licensee is a company or trust, then all Licensees must appoint either one of their number or some other person to be their agent. In default of any such appointment the first named Licensee is deemed to be the agent of all the Licensees. The Licensor is entitled to deal with that person and rely on its dealings with that person, and all other Licensees, the Licensee company or the other trustees (as applicable) are legally bound by that person as their agent. Any notice given to or received from that person is deemed to have been given to or received by all other Licensees, the Licensee company or the other trustees (as applicable).

## **20 DISPUTE RESOLUTION**

### **Amicable resolution**

- 20.1 Without limiting the application of the clauses below relating to dispute resolution, in the event of a dispute arising in connection with the Licence the parties shall actively and openly endeavour to amicably settle such dispute themselves, with a view to achieving prompt resolution.

### **Mediation**

- 20.2 Either party may, by notice in writing to the other, refer any dispute under the Licence to mediation, in which case the following shall apply:
- 20.2.1 the mediation shall be conducted by a single mediator;
  - 20.2.2 the parties shall endeavour to agree on a mediator;
  - 20.2.3 if the parties cannot agree on a single mediator within 10 Working Days of service of notice of intention to commence mediation, either party may request Resolution Institute New Zealand to appoint a sole mediator;
  - 20.2.4 the mediator shall discuss the matter with the parties (separately or jointly as the mediator may determine) and endeavour to resolve the dispute by agreement;

- 20.2.5 all discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings;
- 20.2.6 each party shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.
- 20.3 During a dispute, each party must continue to perform its obligations under the Licence, including payment of fees and charges under clause 6.
- 20.4 This clause does not restrict or limit the right of either party to obtain interlocutory relief, or to immediately terminate the Licence where it provides such a right.

## **21 AMENDMENTS**

### **Amendment on 30 days' notice**

- 21.1 The Licensor may make the following amendments to the Licence by giving the Licensee 30 days' prior written notice of such amendment, which will take effect from either the date specified in the notice or the expiry of the notice period, whichever is later:
- 21.1.1 amendments to any provision that is reasonably necessary or desirable for the Licensor to comply with its obligations under the terms of any applicable resource consent or any applicable law; and
- 21.1.2 any amendment that is immaterial, administrative or procedural in nature, or that corrects an administrative or typographical error.

### **Other amendments**

- 21.2 Other than amendments to fees and charges under clause 6, the Licensor may make any other amendments to the Licence by giving the Licensee 30 days' prior written notice of such amendment, and any such amendment binds the Licensor and the Licensee on and from the expiry of that period unless the Licensee advises the Licensor that it does not accept any amendment in which case the Licence will be deemed terminated by the Licensor from a date advised by the Licensor.

## **22 GENERAL**

### **Joint and several liability**

- 22.1 Where a party comprises two or more persons, those persons shall be liable on a joint and several basis.

### **Time of the essence**

- 22.2 For the purposes of clauses 12.5 (removal), and clauses 16.1 and 16.4 (default), time is of the essence.

### **Law and Jurisdiction**

- 22.3 This Licence is subject to the laws of New Zealand, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand in relation to any matter arising from or in connection with this Licence.

### **Use of electronic technology and mobile phones**

- 22.4 The Licensee consents to using, providing and accepting information in an electronic form, including in relation to the acceptance of the terms of this Licence.
- 22.5 The Licensee consents to receiving information relevant to this Licence or the operation of the Marina by way of text messages and emails from the Licensor and/or the Marina Manager. The Licensee must ensure the Licensor has at all times current details for mobile and email contact of the Licensee. The Licensee cannot opt out of this requirement.

## **23 GLOSSARY AND INTERPRETATION**

### **Definitions**

- 23.1 In this Licence and the Schedules, unless the context otherwise requires:

**Berth** means the berth described in Schedule 1.

**Charter Boat** means a vessel which is available for public charter or which is used for the teaching of yacht and boat handling skills.

**Commencement Date** means the date specified in Schedule 1.

**Facilities** means the foreshore areas, parking areas, driveways, landscaped areas, toilets, launching ramps and other facilities constructed or placed on, or in, the Marina Area.

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

**Licence** means a licence in the form prescribed by the Licensor pursuant to which a Licence Holder shall be or is entitled to occupy and enjoy a particular berth in the Marina, and includes the relevant Licence Schedules.

**Licence Holders** means those persons who hold a Licence and **Licence Holder** means any one of them.

**Licensee** means the Licensee described in Schedule 1, and includes the Licensee's executors, administrators and successors and, where relevant, the Licensee's agent.

**Licensor** means Nelson City Council and its successors and assigns and, where relevant, the Licensor's agent.

**Marina** means that area generally shown shaded on the plan attached to Schedule 1.

**Marina Area** means the marina waters, common marina fairways, the Structures, the Facilities, all marina foreshore areas, administration and service areas, parking areas, ramps and driveways and all other areas used for the Marina.

**Marina Manager** means any person or entity who may be appointed as the Marina Manager, or contracted or appointed as agent from time to time by Nelson City Council as the Marina Manager to manage and administer the Marina, and includes any contractors, sub-contractors, agents, staff or any other persons who have been delegated by the Council to manage the day to day operation of the Marina.

**Marina Rules** means the rules established by the Licensor from time to time in respect of the Marina, as set out in Schedule 2, and includes any variation of such rules made by the Licensor.

**Nominated Boat** means the boat nominated by the Licensee (in writing to the Licensor) and specified in Schedule 1, or any boat substituted therefore which has been nominated by the Licensee under clause 1.6 and which complies with the dimension requirements specified in clause 3.

**Seaworthy** means that the vessel's hull, keel, decking, cabin and mast are structurally sound and generally free from dry-rot or other similar defect or deficiency.

**Services** means the power, water, hard refuse collection and other services and utilities provided for the benefit of the Licensee in the Marina.

**Structures** means the breakwater, fingers, jetties, loading jetty, piles and other structures constructed or placed on or in the Marina Area.

**Term** means the period commencing on the Commencement Date and ending either 3 years after that, or on the expiry of any agreed renewal term.

**Termination Date** means the date ending 3 years after the Commencement Date, or on the expiry of any agreed renewal term, unless terminated earlier by reason of a surrender of a licence, power of termination under this Licence or agreed departure date.

**Working Day** means a day which is not a Saturday, Sunday, bank holiday or public holiday in Nelson, New Zealand.

### **Interpretation**

23.2 In this Licence, unless the context requires otherwise:

- 23.2.1 the headings to clauses are inserted for convenience only and shall be ignored in interpreting this Licence;
- 23.2.2 the word including and other similar words do not imply any limitation;
- 23.2.3 a person includes any company or body of persons (incorporated or not, and whether or not having separate legal personality);



- 23.2.4 the plural includes the singular and vice versa;
- 23.2.5 references to parties are references to parties to this Licence;
- 23.2.6 any obligation not to do anything shall be deemed to include an obligation not to suffer, permit or cause that thing to be done;
- 23.2.7 where a term refers to the Licensor exercising its discretion such exercise shall be at the Licensor's sole discretion;
- 23.2.8 where a term requires the consent or approval of the Licensor such consent or approval is not to be unreasonably withheld; and
- 23.2.9 a reference to a statute includes any legislative instrument or other subordinate legislation made under it and amendments to or replacement of any of them from time to time.

**Prevailing terms**

- 23.3 Where there is any conflict between any term of this Licence set out in the above clauses 1 to 22.3 inclusive and any term or provision of the Licence Schedules, the provisions of clauses 1 to 22.3 above shall prevail.

**EXECUTION:**

**Executed for and on behalf of the Licensee by:**

\_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
**Name Signature Date**

**Executed for and on behalf of Nelson City Council (Licensor) by the Nelson Marina Manager:**

\_\_\_\_\_ /\_\_\_\_\_/\_\_\_\_\_  
**Nigel Skeggs Signature Date**

**SCHEDULE 1 - NELSON MARINA - SCHEDULE OF LICENCE DETAILS:**

<b>Name of Owner:</b>	
<b>Address: Street or PO Box</b>	
<b>Address: Suburb</b>	
<b>Address: Town/City</b>	
<b>Address: Postcode</b>	
<b>Address: Country</b>	
<b>Email Address:</b>	
<b>Mobile Phone:</b>	
<b>Home Phone:</b>	

<b>Alternative Emergency Contact Name:</b>	
<b>Alternative Emergency Contact Mobile:</b>	

<b>Vessel Name:</b>	
<b>Vessel Type: (Motor/Sail)</b>	
<b>Vessel Design:</b>	
<b>Vessel Length:</b>	
<b>Vessel Beam:</b>	
<b>Vessel Draft:</b>	

<b>Vessel Pier Letter:</b>	
<b>Vessel Berth Number:</b>	

## Schedule 2 – Nelson Marina Rules:

# NELSON MARINA RULES

The following rules have been established to provide for the efficient and harmonious operation of Nelson Marina and for the safety of the Berth-occupiers and visitors to the Marina.

All marina users, Berth-occupiers, guests, contractors and the general public are bound by these rules when on Nelson Marina property.

## ACTS AND BYLAWS

All persons are required to obey all Acts and Bylaws that may at any time be in force whilst in Nelson Marina.

## SIGNS

Signs relating to the use of the Marina and directions issued by the Marina Manager are to be observed at all times.

## HEALTH AND SAFETY

A copy of Nelson Marina's Health and Safety Policy is available in the Marina office for viewing. All Health and Safety rules must be abided by.

## VESSEL SPEED WITHIN THE MARINA

Vessel speed within the Marina is restricted to 3 knots and is a no wake zone.

## OBSTRUCTION OF ENTRANCES

No person shall obstruct any of the entrances to the Marina or use them for any purpose other than access to and from the Marina.

## NAVIGATION AREA

No person shall moor or navigate any vessel within the Navigation Area so as to create a danger, impediment, obstacle or inconvenience to any other vessel.

## BERTHING

All Berth lines will be sufficient to meet the current industry standard, for the purpose of

Berthing vessels; shall be of sufficient strength; and secure safely a vessel of the size and weight allocated to the Berth.

Where required by the Marina Manager the Berth-occupier shall pay the cost of fixing, repairing, and replacing any lines that fail the inspection of the Marina Manager.

Should the Berth lines prove to be inadequate to secure a vessel all liability rests with the Berth-occupier.

No person shall interfere with any Berthing line without good cause relating to safety of the vessel or safety of other vessels or persons unless authorised by the Marina Manager.

The Berth-occupier issued pursuant to this agreement shall ensure that all halyards, lines, ropes, rigging and sheets on the licensee's vessel whilst berthed in the Marina are secured so that they shall not create any excessive noise, or hazards.

No part of any vessel may overhang a jetty or walkway.

## SERVICES

Services means power, water and any other services provided for the use and benefit of the Berth-occupier in the Marina:

Persons may use the Services provided for them on an occasional basis only.

All leads and appliances connected to the Marina's power outlets must comply with the relevant regulations. No leads shall be connected to shore power connections without a current electrical warrant of fitness.

If a person requires more regular use of any services then such use shall be subject to the prior written approval of the Marina Manager who may make an extra charge to cover the costs of providing such Services.

No person shall use any water supply in or around the Marina landing stages other than for washing down vessels, domestic or culinary purposes.

No person shall use any Services for a purpose for which it was not designed.

 **SECURITY**

Berth-occupiers shall take all reasonable steps to protect any vessel occupying the Berth from theft and vandalism and shall keep all hatches and other openings closed and securely fastened when such vessel is not in use.

 **FIRE HAZARDS**

Persons shall not do anything in the Marina which creates a fire hazard or which may contravene the regulations or bylaws of any Authority and, without limitation, shall not use firefighting equipment supplied by the Marina Manager for any purpose other than the fighting of fires.

 **DANGEROUS GOODS**

No person shall bring into, store or use within the Marina any chemicals, inflammable gases, fluids or substances except in the ordinary course of using such items for recreational purposes.

 **NUISANCE**

No person shall make any improper noise or interfere in any way with other persons lawfully in the Marina.

Noise shall be kept to a minimum at all times and no person shall create a nuisance by the use of television, radio, musical apparatus, or any other form of sound reproduction.

No person shall on or about a mooring or on or about any vessel occupying a Berth use abusive or improper language.

No person shall commit any act calculated to or likely to provoke or result in a breach of the peace or do or omit to do anything constituting or likely to constitute a public nuisance.

No unlawful activities shall be conducted from the Marina.

 **MARINA TROLLEYS**

For the convenience of others, Marina trolleys must be returned to the jetty entrances immediately after use.

 **DOMESTIC RUBBISH**

No person shall deposit any domestic rubbish or useless property in the Marina or upon Marina structures.

All rubbish shall be deposited in the receptacles provided.

 **DISCHARGE OF POLLUTANTS, LITTER AND RUBBISH**

No person shall discharge any poisonous, noxious, dangerous or offensive substance or thing into or onto the Marina.

In particular, but without limitation, no person shall discharge any sewage or otherwise empty any latrines into the waters of the Marina or otherwise dispose of any garbage, oil, fuel or other material whatsoever into the Marina except into containers provided by the Marina Manager. Or do anything/fail to do anything that would cause deterioration of the waters of the Marina or the waters adjacent thereto.

No person shall in any part of the Marina:

Break or cause to be broken or throw or abandon, cast or leave, whether broken or not any glass or pottery object, tins, bottles, paper, paper wrappings, plastic bottles, bags or containers, plastic sheet, litter, rubbish, oil or other articles or thing likely to be unsightly or to cause any nuisance or danger to public health or safety;

Scale, clean or gut any fish or throw cast or leave or deposit any fish, or any portion of a fish or a carcass of any dead animal, or fowl or any vegetable matter likely to cause a nuisance, injury or danger to public health or safety, nor shall any person leave offensive matter in any vessel in the Marina.

 **WASTE OIL**

Waste oil and oil and fuel filters must be disposed of in the waste oil containers located at the entrance to the boat yard.

 **SHARING OF MOORING**

No person shall tie or raft a vessel to any other vessel moored in the Marina except in such area or areas of the Marina set aside by the Marina Manager specifically for that purpose.

 **NOTICE OF DEFECTS**

Persons shall promptly notify the Marina Manager on becoming aware of any defect or damage to the Marina.

 **ALCOHOL**


No person shall consume alcohol within the Marina except on private vessels or on licensed premises or other premises where consumption of alcohol is not prohibited by law.

 **STORAGE**


No person shall store any property, gear or equipment under their control or direction at the Marina, without the prior written consent of the Marina Manager.

 **FISHING**

Fishing is not permitted in any part of the Marina.

 **NO SWIMMING**

Except where necessary for the inspection of the Berth-occupiers vessel, no person shall swim or dive within the Marina without prior approval in writing from the Marina Manager.

 **NO CYCLING, SKATEBOARDING OR SCOOTERING**

No person shall cycle, skateboard or scooter or permit its guests, visitors, agents to cycle, skateboard or scooter on pontoons at any time.

 **LIVING ON BOARD**

Living on Board is defined as more than two (2) consecutive days living on board the vessel.

Where Living on Board is permitted by the Marina Manager the following rules apply:

All Live-aboards must ensure that the nominated boat is equipped with a sewage holding tank that can be discharged into the land-based black water pump-out facility at the Marina or another suitable facility.

Living on board is by permit only, the maximum number of live-aboard vessels is three per pontoon or as specified by Council.

A list of Berth-occupiers waiting to live on board and their boats will be maintained in order of application date priority and available for public inspection in the Marina Manager's office.

The order of allocation shall be to the highest priority boat on the 'Waiting List' that best fills a Berth on the available pier.

Only owners and their immediate families are permitted to stay aboard.

Electricity consumption shall be limited to battery chargers and small household appliances such as television and radio. Electric heaters are not permitted.

Piers and finger piers must be kept clear at all times.

Animals (excluding caged birds) are not permitted on 'Live Aboard' boats except as permitted by the Marina Manager in writing and subject to any conditions the Marina Manager may require.

Shore side toilets and showers are to be used and no material is to be deposited overboard.

Any Live-aboard tenant who is away from the Marina with their boat for more than three months, but who continues to pay a permanent Berth fee, shall, on their return to the Marina, if they request to go on the Liveaboard waiting list, be placed at the bottom of that list.

Any Live-aboard tenant who does not live aboard their boat in the Marina for a period longer than three months shall lose their Live Aboard status.

Any permanent Berth-occupiers staying on their boat for more than five nights per month will be charged 'Visitor' rates and 'Visitor' rules Time Limit will apply.

'Live Aboard' tenants shall pay a 'Live Aboard' fee per month over and above their permanent mooring rate. This fee will be subject to regular review.

 **LIVE-ABOARD RESPONSIBILITIES**

Help monitor security on piers and parking lots. Telephone police (phone +64 3 546 3840), or Nelson Marina office in the event of suspicious activities.

Report to Marina Manager any unusual conditions or activities (like broken street/pontoon lights, mooring lines, water pipes) needing attention.

 **WASHING**

No washing is to be hung out on your vessel at any time.

 **VISITOR RULES**

Visitors to the Marina are permitted to stay aboard their boats.

The maximum period of stay for visitors is three months per year, or a period of extension as agreed by the Marina Manager.

The “Visitors” rates shall apply. These shall be subject to regular review.

 **VISITING VESSELS**

No person shall use or occupy a mooring in the Marina which has been set aside by the Council for visiting vessels except with the consent of the Marina Manager and then only on such terms and conditions and for such duration as specified by the Marina Manager.

 **ANIMALS**

No person shall permit any animal under their control to enter or remain in the Marina unless properly controlled and provided it does not disturb other persons. All dogs must be kept on a leash and under proper control at all times.

Persons shall be responsible for promptly cleaning up and disposing of any droppings of any pets brought to the Marina by themselves, or their invitees, in a proper manner.

 **USE OF LANDING STAGES**

No person shall use the Marina landing stages for any purpose other than for embarking or disembarking passengers or stores except with the prior approval of the Marina Manager and then on such conditions as the Marina Manager may impose.

 **ALTERATION OF BERTHS**

No person shall alter or modify any structure or thing associated with or forming part of a berthing area without the written permission of the Marina Manager.

Only fenders approved by the Marina Manager may be used within the Marina.

 **SAFETY**

Any person mooring or tying up a vessel in the Marina shall ensure that:

The vessel is properly and safely secured to whatever it is moored or tied to.

All access ways and waterways are kept clear. The vessel is in a good and safe state of repair. In the event of any accidental spillage into the Marina immediate steps are taken to notify the Marina Manager where the spillage poses a threat to any other vessel, property or thing, and with advice remedy any damage caused.

The name of the vessel is clearly displayed on the vessel.

There is on the vessel an adequate fire extinguisher or firefighting appliance.

No person shall commence or carry out any hot works on any vessel in the Marina involving welding; flame cutting; or grinding without the prior approval of the Marina Manager and Harbourmaster in writing, and any conditions imposed by the Marina Manager or Harbourmaster must be strictly observed.

Any repairs, alterations or works on or to any vessel in the Marina must not be undertaken without the prior approval of the Marina Manager in writing, and any conditions imposed by the Marina Manager must be strictly observed. All work must be carried out in a safe and proper manner by Contractors approved by the Marina Manager. Minor work may be undertaken on private vessels by the owner.

If the Marina Manager is of the opinion that any repairs, alterations or works are not being carried out in a safe and proper manner they may order that all work cease and every person carrying out such work cease until the Marina Manager is satisfied the work does not pose a risk to vessels, users, visitors, customers or the general public.

No person shall bring into or keep in the Marina any motor spirit, petroleum products, fuel oil, liquefied petroleum, gas, compressed natural gas, kerosene or goods without the permission of the Marina Manager provided that a vessel may store small quantities of fuel in safe

containers in quantities reasonably required for the vessel's engines or stoves.



**EMERGENCY CONTACT**

Every person shall advise the Marina Manager of the name and telephone number of a person other than the Berth-occupier who can be contacted by the Marina Manager in the event of an emergency.



**CONTRACTOR ACCESS**

The Berth-occupier is responsible for ensuring that any Contractor invited into the Marina complex has in accordance with the Marina's Health and Safety Policy, completed a Contractor Access Application Form and are registered and approved by the Marina.

The Berth-occupier must ensure and accepts responsibility to ensure that any contractor or tradesman invited into the Marina complex for the purpose of carrying out work on the Berth-occupier's vessel holds sufficient insurance to satisfy the insurance requirements of the Marina Management.

The Berth-occupier indemnifies and will keep indemnified the Marina Management against all actions, suits, claims, debts, obligations and other liabilities arising out the activities of any contractor invited by the Berth-occupier to work on the Berth-occupier's vessel.



**DAMAGE TO THE MARINA**

The Berth-occupier will be responsible for all damage to all Marina Property including docks, structures, pilings or property in the Marina and or vessels and persons using the Marina arising from any act or omission, neglect or default by the Berth-occupier or its agents, servants, contractors, employees or invitees relating to the use or storage of the vessel.

All incidents involving the damage to other vessels or Marina structures are to be reported to the Marina Manager as soon as practically possible.



**VEHICLES**

All vehicles must observe parking rules and speed restrictions as revised from time to time. Parked vehicles must display the appropriate Nelson Marina parking permit or proof of

payment to avoid incurring parking infringement notices.



**VISITORS TO THE MARINA**

Every Berth-occupier shall ensure that:

All of its invitees comply with the terms of this licence.

Any children under the age of 13 and for whom the person or its visitors are responsible, are accompanied by an adult.



**LIEN**

Nelson Marina shall have a right of lien or charge in respect of any vessel or other property in or about the Marina for the purpose of recovering all moneys due whether on account of non-payment of fees, debt collection cost incurred by the Licensor in respect of a licence, non-payment of other moneys due to Nelson Marina, recompensate for damage done, or otherwise howsoever.



**INDEMNITY**

The Berth-occupier shall indemnify the Marina Management against any loss, expense, legal liability, claims and costs incurred by the Marina Management arising as a result of the Berth-occupier's act or omissions or the acts or omissions of others to which the Berth-occupier has contributed or the acts or omissions of any person invited into the Marina by the Berth-occupier.



**BERTH RENTAL LICENCE TO PREVAIL**

The Marina Management may vary the rules by written notice to the Berth-occupiers. If there is any inconsistency between the provisions of the Marina Rules and the Berth Rental Licence, the provisions of the Berth Rental Licence shall prevail.



**STANDARDS AND PRACTICES**

Generally people must observe the standards and practices reasonable to be expected of a competent, reliable and considerate person in the Marina.



**SCHEDULE 3 - NELSON MARINA AREA OF OPERATIONS:**



**Nelson Marina**  
Map 4

**Nelson City Council**  
te kaunihera o whakatū

PO Box 645 Nelson 7040 New Zealand PH 03 5460200 nelson.govt.nz

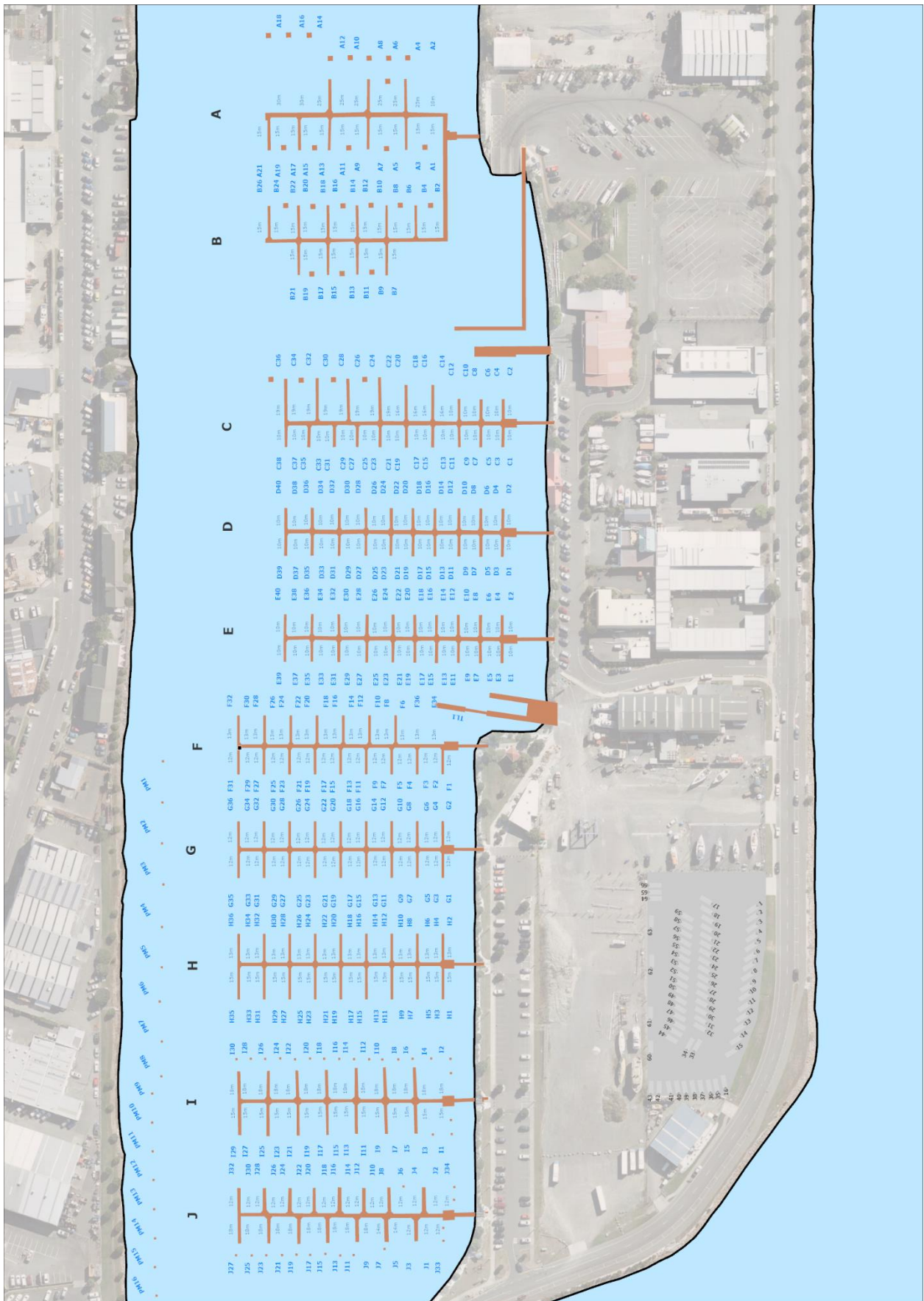
- Marina Area - No Wake Zone 3 Knots Maximum
- 5 Knots Maximum
- Repair Grid
- Maitai River Mouth
- Port Navigation Beacons

0 50 100 150 200 m  
Scale 1:8,000

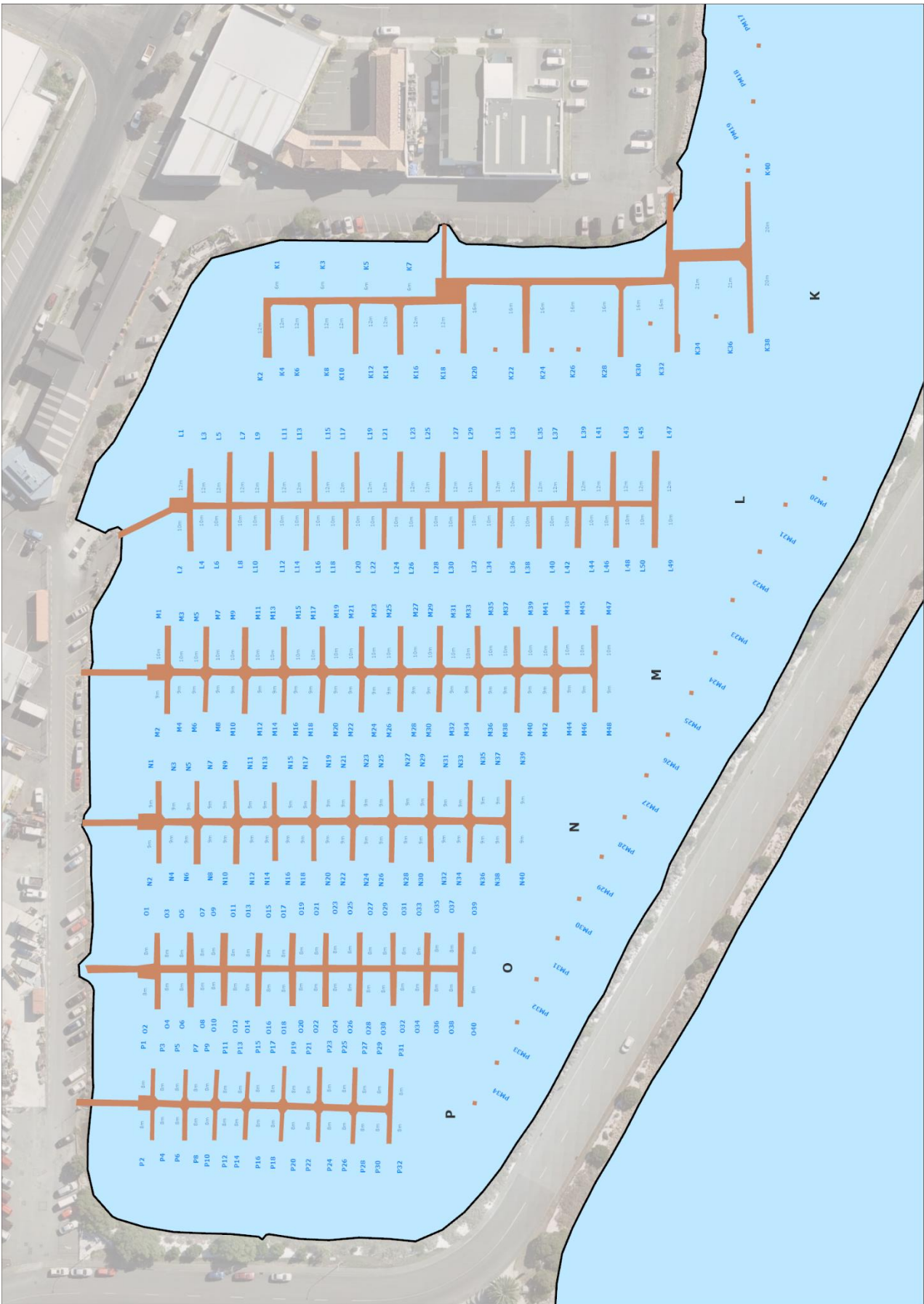
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↑  
October 2019



SCHEDULE 4 - NELSON MARINA BERTH LAYOUT AS AT JULY 2021:



# NELSON MARINA BERTH HOLDER LICENCE



**SCHEDULE 5 – DIRECT DEBIT PAYMENT FORM:**



PO Box 645 Nelson 7040  
03 546 0200  
Nelson.govt.nz

### DIRECT DEBIT AUTHORITY

<b>Name of my/our bank account to be debited:</b> <input type="text"/>	<b>Authorisation code</b> <table border="1"> <tr> <td>2</td><td>7</td><td>0</td><td>0</td><td>8</td><td>4</td><td>2</td> </tr> </table>	2	7	0	0	8	4	2																	
2	7	0	0	8	4	2																			
<b>Name of my/our bank:</b> <input type="text"/>	<table border="1"> <tr> <th colspan="2">Approved</th> </tr> <tr> <td>7008</td> <td>05/20</td> </tr> </table>	Approved		7008	05/20																				
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<b>My/our bank account number:</b> <table border="1"> <tr> <td><input type="text"/></td><td><input type="text"/></td> <td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td><td><input type="text"/></td> <td><input type="text"/></td><td><input type="text"/></td> </tr> <tr> <td colspan="2"><i>Bank</i></td> <td colspan="2"><i>Branch</i></td> <td colspan="6"><i>Account</i></td> <td colspan="2"><i>Suffix</i></td> </tr> </table>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<i>Bank</i>		<i>Branch</i>		<i>Account</i>						<i>Suffix</i>		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>														
<i>Bank</i>		<i>Branch</i>		<i>Account</i>						<i>Suffix</i>															

**From the acceptor to their bank:**

I authorise you to debit my account with the amounts of direct debits from **Nelson City Council** with the authorisation code specified on this authority in accordance with this authority until further notice.

I agree that this authority is subject to:

- The bank's terms and conditions that relate to my account, and
- The specific terms and conditions listed below.

The following information will show on your bank statement:

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Authorised signature(s):  <hr/>	Date:  ____ / ____ / ____
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**Specific conditions relating to notices and disputes**

You may ask your bank to reverse a direct debit up to 120 calendar days' after the debit if:

- You don't receive a written notice of the amount and date of each direct debit from the initiator or
- You receive a written notice, but the amount or the date of debiting is different from the amount or the date specified on the notice.

The initiator is required to give you a written notice of the amount and date of each direct debit no less than 10 calendar days before the date of the debit.

For weekly or fortnightly direct debits, the initiator is required to give you a written notice of the amount and date of each direct debit no less than 2 business days before the date of the debit.

For direct debits with notice no later than the date of the debit, the initiator may only send a direct debit if you have asked the initiator to send it and agreed the amount of the direct debit. The initiator is required to give you a written notice of the amount and date of each direct debit no less than the date of the debit.

For instalment or scheduled direct debits, the initiator is required to give a written notice of the amount and date of each direct debit in a series of direct debits no less than 10 calendar days before the date of the first direct debit in the series. The notice is to include the dates of the debits, and the amount of each direct debit. If the initiator proposes to change an amount or date of a direct debit specified in the notice, the initiator is required to give you notice no less than 30 calendar days before the change.

If the bank dishonours a direct debit but the initiator sends the direct debit again once within 5 business days of the dishonour, the initiator is not required to give you a second notice of the amount and date of the direct debit.

## EASYPAY – DEBTORS

### Account Details:

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_

Contact number(s): Home: \_\_\_\_\_ Mobile: \_\_\_\_\_

Email address: \_\_\_\_\_

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### Debtor Account Details:

Account Number: \_\_\_\_\_

Account Type:    *General Debtor*                      *Marina Debtor*                      *Other*  
(Please circle applicable type)

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### Marina Accounts (only):

Vessel Name: : \_\_\_\_\_

Berth Number: : \_\_\_\_\_

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### Debtors Direct Debit Frequency:

Monthly:                      On the invoice due date - 1<sup>st</sup> of the month or next business day

Monthly:                      On the invoice due date - 20<sup>th</sup> of the month or next business day

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We will send you a confirmation letter when we have loaded your Direct Debit Authority which will confirm the starting date, payment amount and frequency. Please allow at least 10 working days to have your authority set up.