



OFFICE USE ONLY			
Date Received:	Waitlisted:	Allocated:	Notes:

Berthing & Mooring Agreement/Application

This agreement between the Club and the Boat Owner/s is subject to the Terms and Conditions as detailed in **Schedule B**. It is not binding on the Club until executed by the owner of the boat. **Please read carefully** the said Terms and Conditions before signing.
You are invited to take legal advice.

Schedule A

Item 1

The Club: South of Perth Yacht Club Incorporated ABN: 36 417 855 329
 2 Canning Beach Road, Applecross 6153

Item 2 OWNER DETAILS		
<i>Please note: All owners registered with the Department of Transport must be listed and must be members of the Club. A copy of the Vessel's registration must be submitted with this form. The owner listed first below will be recognized by the Club as the spokesperson for the owners of the Vessel. The allocation of the bay will be made in their name.</i>		
Surname:	First Name:	Mem No.:
Home address:		
Home Phone:	Mobile:	
Email:		
SECOND OWNER DETAILS		
Surname:	First Name:	Mem No.:
Home address:		
Home Phone:	Mobile:	
Email:		

Item 3 VESSEL DETAILS			
Boat name:	<input type="checkbox"/> Power <input type="checkbox"/> Sail	Rego No.:	Sail No.:
Make:	Model:	Year Launched:	
Current Location:	HIN:		
Hull Construction:	Engine Make:	Fuel:	HP:
<p>To ensure maneuverability and safe accommodation of Vessels in the Clubs facilities, pen and vessel size is determined by a vessel's length overall (LOA example diagrams below), rather than the registered length.</p> <p>Should a Vessel's size be incorrectly provided any pen allocation at the Club will be revoked.</p>			
<p>Length Overall (Determines Pen Size)</p>		<p>PEN ENVELOPE LOA VESSEL ON TRAILER</p>	
		<p>PEN ENVELOPE LENGTH OVERALL</p>	
Length Overall:	Beam:	Draft:	Weight:

Item 4 INSURANCE		
<i>Insurance is mandatory and a <u>Certificate of Currency</u> must be submitted with this application.</i>		
Insurance Co.:	Policy No.:	Expiry Date: __ / __ / ____

Item 5 FACILITY REQUIRED (Please Circle)						
Water Pen	Land Pen	Mooring	Ramp Only	Dinghy (Tender Rack)	Rack (Dinghy Shed)	Dinghy (Land Pen)

Item 6 DECLARATION	
<i>The Club allocates facilities to members on the waitlist based on Vessel size, participation and service to the Club. Please complete the following declaration to indicate your past, present and intended involvement with the Club.,</i>	
I / we intend to become / remain an active member of South of Perth Yacht Club, and I / we will participate in the following ways:	
ON WATER	
<input type="checkbox"/> Saturday Sailing (Keelboat)	<input type="checkbox"/> Cruising Section Events
<input type="checkbox"/> Wednesday Afternoon Sailing	<input type="checkbox"/> Time Trialing
<input type="checkbox"/> Twilight Sailing	<input type="checkbox"/> Winter Series
<input type="checkbox"/> Other (details):	
Please advise any prior involvement in on water events at the Club:	
I acknowledge and accept that I will be required to do at least one service for the club each year in one of the categories listed below when requested. Please check the box if you have a preference	
SERVICE	
<input type="checkbox"/> Checkpoint / Rescue Duty	<input type="checkbox"/> Start Team
<input type="checkbox"/> Crewing on Support Boat	<input type="checkbox"/> Sailability
<input type="checkbox"/> Mark Laying	<input type="checkbox"/> Section / Committee Member (Committee / Section)

Item 7 ACKNOWLEDGEMENT			
<i>I hereby acknowledge that the above particulars are true in every respect, and I understand that if any of the particulars herein should change, I will notify the Club forthwith.</i>			
<i>I further acknowledge that as a first-time pen holder, a non-refundable Pen Entry Waitlist Fee will apply and be equivalent to 1 times the annual rental based on the length overall of the Vessel allocated a pen. Should a larger pen be allocated to a member who has already paid a Pen Entry Waitlist Fee, a fee equal to the difference between the first ingoing fee and the applicable new ingoing fee shall be paid.</i>			
<i>I agree that this facility allocation is dependent on, and subject to, no monies being outstanding to the Club more than 60 days from due date</i>			
<i>I am aware that the allocation of a Club facility is dependent on my continual active Club participation, availability to perform club requested tasks at least once per annum and agree to be bound by the Club's Policies, Rules and Bylaws relating to this application.</i>			
<i>I acknowledge that I have read and will abide by the items contained in the Terms & Conditions outlined below</i>			
Signature:		Signature:	
Mem No.:	Date:	Mem No.:	Date:

Schedule B

Berthing & Mooring Agreement Terms & Conditions ("T&C's")

- A. The Club is the owner and operator of the berthing facilities listed in Schedule A
- B. The applicant and all owners in the Vessel must be financial voting members of The Club.
- C. The applicants are the owners of the Vessel, incl. equipment, machinery, sails and boats etc identified in Item 3, Schedule A.
- D. The applicants acknowledge and consent to all of the conditions hereto and all co-owners are stopped from the denying the agreement hereto
- E. The applicants will appoint one person to be the sole contact with the Club. This person will be referred to in the agreement as the Boat Owner/s.
- F. At the request of the appointed Boat Owner/s, the Club has agreed to let the berth or mooring within the water leased area of the club from the date of allocation.

1. IT IS NOW AGREED AS FOLLOWS:

The Club shall let the berth or mooring to the Boat Owner/s and the Boat Owner/s shall hire the Berth from the Club on the Terms & Conditions of this Agreement, provided that the Boat Owner/s's use of the Berth shall not be exclusive.

2. AGREEMENT FEE/ PEN ENTRY AND OTHER MONEY:

- 2.1 Prior to the execution of this Agreement, the Boat Owner/s shall produce evidence to confirm ownership of the Vessel. The Boat Owner/s shall pay to the Club prior to the commencement date, all monies as set out in Item 6 Schedule A or as agreed with the Club.
- 2.2 The amount of the annual Agreement Fee/ Pen Entry Waitlist Fee shall be revised annually and decided at the Club's Half-yearly General meeting, and such increase will take effect for the period as determined by the motion carried at the Half-yearly General meeting.
- 2.3 The Boat Owner/s shall pay to the Club, interest at the rate of 1.5% per month on all money due but unpaid by the Boat Owner/s from the due date for payment to the actual date of payment.
- 2.4 The Boat Owner/s shall pay for all costs incurred by the Club to enforce its rights under this Agreement.
- 2.5 The Boat Owner/s shall pay for any damage to Club property including reparation costs, any reasonable contribution to insurance excess and other costs in circumstances where the Boat Owner/s is found to be responsible.
- 2.6 The Boat Owner/s' obligation to pay the fees and all other money payable shall be absolute and unconditional and shall not be affected by any defect in the Berth. Such obligation continues until this Agreement is terminated pursuant to its terms.

3. COMMENCEMENT DATE AND HOLDING OVER PERIOD:

- 3.1 The Commencement Date is the date of pen allocation. This initial period will continue until the next 30th June
- 3.2 At the expiration of the current agreement period, the agreement term shall be 12 monthly and fees and all other money payable in relation to the agreement shall be payable in advance as set out in this Agreement.
- 3.3 Pen fees will be billed and paid in advance in two moieties or as decided by the Club.
- 3.4 Unless either party notifies the other in writing with a month's notice, this Agreement will automatically renew for a further 12 months and the Boat Owner/s must pay a further fee as set out in the club's fees.
- 3.5 Notwithstanding, Clause 3.4, the Club is under no obligation to renew this Agreement.

4. OPERATIONAL MAINTENANCE AND STORAGE OF THE VESSEL AND OTHER EQUIPMENT:

- 4.1 The Boat Owner/s at his own expense shall keep and maintain the Vessel and its equipment including but not limited to the ropes and lines on or attached to the Vessel in good working order and condition as specified in the the Pens & Mooring Regulations document MPMR001
- 4.2 The Boat Owner/s shall operate, maintain and store the Vessel and its equipment with due care and diligence.
- 4.3 The Boat Owner/s undertakes:
 - (a) To comply with all relevant laws, regulations, rules and by-laws governing or relating to the registration, operation or licensing of the Vessel and its equipment or the use thereof and to obtain and maintain in full force and effect all necessary licenses, permits, certificates and registrations relating to the Vessel and its equipment or use and to pay promptly all requisite fees and charges upon demand and produce to the Club receipts for the payment thereof.
 - (b) To reimburse the Club on demand for all money which the Club has paid to make good any failure by the Boat Owner/s to comply with any obligation under this Agreement.
 - (c) Not to cause or not to allow any of his servants, agents, invitees or guests to cause any disturbance in or around the Club area in such a way to prevent the Club, Boat Owner/s, or invitees the use and enjoyment of the facilities provided by the Club. In the event of such disturbance the Club in its absolute discretion (which the Boat Owner/s hereby acknowledges) may terminate this Agreement forthwith by written notice setting out the date and the time the Boat Owner/s is required to vacate the Berth.
 - (d) Not to bring any pets or animals onto the premises owned or operated by the Club without the Club's consent.
 - (e) Not to conduct any refuelling of the Vessel whilst the Vessel is berthed or stored at the Club other than in designated refuelling areas.
- 4.4 The Boat Owner/s confirms that the Vessel has the dimensions and displacement set out in Item 3 of Schedule A. The Boat Owner/s shall be liable for any damage or additional expense arising out of the failure of the Vessel to have the said dimensions and displacement.
- 4.5 The Boat Owner/s agrees not to employ or engage contractors to work on the Vessel at the Club location unless said contractors are licensed and approved by the Club.

5. LIENS AND ENCUMBRANCES:

- 5.1 The Club shall have a lien on the Vessel identified in Item 3, Schedule A for the payment of all monies due to the Club under this Agreement. The Boat Owner/s authorises the Club to take possession of the Vessel if the account remains unpaid for 21 days after demand for payment has been made in writing by the Club to the Boat Owner/s.

6. RISK AND INSURANCE:

- 6.1 The Boat Owner/s assumes all risk and liability for and in respect of the use of the facilities of the Club and the use of his Vessel and equipment. Notwithstanding whether or not the Boat Owner/s has affected insurance with respect thereof, the Boat Owner/s will indemnify and release the Club against and from any claims or demands resulting from loss of or damage to the facilities, other property or persons howsoever caused.
- 6.2 The Boat Owner/s shall deliver a copy of the Certificate of Currency of insurance for their Vessel/s to the Club and shall promptly pay all premiums which are necessary for effectively keeping such insurance in force. The Boat Owner/s shall on demand, and each year immediately after renewal of the insurance, produce to the Club a Certificate of Currency of the insurance. If the Boat Owner/s fails to keep the insurance current, or if any insurance becomes void or invalid, the Club may without prejudice to its other rights and remedies hereunder, but is not obliged to, pay the premiums for such insurance and if so paid by the Club the same shall be immediately recoverable by the Club from the Boat Owner/s.

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6.3 The Boat Owner/s shall advise the Club forthwith in writing of any event which leads or might lead to a claim for compensation or payment under any insurance policy and shall comply with all instructions of the Club in connection with its claim.

6.4 The Boat Owner/s shall self-audit the vessel to ensure that it meets the Clubs Marina Safety Compliance regulations and will have the vessel checked by the Club prior to entering the facilities. The Boat Owner/s shall do all things reasonable and necessary to maintain the Marina Safety Requirements

7. RELIANCES AND WARRANTIES:

7.1 The Boat Owner/s acknowledge by entering into this agreement that:

(a) The Boat Owner/s has not relied in any way on the Club's skill and judgment;

(b) The Boat Owner/s has satisfied themselves as to the condition and suitability of Berth for the Boat Owner/s's purpose;

(c) The Boat Owner/s has examined and satisfied themselves as to the condition and suitability, including but not limited to the piers, pontoons, gangways and ramps at the Club and that they will use such as provided for berthing and parking spaces solely at their own risk: and

(d) The Club may, at its sole discretion, board and move the Vessel and/or its equipment; at the Boat Owner/s' risk and expense as required by emergencies or other operational requirements.

(e) The Boat Owner/s gives the Club the authority to move the Vessel in a situation of default and absolutely indemnifies the Club from any and all liability arising therefrom.

7.2 The Boat Owner/s acknowledges that whether or not these Terms and Conditions are signed, the Boat Owner/s of the Vessel will be deemed to have jointly and severally accepted them upon the earliest of emailing consent, berthing a Vessel at the Club and / or signing of these Terms and Conditions by the Boat Owner/s of the Vessel at the Club.

7.3 The Boat Owner/s is responsible for all rubbish associated with the Vessel and expressly agrees to pay for the cost of the removal of same. Rubbish includes, but is not limited to bilge, engine and other oils, discarded equipment, barnacles, marine growth, paint scraping, etc.

7.4 The Boat Owner/s will abide by the Clubs Rules, Bylaws, Policies and Regulations.

8. DEFAULT AND TERMINATION

8.1 Each of the following events is an Event of Default:

(a) The Agreement or any part thereof or other money payable under this Agreement remains unpaid for a period of twenty-one (21) days or more after demand for payment has been made in writing by the Club to the designated spokesperson / contact for the Boat Owner/s.

(b) The Boat Owner/s fails to observe or perform any obligations, liability or other provision of this Agreement on its part and such failure continues for a period of fourteen (14) days or more after notice in writing by the Club has been given requiring remedy or same; or

(c) The Club ascertains that any undertaking, representation or statement made by the Boat Owner/s under or in connection with this Agreement has been false in any material respect; or

(d) An insurance policy or a marina compliance certificate in respect of the Vessel is cancelled or not renewed; or

(e) The Boat Owner/s commits or suffers to be committed any act of bankruptcy or, an official manager or receiver and manager is appointed in respect of the whole or any of their assets or an inspector is appointed to investigate their affairs; or

(f) The Boat Owner/s enters or proposes to enter into any arrangement, reconstruction or composition with any of their creditors; or

(g) The Boat Owner/s, ceases or threatens to cease carrying on their business, or is unable to pay their debts as they fall due or suspends payment generally; or

(h) The Boat Owner/s, disposes or assigns or parts with all or a substantial part of the Vessel or attempts to do so; or

(i) The Boat Owner/s, if an individual, is declared mentally ill, is convicted of a criminal offence, or dies; or

(j) There is a material adverse change in the business or financial condition of the Boat Owner/s which could adversely affect the ability of the Boat Owner/s to meet their obligations under his Agreement.

8.2 If the Club takes possession of the Vessel and/or its equipment, the Club may retain such possession until the Club is satisfied that the Event of Default giving rise to such taking of possession by the Club has been remedied or in the Club's opinion such event of default does not or would not prejudicially affect the Club's rights under this Agreement.

8.3 This Agreement shall continue during this period of possession by the Club and the Agreement remains payable by the Boat Owner/s as if the Vessel and/or its equipment remained under that Boat Owner/s's control.

9. NON-ASSIGNMENT SUB-LICENSING

9.1 The non-exclusive license granted by the Club to the Boat Owner/s by this Agreement shall be personal to the Boat Owner/s. The Boat Owner/s covenants with the Club that the Boat Owner/s shall not assign, sub-license, or demand any fee or other valuable consideration from any person for the right to occupy the licensed premises, without the prior written consent of the Club.

9.2 The Boat Owner/s certifies that he is the legal and beneficial owner or the duly authorized agent of the owner of the Vessel and that he will be personally liable for all fees, accounts, costs, claims or liabilities of whatsoever nature arising from the provisions of the Agreement.

9.3 Any change in the effective control of the Boat Owner/s from that existing at the date of commencement shall be deemed an assignment and shall be subject to the Club's consent as aforesaid.

9.4 The Boat Owner/s certifies that the Vessel is not used in trade or business or for letting for hire or for any other purpose than pleasure. It is acknowledged by the Club that this term does not prevent the Boat Owner/s from occasionally letting a Vessel solely for private and pleasure purposes or from using the Vessel for the entertainment of business colleagues and clients.

10. MISCELLANEOUS

10.1 This Agreement constitutes the Agreement of the Parties hereto with respect to the subject matter and supersedes any prior agreement.

10.2 If any provision of this Agreement is found to be void or unenforceable, the remaining provisions shall not be in any way affected.

10.3 Any notice by either Party in respect of this Agreement shall be deemed served if in writing, by prepaid mail, email or hand delivered to the respective addresses specified in Schedule A and shall be deemed effective 3 business days later.

10.4 The parties agree that the Club may make further Terms and Conditions from time to time giving one month's notice in writing.

10.5 The Boat Owner/s agrees to abide by and comply with the Terms and Conditions as made, varied or amended by the Club.

11. GOVERNING LAW

11.1 This Agreement shall be governed and construed in accordance with the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the courts of Western Australia.

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