

**PROPOSED UPDATES TO THE BERTH LICENCE  
EXPLANATORY NOTE  
MARCH 2020**

**Background**

1. The Marina Extension and the Existing Marina are owned by the respective Marina Trusts and together comprise Westhaven Marina. Westhaven Marina Limited (WML) is the trustee of each of the Marina Extension Trust and the Existing Marina Trust, the issuer of Berth Entitlement Units (BEUs) and the licensor under the marina berth licences. Panuku Development Auckland Limited (formerly Waterfront Auckland Limited, and known as "Panuku") is the manager of Westhaven Marina.
2. The existing marina berth licences that apply to each of the marinas have been in place, in the same form, for many years. In its capacity as manager of the marina, Panuku has recommended to the directors of WML that the berth licences should be updated to address specific issues identified in the course of the ongoing management of Westhaven Marina. These updates are intended to reflect the continued development of Westhaven Marina as a world class marina and to recognise that the berth licences should be updated to reflect existing (and in some cases, longstanding) practice within the Marina for the benefit of all berth holders.
3. Four specific updates have been identified. The proposed updates would be made on consistent terms to the berth licences that apply to the two Marina Trusts.
4. Any change to the form of a berth licence must be:
  - a. agreed by WML (as trustee) and Panuku (as manager); and
  - b. approved by way of an extraordinary resolution of the BEU holders of the relevant Marina Trust, which means a resolution passed at a BEU holder meeting by 75% of the persons voting at that meeting.
5. Given that the updates relate to the berth licence for both of the Marina Trusts, the approval of each group of BEU holders must be obtained to maintain consistency between the two berth licences.
6. Panuku considers that the proposed updates are appropriate to enable the ongoing effective management of Westhaven Marina. WML, in its capacity as trustee, is broadly supportive of the proposed updates, subject to consultation with stakeholders occurring before formalising the proposed updates and putting them to a vote of BEU holders.

## Proposed amendments

8. A brief description of each proposed amendment and the underlying rationale is set out below.

### Permitting non-recreational boats to use selected berths within the Marina

#### ***Providing limited scope for the following types of boats to occupy berths in Westhaven Marina: work boats, service vessels, including charter boats and boats for hire or instruction***

9. WML and Panuku propose that the berth licences be updated to expressly permit WML (or Panuku as manager on WML's behalf) to enable work boats, or service vessels (including charter boats and boats for hire or instruction) to occupy berths within Westhaven Marina, subject always to and in accordance with an agreed approval framework.
10. A number of work boats and service vessels already occupy berths in Westhaven Marina and have done so for a very long time, including boats used for sailing tuition, survey vessels and service barges.
11. The original berth licence referenced "charter boats that are used for recreational purposes" (which have been permitted in the marina subject to some restrictions) and distinguished "charter boats that are used for non-recreational purposes" which until now have been prohibited. The distinction between these two categories of charter boats has not been entirely clear in the berth licences, and it is considered prudent to simply have one regime that applies to all charter boats, so that a common and consistent approach can be implemented for the benefit of all users of Westhaven.
12. It is considered to be in the interests of all berth holders to accommodate a limited number of work boats and service vessels including charter boats within Westhaven Marina, such as those noted above, in light of the value that this can bring to Westhaven Marina and its users.
13. Importantly, the proposed amendment does not extend to all commercial vessels, but is limited to work boats and service vessels that fit within the approval framework agreed by WML and Panuku. A copy of the current draft approval framework is attached as Schedule 1 to this Explanatory Note.
14. The approval framework is designed to protect the interests of recreational berth holders, and requires consideration by Panuku (as manager) on a case by case basis of various matters, including ensuring that the relevant vessel properly fits within the parameters of the berth, considering the impact the work boat or service vessel may have on other users of Westhaven Marina or on marina assets, and determining whether any additional fees are to be imposed on a particular work boat or service vessel (e.g. a surcharge on OPEX). The intention is that the approval framework will be agreed and reviewed by Panuku and WML from time to time.

### The introduction of a user pays regime for utilities in the Marina

#### ***Recognising the "user pays" regime for certain utilities and services***

15. User pays is regarded to be a fair and equitable method of allocating the costs of utilities and services consumed by berth holders. A key benefit is ensuring that berth holders only pay their fair share of utilities consumed, and do not get called upon to subsidise more extensive use by others.

16. When Westhaven Marina was first established, utilities (primarily water and electricity) for use by vessels berthed in Westhaven Marina were not able to be cost effectively provided on a metered "user pays" basis.
17. Panuku has subsequently installed and implemented a user pays utilities system within Westhaven Marina that applies in respect of electricity consumption, and the proposal is to update the marina berth licence to recognise these advancements in technology.

### **Allowing berth holders to sublet their marina berths for 12 months or more**

#### ***Permitting the subletting of berths for periods longer than 12 months***

18. The berth licences currently prohibit berths from being sublet for any period, or combination of periods, exceeding 12 months.
19. Panuku proposes that this be amended to permit a berth holder to sublet its berth for more than 12 months and on terms other than any standard approved subletting terms, subject to obtaining the prior written approval of Panuku (as manager), which approvals may be granted or withheld in Panuku's sole discretion.
20. This provides berth holders with more flexibility in terms of managing the occupancy of their berth, for example during extended periods in which the licensee may hold a licence to occupy a berth but is not itself occupying that berth for an extended period of time. Any extended subletting (or subletting on terms other than standard subletting terms) must be approved by Panuku.

### **Permitting "Live on Board" at Panuku's discretion**

#### ***Introducing a Living on Board programme***

21. The current berth licences do not permit Living on Board arrangements within Westhaven Marina for more than two days.
22. Panuku proposes that the berth licences be amended to enable Panuku to consider Living on Board applications and approve Living on Board arrangements within Westhaven Marina on a case by case basis.
23. All Living on Board arrangements will be subject to prior approval by Panuku, and subject to the relevant person entering into and complying with Panuku's Living on Board Rules and agreeing to comply with any other terms and conditions that Panuku may impose from time to time.
24. Panuku's Living on Board Rules will be designed to protect the interests of other berth holders and the Marina assets themselves and will be available at both the Marina office and on the Westhaven Marina website.

## SCHEDULE 1 - PROPOSED FRAMEWORK

### PROPOSED FRAMEWORK WORK BOATS AND SERVICE VESSELS MARCH 2020

Clause 2 of the marina berth licence for each of the Existing Marina and Marina Extension has been amended to permit work boats and service vessels (including charter boats) to occupy berths within Westhaven Marina, subject to the prior written approval of Panuku, in its capacity as manager of the Westhaven Marina.

Any application by a berth holder or prospective berth holder for a vessel used for non-recreational purposes shall be considered by Panuku having regard to the following agreed framework:

1. A 'work boat ' or 'service vessel' shall include without limitation a vessel that is used directly or indirectly in the provision of services:
  - (a) to WML or Panuku directly or indirectly in connection with the ongoing operation and/or maintenance of Westhaven Marina;
  - (b) to berth holders and other users of Westhaven Marina in their capacity as berth holders and users of Westhaven Marina;
  - (c) that otherwise provide a benefit to or enhance the safety of berth holders and other users of Westhaven Marina;
  - (d) for the wider benefit of the people of Auckland, including vessels used for ferry transportation services;and may include:
  - (e) vessels used for instruction and tuition;
  - (f) dredging barges used in and around the Westhaven Marina;
  - (g) vessels used for non-recreational purposes that do not constitute port related commercial activity; and
  - (h) charter boats.
2. A 'work boat ' or 'service vessel' shall not include any vessel that is predominantly used for providing port related commercial activity.
3. The relevant vessel (measured by length overall) must properly fit within the parameters of the berth.
4. Panuku shall consider the impact the work boat or service vessel may have on berth holders or other users of Westhaven Marina or on the marina assets themselves, directly or indirectly, including having regard to:

- (a) the frequency and timing of entering/exiting the berth and the extent of use of other marina assets, in comparison to other berth holders;
  - (b) the location of the relevant berth within Westhaven Marina;
  - (c) the number of personnel (non-passengers) boarding and/or disembarking from the work boat or service vessel on a regular basis;
  - (d) in the case of charter boats used for non-recreational purposes, the number of personnel (passengers and non-passengers) boarding and disembarking from the charter boat on a regular basis;
  - (e) the amount of equipment being loaded and unloaded from the work boat or service vessel at the berth on a regular basis;
  - (f) the likelihood of any increased wear and tear on marina assets, whether land or water based;
  - (g) the likelihood of any increased use of services and/or utilities provided at Westhaven Marina;
  - (h) the extent of any potential nuisances to other users (either new or existing) arising as a result of the work boat or service vessel occupying a berth; and
  - (i) increased maintenance and operational costs arising out of any of the above.
5. In conducting an impact assessment under this framework, Panuku shall consider and take into account ways in which any impacts so identified may be mitigated, minimised or eliminated by imposing on the relevant berth holder conditions that shall apply to any approval given under this framework.
  6. Except in respect of any area of the Westhaven Marina that has been specifically designated for use by charter boats, the loading and unloading of passengers, goods and other supplies shall not be undertaken at the relevant berth and must be undertaken at other facilities designed for this purpose, and any approval granted may include an express condition or a requirement that any sub licence contains a restriction to this effect.
  7. Panuku may ask the berth holder for any information that Panuku considers relevant to making an assessment under this framework. No approval will be provided under this framework where requested information has not been made available to Panuku.
  8. Panuku may consider the extent to which some or all of the impacts identified can be addressed by imposing financial charges and fees over and above those that would apply to a berth holder whose boat is used for recreational purposes only, including for example by way of a percentage surcharge on OPEX fees otherwise payable, or by way of an additional annual fee.

It is recognised that under clause 24 of the marina berth licence for each of the Existing Marina and Marina Extension Panuku, as manager, shall have all the rights and powers of Westhaven Marina Limited as Licensor under the licence. Panuku's application of this approval framework and granting of any approval under clause 2 of the marina berth licence is an exercise by Panuku of its discretion as the manager of the Existing Marina and the Marina Extension.

Where Panuku is the licensee of a berth that is proposed to be occupied by a work boat or a service vessel, Panuku must first obtain the prior written approval of Westhaven Marina Limited (as trustee of the

Existing Marina Trust and the Marina Extension Trust) and Westhaven Marina Limited shall apply this framework in respect of such application.

This framework may be reviewed and amended by Panuku and Westhaven Marina Limited from time to time.