



# Westhaven Marina Users Association Inc

PO Box 47876, Ponsonby, Auckland 1144  
email: [info@westhavenmarinausers.org.nz](mailto:info@westhavenmarinausers.org.nz)

Dear Members,

With reference to the Panuku driven proposed updates to the Berth Entitlement Unit Holders Berth Licence agreements, our committee is concerned at this attempt to legitimise the ultra vires activities undertaken by Panuku in respect to the various legislations which cover the operations at Westhaven Marina. These proposed amendments favour only Panuku and Westhaven Marina Limited and potentially disadvantage BEU holders based upon the original licences signed as part of attracting you, as retail investors, to fund the original developments at Westhaven marina. We will take this opportunity to fill in the missing gaps in your background information.

**Background 1.** The Marina Extension and the Existing Marina are owned by the respective Marina Trusts and together comprise the precinct of Westhaven Marina as defined in the Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1969.

Westhaven Marina Limited (WML) is the trustee company, charged with the task of protecting the rights and interests of Berth Holders, 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 Auckland City Council Property Services Limited and is known as "Panuku") is the manager of Westhaven Marina.

**Background 2.** The existing marina berth licences that apply to each of the marinas have been in place, in the same form, for the Existing Trust berth holders, since 1969 and for Extension trust Berth Holders since 1972.

It is only since Auckland City Council took direct ownership of Westhaven Marina in 1998 that Waterfront Auckland began ignoring the existing agreements and to tread roughly over the operations of Westhaven marina. The outline for this proposed amendment consultation is lacking important details such as the actual guidelines that will be applied, is incredibly meagre in content and does not acknowledge the ultra vires actions on the part of the Auckland City Council and Auckland Council operators of the marina.

Berth holders have never been consulted over the contracts issued by Panuku, for berth rental to commercial operations in the Westhaven precinct. These contracts have been let, by Panuku, in flagrant disregard for the founding documents upon which the original investment in Westhaven has been funded by means of a retail offering to investors.

Earlier agreements for semi commercial operations were issued by The Auckland Harbour Board and relate to the Penny Whiting Sailing School, the Floating Dock and the MRX Yachting fleet. These were passed by the Trustees of the two trusts at the time of issue.

The trustees, at that time, consisted of members of the Westhaven Marina Users Association along with appointees of The Auckland Harbour Board and Subsequently The Port Company Limited after the creation, by Government, of the Auckland Regional Services Trust, which owned 80% of the shares of The Port Company.

Since the sale, by the Government, of Westhaven to Auckland City Council and the subsequent hiving off of Westhaven to Waterfront Auckland and subsequently Panuku, all Westhaven Marina User Association appointees as Trustees were removed from the Trustee company, Westhaven Marina Limited and replaced with two Panuku directors and their nominee. This creates a clear conflict of interest – the Trustees are employed by the very organisation they are supposed to be holding to account.

It has been since this time that a wide raft of commercial operations have been granted berth rental rights to the Westhaven precinct at the behest of Waterfront Auckland and subsequently Panuku in contradiction of the requirements of the Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1969 and all berth entitlement unit holder licences.

These transgressions cannot simply be catered for, by re-writing history and adjusting the terms of licence agreements for BEU holders.

**Background 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. There has been no consistency of charging between the two trusts, for a similar sized berth. The members of the Extension Trust were offered a special arrangement to allow walkway access from the new pier Y, to the carpark area. To accept shared use, existing Trust berth holders were offered a \$300 p.a. reduction in their annual charge as long as they signified their agreement to the shared use of their walkway at a Special General Meeting in 2015. The fees remained at the lower level for around 3 years, after which the charges increased again.

Clearly Auckland Council have been on a fee-increase path ever since taking over the operations with some increases amounting to 30% over just the past 2 years.

Controversially, Panuku are attempting to introduce a new class of commercial operation which has now to be permitted, to occupy berths at Westhaven. This specifically is referred to as boats for instruction.

**Background 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.

Westhaven is a marina, reserved under the Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1969 plus the Auckland Unitary Plan 2016. Under The Auckland Harbour Board jurisdiction Recreational vessels, used for training, were approved to occupy berths in Westhaven marina.

These included the sailing training operations of all the yacht clubs on the Northern reclamation, the MRX fleet of privately owned vessels with a high component of sailing tuition, the Penny Whiting sailing school plus the Floating dock for recreational vessel maintenance. This does not represent a new class of vessel which has to be re-approved for berthing at Westhaven marina, it has already been approved by previous Trustees of Westhaven Marina Limited. So, they should not be included in the proposed changes

Having separated this class of vessel, it becomes clear that Panuku are wishing to legitimise their previous ultra vires activities within the Westhaven marina. It is clearly worded that these changes benefit all users of Westhaven marina. However, it is the commercial vessel users, specifically mentioned, currently in breach of the requirements of the Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1969, the BEU licensing agreements and the Westhaven covenant between the Government of New Zealand and Auckland City Council, that it is aiming to help. Panuku has allowed and encouraged this illegal activity over many years, with no consultation with all BEU holders, and now seeks to regularise their behaviour under the guise of benefitting all BEU holders.

The Auckland Unitary plan states that permitted activities within the Westhaven marina precinct must relate to marina and marina related activities. The Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1969 states that only recreational vessels shall be moored at berths in the marina. Commercial vessels are not permitted. The basis of this change will enable Panuku to offer longer than 12-month rentals to commercial vessels of any type.

Under the Auckland Harbour Board (Westhaven) Vesting and Empowering Act 1969 Auckland Council is responsible for dredging operations in the Westhaven marina. This does not require that a dredging vessel should be able to moor there for an indeterminate time.

There is a large waiting list for recreational vessels to berth at Westhaven. Panuku produced a report in 2018 detailing the wait list of 237 vessels for berths over 12 metres in length. They claimed that the waiting list had doubled in the previous 3 years. This indicates a strong market for recreational vessels to be allowed to berth at Westhaven marina

and runs contrary to this attempt to legalise long term berthage of commercial vessels, an illegal activity, in Westhaven marina

The introduction of a user pays regime for utilities in the Marina Recognising the "user pays" regime for certain utilities and services

**Background 15, 16, 17:** 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.

The actual history behind this is quite long. Westhaven Marina Limited had accrued a fund of around \$1 million, through not performing the maintenance for which they had charged BEU holders, via the annual OPEX charges. In other words, underperforming.

Panuku, in an attempt to use up this fund decided, with little or no consultation with all BEU holders, to introduce a regime of pedestals containing water and electricity meters. This was accompanied with projections of real savings to frugal operators and to be for the benefit of all BEUs.

There are two parts to this. The first covers electricity. At your home, you can choose your own retailer in order to achieve some price benefit. Under Panuku, you cannot. They determine the retailer whom everyone will use.

The second part relates to water use. Once the meters had been installed, Panuku could not reconcile the Waste water charges from another CCO, Watercare Services Limited. These charges are based upon the water consumed. Panuku discovered that their meters were showing a much lower total consumption than the Watercare meters against which the waste water charges were to be levied. It was then that Panuku discovered that due to a lack of maintenance the water supply pipes, after the Watercare meters but before the Panuku water meters, were decrepit and leaking badly. Opex charges were subsequently increased to cover the extra maintenance of the water distribution network, within Westhaven marina. In other words, incompetence.

Now Some 5 years later, Panuku wants to legitimise its non-notified changes to the billing of utilities at Westhaven marina.

**Background 18, 19 20:** The berth licences currently prohibit berths from being sublet for any period, or combination of periods, exceeding 12 months.

On the surface this seems reasonable as there are plenty of renters who have enjoyed occupancy of more than 12 months for their recreational vessel, at Westhaven marina. However, if commercial vessel rentals are allowed, then Panuku can offer long term rentals to these non-recreational use vessels. We could support this proposal only if it applied specifically to those classes of vessel allowed to berth at Westhaven under the current legal restrictions. Currently it does not.

**Background 21, 22, 23 24.** The current berth licences do not permit Living on Board arrangements within Westhaven Marina for more than two days.

Once again, this seems innocuous at first glance. As long as appropriate Black water pump-out facilities are available, and the rules are stringent and fair, there should be no problem. However, commercial vessel live-aboards might look very similar to the commercial "office" already in play, to service the Riviera sales jetty. In addition, the rules that Panuku would apply are not yet promulgated and BEU holders are being asked to approve something lacking in detail. Then I feel sure that BEU holders should think carefully about the implications and lack of detail before considering supporting this suggested change.

In summary, there are too many unknowns and it is unfortunately hard to ignore Panuku's attitude towards the wishes of you, as beneficiaries of the two trusts, including their lack of transparency and their previous engagement with BEU Holders, their appropriateness and timeliness of reporting on financials, their willingness to ignore applicable laws and processes especially in relation to the construction of the new marina village at Westhaven marina and the obvious parsimony of truth in relation to the associated loss of car parking.

The desire of Panuku, to adopt changes which require the consent of Berth Licence Holders provides us with an opportunity to engage with them constructively; to get proper, effective representation on the Trustee Company, timely and transparent communication and engagement on the material operational & financial matters affecting Westhaven Berth Unit Holders and Users plus a general positive reset of our working relationships. It is vital we take this opportunity to set a positive stage prior to the expiry of our Berth Holder Licences in the next few years.

Some of the suggested changes may be acceptable but, when seen in the light of potentially allowing commercial operators to be offered preferential rights to a Westhaven berth at the exclusion of recreational vessels on the waiting list as at 2018, our recommendation will be to vote against these proposed licence amendments for Berth Entitlement Unit holders in the two Westhaven Trusts. If BEU holders take this opportunity, it may finally encourage Panuku to properly engage.

Please feel free to make your own submission to Panuku and use any material you like from this summary. At the end of the day, Panuku hold around 51% of the berths at Westhaven marina and you guys hold the balance up to the 75% which Panuku require to march on with their proposal.

You can vote for the changes or you can abstain from voting. Either way, each is a step along the way for Panuku to achieve their 75%.

If you agree with this outline of events and wish to vote against it, then do not abstain, turn up to the next stages where voting will be undertaken or, if you agree with what we, the Westhaven Marina Users Association are recommending, you can assign us a proxy of your vote. However, this is only if you agree to our outline in this letter.

Whichever way you will lean, please let us know.

Kind regards

**Euan Little**

Chairman

Westhaven Marina Users Association Inc

C: +64 21 972 205

E: euan@asset-man.com