



DEED OF LICENCE

Port Coogee Marina Mooring Pen

BETWEEN **City of Cockburn**
of 9 Coleville Crescent, Spearwood, Western Australia

AND **[Licensee]**
of **[Licensee's postal address]**

Details

Parties

City of Cockburn

of 9 Coleville Crescent, Spearwood, Western Australia

(Licensor)

[Licensee Name]

of [Licensee Address]

(Licensee)

Background

- A The Licensor holds a licence to occupy that portion of the Port Coogee Marina described at **Item 1** of the Schedule (**Marina Area**) under the terms of a Head Licence between the Department of Transport as Head Licensor and the City of Cockburn as Licensee.
- B The Head Licensor and the Licensor have agreed that the Licensor may sublicense the Licensed Area on the terms and conditions contained in the Licence, without the express consent of the Head Licensor to this individual Licence.
- C The Licensor has agreed to licence that portion of the Licensed Area described in **Item 2** of the Schedule (**Licensed Area**) to the Licensee.
- D The Parties enter into this Deed for the purpose of creating the terms and conditions that are to apply to the Licence.

Agreed terms

1. Definitions

(1) In this deed:

Amounts Payable means any sum of money payable by the Licensee pursuant to the terms of this Deed including but not limited to the Licence Fee, Outgoings, any costs as a result of the Licensee's default and any other sum payable including Interest calculated thereon;

Common Area means that portion of the Marina Services Building being the showers and toilets and also the jetties and walkways for use by the Licensee together with other tenants, agents, invitees or employees of the Licensor.

Contamination has the meaning set out in the *Contaminated Sites Act 2003*;

Deed means this Licence;

Environmental Harm has the meaning given to that term in the *Environmental Protection Act 1986*.

Environmental Rules means the environmental rules set out in Annexure E as varied or added from time to time by the Licensor.

GST means a tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any legislation substituted for, replacing or amending that Act, levied on a supply including but not limited to the Licence Fee or other money payable to the Licensor for goods or services or property or any other thing under this Licence;

Head Licence means Jetty Licence **No.4097** annexed to this Licence at **Annexure A** or such other Jetty Licence as may be issued for the Marina Area from time to time between the Department of Transport as Head Licensor and the City of Cockburn as Licensee;

Head Licensor means the Department of Transport;

Interest means any interest on any Amounts Payable calculated at the interest rate at the time the payment falls due being 2% greater than the Licensor's general overdraft on borrowings from its bankers on amounts not exceeding \$100,0000;

Local Laws means all local laws made and amended by the City of Cockburn from time to time;

Licensed Area means boat pen described in **Item 2** of the Schedule and more particularly shown on the plan at **Annexure B** to this Licence;

Marina Area means that portion of Port Coogee Marina described in **Item 1** of the Schedule and more particularly shown on the plan at **Annexure C** to this Licence;

Marina Manager means the person authorised by the Licensor to perform the duties of the Licensor under this Licence.

Nominated Vessel means the Licensee's Nominated Vessel specified at **Item 6** of the Schedule before the commencement of this licence and any replacement vessel that the Licensor has consented to under **clause 9**.

Pollution has the meaning contained in the *Environmental Protection Act 1986*.

Schedule means the schedule to this deed;

Short Stay Application means the Licensee's application to reside on the Nominated Vessel for an overnight period in accordance with **clause 8** and the Licensor's processes as may apply from time to time;

Term means the term of this Licence as specified in **Item 3** of the Schedule;

Transferee means the proposed purchaser of the Licensee's Nominated Vessel moored in the Licensed Area;

- (2) Except to the extent inconsistent with this deed, terms in this deed have the same meaning as they have under the Head Licence.

2. Interpretation

In this deed unless the contrary intention appears:

- (a) reference to a person includes a reference to that person's personal representatives, successors and assigns;
- (b) reference to a person includes a natural person, partnership, trust, association and company;
- (c) a word importing the singular number includes the plural number and a word importing the plural number includes the singular number;
- (d) a word importing a gender includes each other gender;
- (e) reference to a company includes any incorporated body of any description;
- (f) reference to any statute, regulation, proclamation, ordinance, by-law or local law includes all statutes, regulations, proclamations, ordinances, by-laws or local laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and local laws issued under that statute; and
- (g) reference to the provisions of a document or part of a document includes a reference to all the terms, covenants, conditions, stipulations, acknowledgments and reservations contained or implied in that document or in that part of a document.

3. Conditional Licence

This Licence is conditional upon:

- (a) the continuation of the Head Licence; and

- (b) the Head Licensor's ongoing consent to the Licensor subletting the Licensed Area.

4. Grant of Licence

Subject to **clause 3**, the Licensor grants to the Licensee for the Term on and subject to the Terms and conditions of this Licence:

- (a) a licence to use the Pen for the purpose of Mooring ONE (1) nominated vessel in the Pen; and
- (b) a non-exclusive licence to pass and re-pass on foot over those parts of the Jetty as reasonably required by the Licensee for the purposes of gaining access to and from the Pen in common with other persons having a licence or right to use the Jetty and subject to such reasonable directions and restrictions as may be imposed by the Licensor from time to time.

5. Term

The Licence granted pursuant to **clause 4** shall continue:

- (a) for the term specified in **Item 4** of the Schedule; or
- (b) until either party gives the other party a notice terminating the Licence.

6. Head Licence

6.1 Comply with Head Licence

The Licensee agrees, subject to **clause 6.2**, to:

- (a) comply with and observe the obligations of the Licensor under the Head Licence, whether those obligations are express or implied, as if those obligations were included in this Licence as obligations of the Licensee enforceable against the Licensee by the Licensor; and
- (b) indemnify the Licensor against any breach by it of the provisions of the Head Licence.

6.2 Except if Inconsistent

If there is any inconsistency between the Head Licence and this Licence, this Licence will prevail in so far as it establishes the obligations of the Licensee.

7. Licence Fees & other Payments

7.1 Licence Fee and GST

The Licensee covenants and agrees to pay to the Licensor:

- (a) the Licence Fee referred to in **Item 4** of the Schedule (**Licence Fee**) from the commencement of the Term without any abatement or deduction whatsoever; and

- (b) any GST payable on the Licence Fee and on any other supply made by the Licensor to the Licensee under this Licence.

7.2 Electricity

- (1) The Licensee covenants and agrees to pay to the Licensor all electricity charges and related administrative fees plus GST incurred in respect of the Licensee's use of the Licensed Area, within 28 days of receipt of invoice from the Licensor.
- (2) If the Licensee does not comply with subclause (1), and the electricity remains unpaid after notice is given demanding payment, then in addition to those remedies available under **clause 16**, the Licensor may disconnect the electricity supply to the Licensed Area until the Amounts Payable are paid.

7.3 Bond

- (1) The Licensee covenants and agrees to pay the Bond specified in **Item 7** of the Schedule prior to the commencement of this licence, to be held by the Licensor and drawn upon for any Amounts Payable which remain unpaid for 14 days.
- (2) If the Licensor is required to use the Bond for payment of any Amounts Payable during the Term of this Licence, the Licensee shall on demand from the Licensor, replenish the Bond reserve to the original Bond amount specified at **Item 7**.
- (3) At the determination of this Licence, the Licensee may elect for the balance of the Bond to be:
 - (a) applied to the Bond under a new licence (if applicable); or
 - (b) refunded to the Licensee within 30 days of the determination of this Licence.

8. Use

8.1 General use of Licensed Area

- (1) The Licensee agrees not to:
 - (a) use the Licensed Area or allow any person to use the Licensed Area for any use or activity which is not permitted under any local planning scheme or written law;
 - (b) use the Licensed Area for any purpose other than the permitted purpose specified in **Item 5** of the Schedule to the Head Licence; and
 - (c) use or permit the Licensed Area to be used for any illegal purpose or so as to create a public or private nuisance to the owners or occupiers of any land, structure or boat pen adjoining or neighbouring the Licensed Area;
 - (d) store or permit to be stored any items or property in or around the Licensed Area, excepted upon the Nominated Vessel of the Licensee;
 - (e) do or permit to be done any act or thing which might result in excessive stress or floor loading to any part of the Marina Area;
 - (f) dispense fuel from or over the jetty within the Marina Area;

- (g) use or store any chemical or inflammable substance within the Licensed Area, except for in reasonable quantities for normal applications in connection with cleaning of the Licensed Area or the Nominated Vessel;
- (h) moor the Nominated Vessel within the Licensed Area unless it is completely within the Licensed Area;
- (i) display, hang or drape any towel, wearing apparel or similar article from the Licensed Areas or from the Nominated Vessel while moored in the Licensed Area;
- (j) park or drive any vehicle on the jetty within the Marina Area, without the consent of the Licensor and Head Licensor (which consent may be withheld for any reason); or
- (k) obstruct the Licensor, Head Licensor, other licensee or any person or member of the public from free and unrestricted access to and across the jetty or to another licensed area within the Marina Area.

8.2 No Living on Vessel

Subject to **clause 8.3** the Licensee will not, and must ensure that other persons do not, live on board the Nominated Vessel while it is in the Licensed Area.

8.3 Short Stay Application

- (1) If the Licensee intends to stay on the Nominated Vessel for a short term period, the Licensee agrees to make a Short Stay Application to the Licensor in accordance with the Licensor's procedures applicable from time to time.
- (2) The Licensor may consent (which consent the Licensor may in its absolute discretion withhold, give or give subject to conditions) to the Short Stay Application:
 - (a) for the Licensee together with a maximum of three (3) other persons staying overnight on the Nominated Vessel in the Licensed Area;
 - (b) for periods not exceeding three (3) nights in any seven (7) day period; and
 - (c) to a maximum of 20 nights per annum.
- (3) The Licensee acknowledges and agrees that any approved Short Stay Application will be subject to the Licensor's fees and charges per person, per night as published in the Licensor's Annual Schedule of Fees and Charges as amended from time to time and available on the Licensor's website.
- (4) The Licensor can revoke its approval for the Short Stay Application at any time if the Licensee and/or their guests utilising the Marina Area or Licensed Area breach the terms of this Licence, including the Marina Rules and the Environmental Rules.
- (5) If the Short Stay Application is revoked for any reason, the Licensee and other parties utilising the Licensed Area will be expected to vacate the Licensed Area and the whole of the Marina Area and not return before the following day.

8.4 Pets & Other Animals

The Licensee will not allow domestic pets or other animals to enter the Marina Area without the Licensor's prior written consent (which consent the Licensor may in its

absolute discretion withhold, give or give subject to conditions). If the Licensor grants consent:

- (1) the animal must be under the effective control of the Licensee including the use of a leash or harness as required at all times;
- (2) the animal must not obstruct, interfere with or be a nuisance to any other user of the Marina Area; and
- (3) any animal faeces must be disposed of immediately in appropriate waste receptacles and not be allowed to enter the Marina waterways or otherwise soil the boardwalks or other areas of the Marina precinct.

8.5 Rules

The Licensee covenants and agrees that the Licensee and the Licensee's agents, invitees, contractors and guests will comply with the Marina Rules at **Annexure C** and the Environmental Rules at **Annexure D**.

8.6 Cleaning of Licensed Area

The Licensee agrees to maintain at all times and at the Licensee's expense, the Licensed Area in a clean and tidy state, unobstructed and free from dirt and rubbish.

8.7 Pollution or Contamination

The Licensee covenants and agrees to do all things necessary to prevent Pollution or Contamination of the Licensed Area and the Marina Area and to immediately report to the Licensor any Pollution or Contamination howsoever caused in or around the Licensed Area or Marina Area.

9. Nominated Vessel

9.1 Registration of Nominated Vessel

- (1) The Licensee will only moor the Nominated Vessel specified at **Item 6** of the Schedule in the Licensed Area.
- (2) If this Licence is issued without details of the Nominated Vessel specified at **Item 6**, the Licensee shall not moor any vessel within the Licensed Area without first notifying the Licensor in writing of the Nominated Vessel details including the registration number and providing those insurances required under this Licence in respect of that Nominated Vessel.
- (3) If the Licensee wishes to make an application to change the vessel to be moored in the Licensed Area, the Licensee must:
 - (a) make an application in writing to the Licensor requesting a change of Nominated Vessel, specifying the dimensions of the proposed vessel and evidencing that the proposed vessel will fit in the Licensed Area; and
 - (b) provide copies of those insurances required under this Licence for the proposed vessel,

and on receipt of that information, the Licensor may approve the Licensee's application to change the Nominated Vessel to be moored in the Licensed Area in its absolute discretion.

9.2 Securing Nominated Vessel

- (1) The Licensee will secure the Nominated Vessel within the Licensed Area with ropes or ties of good quality at all times that the Nominated Vessel is in the Licensed Area.
- (2) If the Licensee fails to comply with this requirement after notice from the Licensor, the Licensee acknowledges that the Licensor may do all things necessary to ensure the Nominated Vessel is correctly moored, including but not limited to the Licensor replacing or installing security ropes or ties at the Licensee's expense.
- (3) The Licensee acknowledges that the Licensor may do all things necessary to secure the Nominated Vessel in the event of an emergency, without notice to the Licensee, and any expense incurred to secure the Nominated Vessel in such circumstances will be borne by the Licensee.

9.3 State of Nominated Vessel

The Licensee will ensure that the Nominated Vessel is at all times kept in good, tidy and seaworthy condition.

9.4 Works to Nominated Vessel

- (1) The Licensee will notify the Marina Manager:
 - (a) if the Nominated Vessel requires works for any reason;
 - (b) the details of any tradespersons or company that will undertake works on the Nominated Vessel; and
 - (c) the expected timeframe for completion of the works.
- (2) The Licensee covenants and agrees that it will not have works done to the Nominated Vessel in the Licensed Area which may cause nuisance, damage, hazard or safety risk to person or property of other users to the Marina Area or the Marina Area itself.

10. Services

10.1 Electrical and Gas Certification

- (1) The Licensee will lodge with the Licensor before the commencement of this Licence, and make available to the Licensor thereafter on request, a certificate from a suitably qualified competent person certifying that the Nominated Vessel's electrical and gas fittings have been inspected, are safe, and meet Australian Standards: AS 3000:2007, AS 3004:2014 and AS 5601:2013 (or any replacement Australian Standard). The Certificate must not be more than five (5) years old. (**Valid Safety Certificate**)
- (2) If Licensee is unable to provide a Valid Safety Certificate at any time, or if the Licensor considers that any electrical or gas fittings on the Nominated Vessel may be unsafe, the Licensor may take any action necessary to ensure the safety of the Licensed Area or the Marina Area, and its users, including disconnecting the electricity and/or gas supply until such time as a Valid Safety Certificate is provided by the Licensee.

10.2 Electricity Connection

- (1) The Licensee must ensure that any electrical cords used to connect the Nominated Vessel to the Jetty power supply:
 - (a) have a three pin plug with a rating of IP56 or greater;
 - (b) have a minimum current rating of 15 amps;
 - (c) do not exceed 25 metres in length;
 - (d) meet Australian Standard AS 3004:2007 (or any replacement Australian Standard); and
 - (e) are inspected, certified and tagged at a minimum, every two years by a suitably qualified competent electrician.
- (2) The Licensee acknowledges and agrees that it may not make any claim against the Licensor, the Head Licensor or the Minister for Lands for any loss or expense because electricity is disconnected, is interrupted, not supplied, fails for any reason or is affected in any way because the Licensor's plant or equipment breaks down.

11. Common Area

11.1 Grant of Licence

The Licensor grants the Licensee the non-exclusive right to use the Common Area in common with other users of the Marina Area.

11.2 Access to Common Area

The Licensee shall be provided an access key or card as required from time to time to facilitate the Licensee's use of the Common Area.

11.3 Obligations in respect of Common Area

- (1) The Licensee shall ensure that the Common Area is left in a clean and tidy state after each use.
- (2) The Licensee shall immediately report to the Licensor any vandalism, damage or antisocial behaviour in or around the Common Area.

11.4 Revocation of Licence to use Common Area

In the event of any misuse of the Common Area by persons utilising that access key or card, e.g. by a failure to maintain cleanliness or through over consumption of water or extended periods of occupancy such as to inconvenience others, then the Licensor reserves the right to withdraw the Licensees ongoing use of the Common Area and require the access key or card to be returned.

12. Licensor's Rights

12.1 Reallocation of Licensed Area

- (1) The Licensor reserves the right to, in its absolute discretion, reallocate the Licensed Area to another boat pen of a suitable size, and the Licensee shall relocate their Nominated Vessel to the new licensed area assigned within seven (7) days of receiving the notification of reassignment, or such longer period as may be agreed with the Marina Manager.
- (2) The Licensee may request (which request must be in writing) that the Licensor relocate their Nominated Vessel to an alternative vacant boat pen of a suitable size. The Licensor may, subject to availability and in its absolute discretion, agree to the relocation of the Nominated Vessel to another boat pen for the unexpired residue of the term of this Deed. The Licensee acknowledges that Licence Fee adjustments and administrative charges may apply.

12.2 Abandoned Vessels

- (1) The Licensee acknowledges and agrees that if the Licensee leaves the Nominated Vessel or any other vessel in the Licensed Area without a valid licence (**Abandoned Vessel**), then if the Abandoned Vessel has not been removed from the Licensed Area within SEVEN (7) days after notice has been served in accordance with this Licence, the Licensor may treat the vessel as abandoned and remove and/or deal with the Abandoned vessel as it sees fit, including:
 - (a) removing the vessel from the Licensed Area and/or the Marina Area;
 - (b) selling or otherwise disposing of the vessel;
 - (c) charging the Licensee on a pro rata basis for the time that the Abandoned Vessel was moored in the Licensed Area (which charges will be considered an Amounts Payable for the purpose of this Licence); and
 - (d) recovering the cost of any disposal, sale or other fees or charges incurred in respect of the Abandoned Vessel from the Licensee.
- (2) The Licensor, Head Licensor and the Minister for Lands are not responsible for any loss or damage arising as a result of the Licensee's failure to remove the Abandoned Vessel from the Licensed Area in accordance with this clause 12.2.

13. General

13.1 Compliance with Legislation and Notices

The Licensee agrees to comply with all laws including but not limited to the Local Laws relating to the use of the Licensed Area and anything that is done on the Licensed Area.

13.2 Licences and Permits

The Licensee agrees to keep in force at all times all licences and permits required for carrying on the Licensee's Permitted Use on the Licensed Area.

13.3 Alterations

The Licensee covenants and agrees not, without the prior written approval of the Licensor and the Head Licensor, to erect, alter or modify in any manner any existing structure in the Licensed Area.

13.4 Damage to Licensed Area

The Licensee covenants and agrees to repair and make good any damage to the Licensed Area caused by or arising out of or in relation to or incidental to the use of the Licensed Area by the Licensee or any employee, agent or invitee of the Licensee or resulting from an act or omission of the Licensee or any employee, agent or invitee of the Licensee and where such repairs are undertaken by the Licensor pay the cost of any repairs or making good of damage within seven (7) days of receipt of a written demand for such payment being made by the Licensor.

13.5 Costs

The Licensee agrees to pay the costs of and incidental to the preparation and execution of this Licence if requested by the Licensor.

13.6 Signs

The Licensee must not, without the prior written consent of the Licensor and the Head Licensor erect any sign or advertising material on the Licensed Area.

12. Insurance and Indemnity

12.1 Insurance

The Licensee shall:

- (a) insure and keep insured with an insurer approved by the Licensor against all claims based on what is commonly known as public liability or public risk insurance so as in particular to insure the Licensor against all claims which may be made against the Licensor by any person arising from the Licensed Area during the Term which could cause or might cause any claim in damages against the Licensor by any third party which insurance shall be in an amount of not less than fifteen million dollars (\$15,000,000) for any one claim;
- (b) insure and keep insured such other insurances that a prudent owner of a vessel similar to the Nominated Vessel would take out and maintain; and
- (c) deliver such policy or policies of insurance to the Licensor and receipts for the payment of the premiums on such policy or policies.

12.2 Indemnity

The Licensee covenants and agrees to (notwithstanding the existence of any policy of insurance in the name of any person) indemnify and keep indemnified the Licensor, the Head Licensor and the Minister for Lands from and against all actions, claims, demands, losses, damages and expenses for which the Licensor becomes liable as a result of, or caused or contributed by:

- (a) the Licensee's use or occupation of the Licensed Area except to the extent that the same is caused, or contributed to, by the negligence or default of the Licensor; or
- (b) the negligence of the Licensee or any employees, members, contractors, agents, and invitees of the Licensee and in particular but without limiting in any way the generality of the foregoing by reason of the negligent or careless use or misuse waste or abuse of water gas or electricity or faulty fittings or fixtures by the Licensee.

13. Entry by Licensor

The Licensee shall permit the Licensor or the Head Licensor, and their servants and agents, to enter the Licensed Area at any reasonable time for the following purposes:

- (a) to inspect and view the same;
- (b) to do or cause to be done all such matters and things as are necessary in order to rectify any breach by the Licensee of the Licence;
- (c) to execute any works or improvements to the Licensed Area or any neighbouring property but so as not to interfere unreasonably with the Licensee in the ordinary course of its activities;
- (d) to rope and re rope the Licensed Area and to do all things necessary to secure the Nominated Vessel if the Licensee has failed to do so;
- (e) to move the Nominated Vessel to a different mooring pen in the Marina if necessary, in which case, the Licensor will use all reasonable endeavours to notify the Licensee before moving the Nominated Vessel; and
- (f) to do all things necessary to ensure the safety of persons and property in the Licensed Area, Marina Area and surrounding areas including evacuating the Licensed Area and the Marina Area.

14. Termination

14.1 Determination of Licence

- (1) At the determination of this Licence:
 - (a) the Licensee shall remove the Nominated Vessel and any equipment, fixtures and fittings of the Licensee from the Licensed Area and to make good any damage caused by such removal and to remove or restore (as appropriate) any sign, placard, hoarding, pylon sign, free standing sign or other type of advertising material which was painted or placed on the Licensed Area with the consent of the Licensor; and
 - (b) deliver up possession of the Licensed Area to the Licensor in good condition and repair.
- (2) It is agreed that these obligations will survive the termination of this Licence.

14.2 Early Termination

- (1) If this Licence is issued for a Term of greater than one year and up to two (2) years, the Licensee may terminate and surrender this Licence in accordance with this clause 14.2 only (**Early Termination**).
- (2) The Licensee must provide notice in writing of the Early Termination to the Licensor no later than one (1) month prior to the first anniversary of the commencement date of this Licence and the Licensor may, acting in its absolute discretion, refund any Licence Fee previously paid by the Licensee for the portion of the licence period that is beyond the first anniversary.
- (3) In the event that the Licensee exercises its right to Early Termination (and whether or not the Licensor agrees to provide a refund of the balance of the Licence Fee paid in advance for the period in excess of one year, in its absolute discretion) the Licensee acknowledges and agrees that:
 - (a) any Amounts Payable outstanding at the time of Early Termination, including up to midnight on the day prior to the anniversary of the commencement date of this Licence, will remain payable and may be deducted from the bond if they remain unpaid in accordance with this Licence; and
 - (b) the Licensee must comply with subclause 14.1.
- (4) For the avoidance of doubt, this clause 14.2 does not apply to a Licence with Term of one year or less.

15. Subletting and Assignment

- (1) The Licensee covenants with the Licensor not to mortgage, charge or encumber nor sublet, assign, transfer or part with the possession of the Licensed Area or any part of the Licensed Area or any estate or interest in the Licensed Area to any person except in accordance with subclause (ii). Sections 80 and 82 of the *Property Law Act 1969* are expressly excluded.
- (2) The Licensee may transfer possession of the whole of the Licensed Area only in circumstances where the Licensee transfers ownership of the Nominated Vessel moored in the Licensed Area together with this Licence, and on the following conditions:
 - (a) The Licensee must notify the Licensor in writing at least one (1) month prior to the proposed transfer of ownership of the Nominated Vessel and this Licence;
 - (b) The Licensee must satisfy the Licensor that the purchaser (**Transferee**) will purchase the Nominated Vessel moored in the Licensed Area by producing evidence of the transfer; and
 - (c) The Licensee, Licensor and the Transferee must execute a Deed of Transfer of Licence for the remainder of the unexpired residue of the Term under this Licence.

16. Mutual Covenants

16.1 Default

The Licensor and Licensee agree as follows:

- (a) If any moneys payable under the Licence are unpaid fourteen (14) days after written demand has been made; or
- (b) If the Licensee is in breach of any other covenant and the Licensor serves on the Licensee a notice specifying the particular breach and (where the breach is capable of remedy) requiring the Licensee to remedy the breach or requiring the Licensee to make compensation in money for the breach and the Licensee fails within twenty eight (28) days after service of the notice to remedy the breach or to make reasonable compensation in money to the satisfaction of the Licensor for the breach; or
- (c) If any person is in occupation or possession of the Licensed Area or in receipt of the rents or profits thereof other than the Licensee or an approved Transferee of the Licensee; or
- (d) If the interest of the Licensee in this Licence is taken in execution,

THEN and in any of the said cases the Licensor may at any time thereafter by notice in writing addressed to the Licensee determine this Licence or without notice re-enter the Licensed Area or any part thereof and thereupon this Licence will absolutely determine but without releasing the Licensee from liability for any Amounts Payable accrued up to such determination or for breaches of covenant antecedent to such determination.

16.2 Notice to Licensee

Any notice required to be given to the Licensee under this Licence may be given by the Licensor or its solicitors and may be left for the Licensee at its address herein or at the Licensed Area or sent to it by post in a letter addressed to it at such address or at the Licensed Area or at its office last known to the Licensor and a notice sent by post shall be deemed to have been served on the next day following that on which it was posted notwithstanding actual non receipt.

16.3 Notice to Licensor

A requirement herein to deliver payment or serve any document on the Licensor shall include a requirement that such delivery or service be effected at the address herein of the Licensor or as directed by the Licensor in writing.

16.4 Dispute Resolution

The parties agree that any dispute between the Licensee and the Licensor in regard to anything arising from this Licence shall:

- (a) Be addressed in the first instance by a meeting between representatives of the Licensee, appointed for that purpose, and the officer of the Licensor responsible for administering the Licensed Area; and
- (b) If the dispute cannot be resolved, in a manner that is satisfactory to both parties through such a meeting, the Licensee agrees that the CEO of the Licensor will

have the power to make a final determination in resolution of the dispute, but only after giving due consideration to all of the matters discussed at the meeting referred to in sub-clause (a) of this clause and setting out in writing the reason for his or her decision.

17. Exclusion of Warranty

The Licensee acknowledges that no promise representation warranty or undertaking has been given by or on behalf of the Licensor in respect to the suitability of the Licensed Area for any use proposed or undertaken by the Licensee.

18. Termination of Head Licence

Upon termination of the Head Licence, whether by expiry of the Term or sooner termination, this Licence shall automatically determine without any compensation being payable to the Licensee by either the Licensor or the Head Licensor.

19. Rights rest in contract only

The Licensee ACKNOWLEDGES that the rights hereby conferred rest in contract only and nothing herein contained or implied shall be construed as granting or shall be deemed to grant to the Licensee any estate or interest in the Licensed Area.

20. No right of exclusive possession

The Licensee acknowledges that this Licence does not convey any proprietary right of exclusive possession over the Licensed Area to the Licensee and the Licensee AGREES that it shall not interfere with the use of the Licensed Area by any other person authorised by the Licensor or otherwise entitled at law to access or use the Licensed Area.

21. No Holding Over

On expiry of the Term the Licensee will not be permitted to any period of holding over or to continue to use and occupy the Licensed Area.

22. Severance

If any part of this Licence is or becomes void or unenforceable then that part is or will be severed from this Licence so that all parts not void or unenforceable remain in full force and effect and unaffected by that severance.

23. No Fetter

Notwithstanding any other provision of this Licence, the Licensee acknowledges that the Licensor is a Local Government established by the *Local Government Act 1995 (WA)*, and in that capacity, the Licensor may be obliged to determine applications for approvals having regard to statutes governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Licensor shall not be taken to be in default under this Licence by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this licence fetter the Licensor in performing its statutory obligations or exercising any discretion.

24. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 8** of the Schedule shall be deemed part of this Licence and shall be binding upon the Licensor and Licensee as if incorporated in the body of this Licence.

Schedule

Item 1 Marina Area

That area of the Port Coogee Marina under the Head Licence, as shown annexed hereto as **Annexure A**.

Item 2 Licensed Area

Boat Pen **[Insert]** as shown at **Annexure B** to this Licence.

Length:

Width:

Item 3 Term

[Insert #no] **[days/weeks/years]** commencing on **[Insert]** and expiring on **[Insert]**

Item 4 Licence Fee

[Cost]

- (a) The Licence Fee set by the Council of the Licensor according to the size of the Licensed Area and amended from time to time by the Licensor in the Licensor's Annual Schedule of Fees and Charges, available on the Licensor's website; or
- (b) If the Licensed Area is larger than that required for the size of the Nominated Vessel due to availability of suitable pens, the Licensor may, acting reasonably, charge a lesser Licence Fee in accordance with the size of the licensed area that the Nominated Vessel actually requires.

Item 5 Permitted Use

Nominated Vessel mooring only.

Item 6 Nominated Vessel

[DoT Vessel Registration #No.: INSERT]

[Vessel Name: INSERT]

Item 7 Bond

Five hundred dollars (\$500)

Item 8 Additional terms and conditions

Signing page

Executed on the _____ day of _____ 2016

THE COMMON SEAL of the **CITY OF COCKBURN**)
was hereunto affixed in the presence of:)

(Signed) (Position) (Print Full Name)

(Signed) (Position) (Print Full Name)

[For a Company with Director and Secretary]

EXECUTED BY _____ [Company] _____
[ACN _____] pursuant
to Section 127 of the Corporations Act: _____

Name of Director Signature of Director

Name of Director/Secretary* Signature of Director/Secretary*

[For a Company with Sole Director and Secretary]

EXECUTED BY _____ [Company] _____
[ACN _____] pursuant
to Section 127 of the Corporations Act: _____

Signature of Sole Director/Secretary (Print Full Name)

[For an Individual Applicant(s) (Not Company)]

SIGNED by _____ [**FULL NAME**] _____
in the presence of Signature of [**FULL NAME**]

Witness Sign

Name of Witness

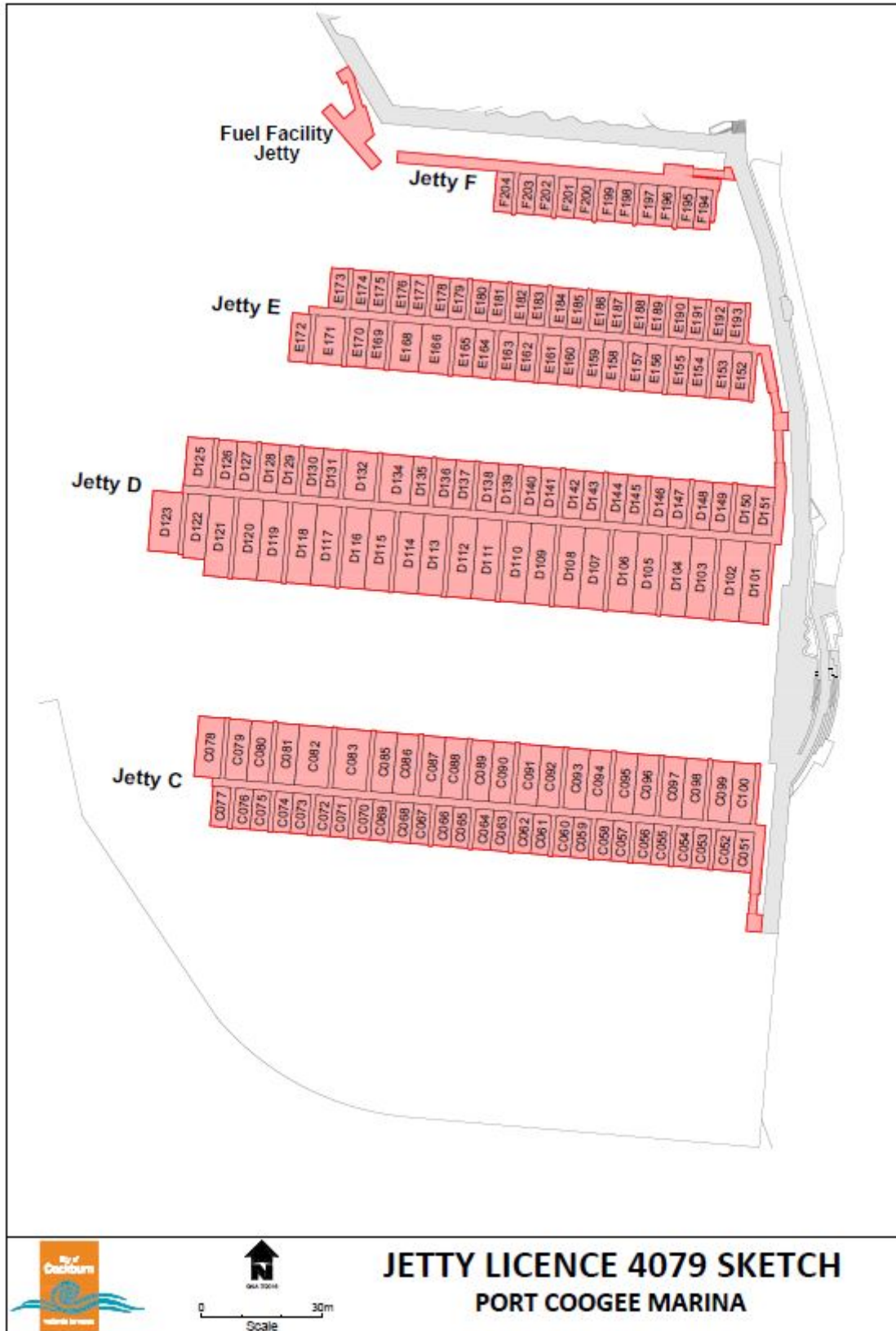
Address

Occupation

Annexure A – Head Licence

Annexure B – Licensed Area

Annexure C – Marina Area Diagram



Annexure D – Marina Rules

Rules and Regulations

Vessel owners and visitors to the marina including Contractors must comply with the marina rules and the directions of the Marina Manager and Marina management staff at all times.

Head DoT Jetty Licence Obligations and City of Cockburn's Port Coogee Bylaws

Adhere to all the Department of Transport jetty licence rules and regulations and City of Cockburn's Port Coogee Waterway Bylaws including:

- No advertising or 'for sale' signs allowed to be displayed within the marina.
- No swimming in the waterways except at the provided beach.
- No fishing in the waterways except at the provided fishing jetty(s).
- No boat lifters allowed. 'Sea pens' or similar only on approval of the Marina Manager and only where the installed boat & 'sea pen' do not exceed the pen length.

Respect the environment:

- Do not allow any waste or contaminant of any sort to enter the waterways.
- Do not leave any rubbish or waste outside the confines of a vessel, other than in the bins provided near to the security gates at the end of the jetty.
- No vessel painted with Tributyltin (TBT) is allowed to enter the marina waterways or boat pen area.
- Always double wrap any wet waste before placing it in the provided bins.
- Always compact any recyclable waste before placing it in the provided bins.
- No external sanding, grinding, painting or cutting is allowed within the marina.
- No brushing of the vessel's hull is permitted within the marina.
- No oils are to be disposed of within the marina or placed in the marina's bins.
- Only cosmetic cleaning of vessels is permitted within the marina.

Respect the property and amenity of others:

- Do not board, enter or interfere with any other vessel than your own without the express consent of the vessel owner.
- Always proceed with caution within the marina waterways.
- Never exceed the 5 knots speed limit within the marina waterways and avoid any activity that causes undue wake within the waterways.
- Do not exceed the following noise limits within the marina as measured 15m from you/your vessel:
 - 9am to 7pm, 44db L(A10), 54db L(a1) and 79db L(max)
 - 7pm to 10pm, 44db L(A10), 54db L(a1) and 69db L(max)
 - 10pm to 9am, 39db L(A10), 49db L(a1) and 69db L(max)

Safety, Access & Security:

- Safety and security is everyone's responsibility.
- Do not block or restrict access on any walkway or finger jetty in any way.
- Vessels are not to overhang the walkway(s).
- Always ensure that the security gates are closed after you pass through them.
- Visitors and invitees must be accompanied by the licensee at all times within the

secured area of the boat pens.

- Record and report any suspicious activities.
- Immediately report any lost or stolen security access keys, device or codes.
- Contractors are required to carry the written permission of the vessel owner and the security pass of the owner (or a pass issued by the Marina Manager) and their activity at the Marina is to be notified to the Marina Manager.

Electrical and Gas:

- The electrical, fire prevention, fire control and gas systems with the vessel are to be maintained in good compliant condition and always operated in a safe manner.
- In the event of a non-compliance to any of the mandatory electrical and gas rules contained in this section the Marina Manager will, after appropriate notice dependent on the circumstances, disconnect the vessel from the marina power supply until such time as compliance is achieved.
- The electrical system and the supply connection to the shore based power supply of each vessel berthed in the marina must comply with Australian Standard AS3000 and AS3004.2 and have a valid current Certificate of Compliance not more than five (5) years old provided by the vessel manufacturer or a licenced electrical contractor stating compliance with these standards.
- Any alterations or additions to the vessel's electrics must be undertaken by a licenced electrical contractor and an Electrical Safety Certificate provided to the vessel owner.
- All electrical work greater than 50 volts AC or 115 volts DC carried out on recreational vessels is to comply with the WA Electricity Act 1945; Electricity Regulations 1947 & Electricity (Licensing) Regulations 1991.
- Connection to the 240 volt jetty power supply point must be via a 15 amp heavy duty flexible lead of not greater than 25m length, be fitted with a three pin IP56 rated (dust and weather proof) plug with locking ring, and be fitted with an inspection and compliance tag fitted by a qualified electrical contractor within one (1) metre of the jetty connection plug end.
- Only one power lead is to be connected to any socket outlet and use of double adaptors or power boards at the jetty connection point is prohibited.
- Leads are not to be allowed to drape into the water and precautions need to be taken to prevent the lead from falling into the water when being disconnected.
- Leads should not be used coiled as coiled leads can generate heat and can damage the supply lead.
- Examine leads and plugs before connecting to the marina power supply and repairs to leads and plugs used for the power supply to vessels should only be undertaken by qualified electrical tradespersons.
- The electrical supply lead should be disconnected from the power supply point first and then from the vessel's power supply or appliance connection.
- Potential vessel corrosion activity caused by connecting a vessel's earth to the marina power supply can be reduced by fitting an isolating transformer on board, and/or fitting galvanic isolators complying with AS/NZS3004.2 clause 6.4.4 or alternatively sacrificial anodes may also assist to reduce the effects of galvanic corrosion.

- Onboard gas fittings must comply with the:
 - Gas Standards Act 1972
 - Gas Standards (Gas fitting and Consumer Gas Installations) Regulations 1999.
 - Australian Standards relating to gas installation: AS 5601-2004.

General:

- Keep only the nominated and approved vessel within the mooring pen.
- Living or staying overnight on board a vessel within the marina is restricted (see clauses 8.2 and 8.3 of the licence) and shall only be approved for vessels with inbuilt grey water and sullage holding tanks.
- Pets and other animals are not to be brought into the marina except by permission of the Marina Manager (see clause 8.4 of the licence).
- No skateboards, skates, bicycles, scooters or other related items are to be ridden within the secured zones of the marina.
- Dinghies and tenders are to be stowed aboard the vessel.
- Roping and re-roping of your vessel is to be in accord with clause 9.2 of the mooring pen licence and:
 - Shackles are not to be used to secure boat pen lines to the jetties.
 - Boat pen lines are not to traverse any vacant or alongside pen.
 - Ropes are to be sized to suit the vessel and maintained in first class condition at all times.
- No fixings to the jetty structure unless by approval of the Marina Manager.

Contacts

OTHER IMPORTANT CONTACT NUMBERS	CONTACT NUMBERS
Port Coogee Marina Administration	9411 3444
Marina Manager – Port Coogee (non admin matters)	0419 944 355
City of Cockburn (General Inquiries Business Hours Monday-Friday)	9411 3444 (or email customer@cockburn.wa.gov.au)
Department of Environmental Protection (Pollution Emergencies)	9483 6462 1300 784 782 (24 HRS)
Department of Transport (Marine Environmental Protection Unit)	9480 9924 (24 HRS)
Fire and Emergency, Police, Ambulance	000
Fremantle Port Authority (Emergency)	9335 1300
Fremantle Sea Rescue VHF channel 73 (or 16 - emergency) 27Mhz channel 90 (or 88 - emergency) Our call sign is <i>VN6DI</i>	9335 1332 – Marina Assistance (24HRS)