



BERTH TRANSFER FREQUENTLY ASKED QUESTIONS

Welcome to RQYS Marina

The Royal Queensland Yacht Squadron (**Squadron**) is home to one of Queensland's oldest and most prestigious recreational sailing and cruising clubs. Formed in 1885, the Squadron has a long history of supporting and encouraging sailing as a sport that continues on today.

This document is designed to provide preliminary information in relation to the process for the sale or purchase of a berth in our marina. The legal process for transfer of the berth interests is handled by our solicitors, HWL Ebsworth Lawyers (**HWLE**).

If you have queries that are not covered below, please contact the Marina Office on (07) 3393 3554 or at marina@rqys.com.au.

1. Marina structure and lease information

1.1 How is the Marina structured?

The Squadron's marina is actually comprised of two different marinas, as follows:

- RQYS Marina 1 comprises berths in rows A to P.
- RQYS Marina 2 comprises berths in rows R to Z.

1.2 What am I buying?

The tenure of berths at RQYS marina is leasehold tenure.

The ultimate owner of the Manly Boat Harbour is the State of Queensland (represented by the Department of Transport and Main Roads) (**DTMR**).

Companies related to the Squadron hold leases from DTMR and the berths are held under subleases between those entities and the berth holders.

Marina 1

Title to berths in RQYS Marina 1 is based on the following lease interests:

(a) 2 consecutive Leases of the overall water area from DTMR. These operate as follows:

- (i) The first RQYS Marina 1 "head lease" is between DTMR and Manly Operations Pty Ltd ACN 632 701 976 as trustee for the Manly Operations Trust (**Manly Operations Trust**), registered as dealing number 711491507 with Titles Queensland.

This lease is currently in effect and will expire on 31 December 2028.

- (ii) The second RQYS Marina 1 "head lease" is between DTMR and RQYS Nominees Pty Ltd ACN 130 840 523 as trustee for the Marina 1 Trust



(Marina 1 Trust), registered as dealing number 715351277 with Titles Queensland.

This lease will commence on 1 January 2029, ie immediately after expiry of the first RQYS Marina 1 lease, and will expire on 31 December 2051.

- (b) Each individual berth area in RQYS Marina 1 is held under 2 consecutive Subleases, as follows:
- (i) A sublease from Manly Operations Trust to the berth holder under the first RQYS Marina 1 lease.

This sublease is currently in effect and will expire on 30 December 2028 (ie one day short of the relevant "head lease", for legal purposes).

- (ii) A sublease from Marina 1 Trust to the berth holder under the second RQYS Marina 1 lease.

This sublease will commence on 1 January 2029 (ie one day after expiry of the first sublease and on the date the second RQYS Marina 1 lease commences) and will expire on 31 December 2041.

On acquiring a marina berth in RQYS Marina 1, the assignee will take an assignment of the 2 subleases from the berth holder.

Note that no RQYS Marina 1 berths will continue to be subject to a sublease after 31 December 2041. At this point, Marina 1 Trust will be in direct control of all RQYS Marina 1 berths.

Marina 2

Title to berths in RQYS Marina 1 is based on the following lease interests:

- (a) The RQYS Marina 2 "head lease" of the overall water area is between DTMR and RQYS Nominees Pty Ltd ACN 130 840 523 as trustee for the RQYS New Marina Trust (**Marina 2 Trust**), registered as dealing number 713249810 with Titles Queensland.

This lease is currently in effect and will expire on 24 February 2035.

- (b) Each individual berth area in RQYS Marina 2 is held under a sublease from Marina 2 Trust to the berth holder under the RQYS Marina 2 lease.

This sublease is currently in effect and will expire on 23 February 2035.

On acquiring a marina berth in RQYS Marina 2, the assignee will take an assignment of the sublease from the berth holder.

There is a very small number of specific berths subject to subleasing arrangements extending beyond 23 February 2035, however apart from these, no other RQYS Marina 2 berths will continue to be subject to a sublease after 23 February 2035.



1.3 How long does the sublease run? Is there an option to renew?

Marina 1 berth leases expire on 30 December 2041.

Marina 2 berth leases expire on 23 February 2035 except for a very limited number extending past this point (and which will all end by 31 December 2041).

There are no options to renew any sublease past these dates, nor is there any guarantee any new berth subleases will be granted past these dates.

Marina 2 Trust will have direct control of all berths as at 1 January 2042. Marina 2 Trust may offer further subleases to berth holders for periods on and from this date, depending upon relevant factors at that time.

2. Sale and purchase process

2.1 What is the process for the transfer of a marina berth sublease?

- (a) A berth holder can request that the Squadron list the berth for sale on the Squadron's website. Interested parties can then contact the Marina Office and provide their details, which the Squadron will pass onto the berth holder.

The berth holder can then reach out to an interested party to negotiate directly with them to reach agreement on the sale price and any other commercial terms.

Please note that the Marina Office does not operate as a brokerage and has no role in facilitating a sale other than providing contact details. The Squadron does not hold a real estate agent's or similar form of licence and will not carry out activities that would require this to be in place. The Squadron does not collect any commission on any sale.

There is also no guarantee an interested party will be able to secure a marina berth as it is a matter for the berth holder whether or not to sell to any particular party.

- (b) Once a berth holder and an interested party have come to agreement on terms of sale, a Berth Transfer Information Form should be completed by both parties and emailed back to the Marina Office at marina@rqys.com.au.

The Berth Transfer Information Form can be found on the RQYS website.

- (c) RQYS will then notify HWLE of the sale and confirm that all is in order for the berth transfer to proceed. Once confirmed, HWLE will prepare the necessary documents to effect the transfer in compliance with the relevant head leases for the berth, and send the forms to both the assignor and assignee.

It is the responsibility of the assignor and assignee to arrange for the documents to be signed and returned to HWLE.

Please note: Any assignor or assignee who is a natural person will need to have their signature on the Transfer of Lease witnessed by a person qualified to



witness signatures under Schedule 1 of the *Land Title Act 1994* (Qld). This is most commonly going to be a lawyer, a Justice of the Peace, a Commissioner for Declarations or a notary public.

- (d) HWLE will arrange for the documents to be signed by the Squadron entities where required.
- (e) Once fully signed and stamped, HWLE will arrange for a transfer of the relevant sublease(s) to be lodged for registration with Titles Queensland.
- (f) Once the transfer has been registered, HWLE will circulate copies of the completed documents and evidence of registration.

2.2 Do I need my own lawyer for this transaction?

While not essential, it is strongly recommended both parties instruct lawyers to act for them in connection with a transfer of any berth sublease.

It is preferred that the parties prepare the required transfer of sublease(s) and attend to its stamping prior to delivery to HWLE, however HWLE can attend to these matters if needed.

HWLE will be instructed to prepare a Deed of Covenant (including a form of guarantee and indemnity) and will not be able to provide either party with legal advice about it beyond answering questions of a general nature.

2.3 What is the role of HWLE?

HWLE acts for the Squadron and its related companies.

It is a requirement under the terms of the berth subleases that the berth holder obtain RQYS consent before the transfer of the interests in the berth sub subleases can be effected. RQYS is required to have the parties enter into certain covenants in favour of the State and also in favour of RQYS. HWLE prepares the consent documents required.

Most commonly, parties are not represented by a lawyer. Unless the parties intend to have their own lawyers involved, HWLE will prepare the transfer form to facilitate the transaction and will attend to stamping and lodgement of the transfer on the title on behalf of the parties.

It is important to note that HWLE acts for RQYS and so cannot provide you with any legal advice in respect of the transaction. HWLE will also not be able to prepare any form of sale contract or agreement, or be involved in any "settlement" process between the parties.

The assignee will be responsible for payment of HWLE's legal costs.



3. Transaction costs

3.1 What are the costs associated with the transaction for the assignee?

Apart from any price payable to the berth holder, the assignee will also be required to pay the following costs:

- (a) HWLE's legal costs for drafting the documents and attending to the legal aspects of the transfer.

Currently, the "standard" fee for the transfer of one berth at 1 July 2023 is:

- (i) For RQYS Marina 1 - \$2,200.00.
(ii) For RQYS Marina 2 - \$2,000.00.

Both of these sums are inclusive of outlays such as search fees and registration fees, and any GST. The amount is higher for RQYS Marina 1 as there will be 2 separate registration fees for the transfer (one for each sublease at \$224.32 each as at 1 July 2023), while RQYS Marina 2 will only involve a single sublease.

There may be additional fees where anything more complex is required - for instance, deceased estate matters, where there are other dealings involved such as a release of a mortgage or grant of a new mortgage, or where a sublease is unregistered.

- (b) Transfer duty (also called stamp duty) on the purchase price payable to the Queensland Revenue Office (**QRO**) for the transfer.

Duty is calculated on the purchase price. The current rates of duty are as follows as at 1 July 2023, and are subject to review by the State Government from time to time.

| Dutiable value | Duty rate |
|----------------------------------|---|
| Not more than \$5,000 | Nil |
| More than \$5,000 up to \$75,000 | \$1.50 for each \$100, or part of \$100, over \$5,000 |
| \$75,000 to \$540,000 | \$1,050 plus \$3.50 for each \$100, or part of \$100, over \$75,000 |
| \$540,000 to \$1,000,000 | \$17,325 plus \$4.50 for each \$100, or part of \$100, over \$540,000 |
| More than \$1,000,000 | \$38,025 plus \$5.75 for each \$100, or part of \$100, over \$1,000,000 |



Note RQYS' administrative costs and HWLE's legal costs will be payable whether or not the matter proceeds - however, there will be a refund equivalent to any unused registration fees or other outlays not required to be paid to third parties such as Titles Queensland. Any money paid to HWLE on account of assessed transfer duty will be refunded if not required to be remitted to the QRO.

3.2 What are the costs associated with the transaction for the berth holder?

RQYS charges an administration fee of \$500.00 including GST for facilitating the administrative aspects of the berth transfer process. This amount will be invoiced to the berth holder (assignor) after the transaction has been finalised, at the next time when RQYS conducts an adjustment of the half yearly levies.

3.3 When does the assignee pay the purchase price to the berth holder?

This is to be determined between the parties, however we see most commonly that the payment is made at the time that both parties have signed the documentation. The manner and timing of payment is a matter between the parties.

3.4 What about GST?

That is a matter for the parties to determine. The berth holder should advise the assignee as to whether GST is applicable. The parties are encouraged to obtain their own legal or accounting advice for those concerns.

Note it is important the correct amount of consideration is advised on the Berth Transfer Information Form as this is used by HWLE to calculate transfer duty (if the parties do not have their own solicitors involved). The consideration must be given as a GST-inclusive amount.

3.5 What are the ongoing costs of holding the berth?

There are annual levies payable by berth holders. The levies cover costs of upkeep of the marina, head lease rent, dredging, running costs and other costs as outlined in the lease. Levies are rendered in April and October each year.

For an estimate of levies that apply to the berth you propose to purchase, please contact the Marina Office.

4. Purchasing entity

4.1 Do I need to be a Squadron member?

Yes. It is a requirement that a berth holder must be one or more individuals who are all members of the Squadron (**Member**). This is subject to item 4.2 below.

4.2 When is a guarantor required?

The berth holder can be somebody who is not a Member, as long as a Member (together with any directors of the berth holder if it is a company) provides a personal guarantee for the berth holder's obligations under the sublease.



This will include where the assignee is:

- (a) a company;
- (b) an individual or corporate trustee acting on behalf of a trust or superannuation fund; or
- (c) an individual who is not a Member.

An assignee who is not a Member must arrange a personal guarantee by a person who is a Member (together with any directors of the assignee if it is a company). That Member (and any company directors) will be required to sign the standard deed of covenant to be prepared by HWLE as a personal guarantor.

Any personal guarantee must be maintained from the assignment date until the sublease is assigned to somebody who is a Member or the sublease expires.

4.3 **What is the difference between a joint tenancy and tenancy in common?**

If the assignee is two or more individuals, you will be asked to advise whether you wish to hold the berth sublease interests as joint tenants or tenants in common.

Where two people hold their interests as joint tenants, upon one person's death, their interest in the berth automatically passes to the other person.

In the same circumstances for tenants in common, the deceased's interests would form part of their estate and be dealt with in accordance with their will.

4.4 **The purchase is on behalf of a trust – is there anything extra required?**

Yes. HWLE will need a copy of the trust deed and anything recording a variation to the terms of the trust or identity of the trustee.

5. **General use of the berth**

5.1 **What rules apply to the use of the berth?**

In addition to the terms of the subleases, you will also need to abide by all Squadron and RQYS rules and regulations, and any by-laws or similar arrangements for the Manly Boat Harbour put in place by DTMR.

5.2 **How do I go about leasing my berth to somebody else temporarily?**

Please contact the Marina Office and they will provide you with all of the relevant information.

5.3 **Are there any restrictions on my use of the berth?**

Yes, there are maximum beam and length restrictions on any boat that can be moored in the berth. You should check those restrictions prior to proceeding. The metes and bounds of the berth and vessel are listed in the individual subleases.



You may not use the berth for commercial purposes, ie you may not run a business from the berth. Berths are for mooring of boats for private recreational use only.

There is a prohibition on living aboard your boat.

5.4 Do I need to have insurance?

Yes, you should have public liability insurance and also coverage for damage to the boat and your property.

The parties agree and acknowledge that both parties have read and understood this document.

Signed for and on behalf of the Assignor

Signed for and on behalf of the Assignee

Signature: _____

Signature: _____

Name: _____

Name: _____

Date: _____

Date: _____