

Item No.	Classification: Open	Date: January 5 2010	Meeting Name: Executive Member for Environment
Report title:		South Dock Marina	
Ward(s) or groups affected:		Rotherhithe	
From:		Strategic Director of Environment and Housing	

RECOMMENDATIONS

1. The Executive Member agrees to the amendments to the terms and conditions of South Dock Marina Residential licenses relating to the transfer of licences as set out in Appendix 1.
2. That the fee for the transfer of a residential licence applying to all owners residing in the marina from 1 April 2009 onwards be set as 10% of the sale price of the boat or £3,000 whichever is the greater. This fee will be subject to changes as part of the setting of Council fees and charges.

BACKGROUND INFORMATION

3. In February 2009 the Executive Member for Environment, agreed the new terms and conditions at South Dock Marina. The terms and conditions relating to the sale of boats and transfer of residential licenses were not considered at that time, as that issue was to be subject to further consultation with the berth holders.
4. Full residential licenses have not previously been made available to berth holders at the Marina as this had been thought to be excluded from the planning status of the marina. However, in 2008 it was established that the original planning consent for the marina granted by the London Docklands Development Corporation (LDDC) was amended in 1996 to allow for the provision of up to 130 residential berths. The granting of such a licence represents a significant benefit for the berth holders in allowing them for the first time to legally occupy their boats on a permanent basis.
5. Given the significant benefit of a residential berth, the Council was asked by representatives of the berth holders to consider the arrangements for the transfer of licences in the event of the sale of a boat. In particular the Council was asked to consider developing a formula for the transfer of a residential licence which will achieve the following objectives:
 - (i) Optimise income for South Dock Marina/Southwark Council within agreed criteria
 - (ii) Enable boat sellers to sell their boats according to market prices
 - (iii) Provide a fair and equitable formula for owners of small medium and large-size boats
 - (iv) Enable new owners to obtain residential licences.

KEY ISSUES FOR CONSIDERATION

Consultation

6. Officers have consulted with and sought advice from several other Marinas and industry professionals including:
 - (i) The British Marine Federation (BMF) and the Yacht Harbour Association (TYHA)
 - (ii) The Residential Boat Owners' Association (RBOA)
 - (iii) London Tideway Brokerage
 - (iv) Boatshed Thames
 - (v) Professional Advice
7. While the advice received varied, it was clear that the Council is entitled to charge for the residential berths and that such a fee is commonly higher than the leisure mooring fees and/or from charging a fee for granting a transfer of a residential licence.
8. On September 9th 2009, the Strategic Director for Environment and Housing wrote to all berth holders setting out the Council's proposals for allowing those berth holders who wished to sell their boat in the Marina and to transfer the residential license to the new owner (appendix 2). In addition a public meeting was held at Alfred Salter Primary School and attended by up to thirty five berth holders.
9. In total twenty responses to the consultation document were received. All those who commented have received individual letters setting out the Council's response. The main concerns raised by the berth holders the proposed response are set out below:
10. **That the requirement to pay a fee for the transfer of the residential licence should not apply to existing occupiers of the marina.** Many of the existing berth holders have either been living in the marina for a significant number of years or purchased their boat within the marina and, as such, claim to have a reasonable expectation of obtaining the full capital value of the their boat in the event that they should decide to sell. Considering this it is proposed that that the requirement to pay a transfer fee be waived for berth holders living in South Dock Marina prior to 1 April 2009 and who have applied for a residential licence providing all conditions are met.
11. **That the 10% transfer fee is excessive and not comparable to other similar marina, with the British waterways marinas in Tower Hamlets being the most common comparator.** Several berth holders and the South Dock Marina Beth Holders Association (SDMBHA) compared the proposed transfer fee to the fee charged for a boat sold with a berth at Poplar Dock and Limehouse marinas which are also in central London. Additionally, berth holders have commented that the fee at these marinas includes brokerage service and since South Dock Marina does not provide brokerage service, the fee at SDM should therefore be lower.
12. The comparison to these marinas is not relevant given that neither of these marinas offers residential licences. Also Poplar and Limehouse do not offer a brokerage service the fee they charge is their "Sale on Berth Fee" which is not related to a brokerage fee. Both marinas are operated by British Waterways Marinas Ltd (BWML) who offers only Grade 1 and Grade 2 berths which are significantly different from BWML's. Full Residential berths, as detailed in the BWML Berth Definitions (appendix 3). None of the marinas operated by BWML in central London offer Full Residential berths.
13. British Waterways (BW), which is different than BWML, operates forty long term mooring sites within their "London market area" and fifteen of these sites offer residential berths. This "London market area" has been defined as sites broadly within the M25 area but many are substantially outside of central London. In all of the sites in

which both leisure and residential moorings are available, BW charges substantially higher prices for the residential moorings than for the leisure moorings (at least 29%).

14. The advice received and research of the market indicate that a transfer fee of 10% of a boat's selling price is the standard in London for moorings with official residential status.
15. **That the minimum fee of £3000 is excessive and overvalues many of the boats within the marina.** Advice and market information have been sought at to the minimum value of a boat moored within central London that would be suitable for residential occupation. This has been estimated as £30,000. It is therefore recommended that the minimum charge should remain as £3,000.
16. **That the requirement for boats to be inspected by Port of London Authority (PLA) surveyors at the discretion of the Harbourmaster, prior to issuing of the residential licence was too onerous and could be subject to abuse. That the Council should bear the cost of vessel surveys.** In order to protect the Council's interests and improve health and safety, the Council needs to be satisfied as to the condition of boats within the marina. The proposal is that the transfer of a residential licence upon the sale of a boat in the marina shall be conditional on the right of the Council to use its discretion to require a survey by the PLA at the owner's expense.
17. As a Statutory Harbour Authority, PLA is responsible for the management of navigational safety on the tidal River Thames between Teddington Lock and the outer port limits in the Thames Estuary. It has an interest in the 'seaworthiness' of vessels and, as such, is considered to be the appropriate independent body to advise the Council on such matters.
18. The decision to require a survey will be made by the Harbour Master in conjunction with the PLA's qualified Marine Surveyors. The Council will at its own expense pay for the PLA surveyor to assess and recommend which boats require a full survey.
19. Owners of any vessel requiring a full survey will be given notice in writing. Any owner aggrieved by the decision to require a full survey may raise their concerns through the Council's complaint process and the survey will not be undertaken until such process is completed.
20. With regard to cost, officers have negotiated an agreement with the PLA to commit two marine surveyors to 'day-long' inspections at South Dock Marina. South Dock Marina will endeavour to organise up to five surveys in one day and this, combined with Council's willingness to offer discounted rates for the use of marina crane and staff, will enable berth holders to obtain the required surveys at a substantially reduced cost.
21. Revisions to the terms and conditions of residential licences reflecting the above consideration are set out in Appendix 1 for agreement.

Implementation

22. Upon agreement of this report, all berth holders who have expressed a desire for a residential licence will be written to confirming the arrangements for the issuing of licences.

Policy Implications

23. The new conditions set out in this report will be included into the terms and conditions agreed in February 2009 as an amendment.

Community Impact Statement

24. The introduction of conditions for sale of boats in the marina will make it much easier for residential berth holders to sell their boats. The conditions will also help safeguard the Council's asset and help to increase the future income stream which will help the Council improve the services in the marina. The local residents will also be aware of the terms and conditions and the restrictions on berth holders.

Resource Implications

25. Existing budget streams will cover the implementation of the above recommendations.
26. In future this will allow the Council to charge a transfer fee on the transfer of a residential licence providing conditions are met. This will also mean the Council has an additional income stream but it is too early to estimate likely number of transfers or resulting income. Income will affect budget pressures in this area.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director Of Communities, Law & Governance (SB122009)

27. The creation of residential licence arrangements and the provisions enabling their transfer could potentially lead to issues of security of tenure pursuant to the provisions of s79 of the Housing Act 1985. However the definition of "dwelling-house" in the Housing Act is worded such that it cannot apply to a boat. Thus the arrangements proposed by this report will not lead to any of the holders of residential mooring licences obtaining security of tenure under the Housing Act.
29. Given that the licensing arrangements do not fall within the remit of the Housing Act, the provisions of that Act relating to sales of property and the obligation on the Council to obtain best consideration for those sales will not apply.
30. The Council has obtained external legal advice that confirms that creating a different transfer regime for residential mooring licences and leisure mooring licences (which also exist at the Marina) will not fall foul of the Unfair Contract Terms Act 1977 nor the Unfair Terms in Consumer Contracts Regulations 1999.

Finance Director (ET122009))

31. There are no financial implications to the Council as a result of implementing the proposal since the costs will be contained within existing resources of the business unit. The potential income from transfer fee, will be considered for inclusion in the budget during Business Planning and Budget Planning process for 2011/12 financial year, when there is more data to assess volume of transfers and likely income as well any cost of administering the fees.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Notes and minutes of meetings with berth holders, report from industry experts, Comments from Resident Boat Owners Association, Comments from boat brokers.	160 Tooley Street London SE1 2TZ	Nicky Costin, Business Unit Manger Tel: 02075252156

APPENDICES

No.	Title
1	Amendment to the terms and conditions
2	Letter of Proposal
3	BWML Berth Definitions

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment and Housing	
Report Author	Des Waters, Head of Public Realm	
Version	Final	
Dated	January 5 2010	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Head of Property	Yes	Yes
Executive Member	Yes	Yes
Date final report sent to Constitutional Officer	January 5 2010	

South Dock Marina: Response to consultation document dated September 2009

Appendix 1

Amendment to the Terms and Conditions of the South Dock Marina

Section 4.2.3 of the terms and conditions of South Dock Marina agreed on the 25 February 2009 shall be amended to read as follows:

4.2.3 Sale of BOATs in the Marina

An OWNER may sell his/her BOAT in the MARINA at any time subject to the following conditions:

1. Written consent to sell by MARINA MANAGER. No sale of any BOAT whether Through private channels or a broker shall take place within the MARINA without the prior written notification to the MARINA MANAGER. The Lock Office Staff must be notified of the attendance of all visitors, see also clause 4.1.5 'Assumption of Risk'.
2. For Sale or Charter signs. In the event that the OWNER wishes to sell his/her BOAT, and permission has been granted as per 4.2.3 (1) the COUNCIL will permit a small sign to be displayed on the BOAT. In no other circumstances shall the OWNER be permitted to display or cause to be displayed any, 'For Sale' or 'For Charter' or other notice on or in the BOAT.
3. Within Seven days of any Sale, transfer or mortgage of any vessel. The owner shall notify in writing the new details of the purchaser, the berth is not transferable. (Unless the new owner has received written permission from the Marina)
 - i. *Charges and Rates.* Rates are subject to change on an annual basis under the COUNCIL's fees and charges process for which due notification in advance will be given to OWNERS, and the new rates posted on the MARINA OFFICE notice board.
 - ii. *Replacement of BOAT.* In the event that an OWNER wishes to change their BOAT they should inform the MARINA MANAGER immediately in writing and provide full details of the potential new BOAT. When possible the COUNCIL and the MARINA MANAGER will allow existing OWNERS to assign their LICENCE to another BOAT owned by them. However, in the event that the BOAT is of different dimensions and at the MARINA MANAGER'S reasonable discretion requires a different berth, this will not be possible. In such circumstances the OWNER should express their interest for a berth in writing to the MARINA MANAGER and their name will be inserted on the waiting list. Under no circumstances will the COUNCIL permit the retrospective amendment of a Licence or re-allocation of a berth.
4. Transfer of a Residential licence upon the sale of a vessel.
 - i. A transfer fee will be applied upon a sale of a vessel that has been approved and written consent has been provided by the MARINA MANAGER. The fee is set out in the COUNCIL's fees and charges report.
 - ii. The provision of a transfer fee shall not apply to berth holders who were living in the Marina prior to 1 April 2009.
 - iii. The boat concerned will be examined by a surveyor of the PLA to establish the condition of the vessel. If it is determined that a more detailed survey is required to confirm the seaworthiness of the BOAT, it will be commissioned from the Port of London Authority (PLA) at the owners expense. A satisfactory survey must be available before any transfer of licence will take place

- iv. There should be no outstanding debts associated with the existing or future licence holder.
- v. The proposed new licence holder must be introduced to the marina management to be made fully aware of and agree to the marina's terms and conditions.
- vii. Credit checks and references will be carried out on the new licence holder/OWNER and will be required to be satisfactory.
- viii. There is a restriction of one residential licence per berth holder
- ix. All new BOAT OWNERS who acquire a residential licence from the 1st April 2009 will be notified that this permission to transfer the residential licence in the future may be subject to change with twelve months notice.

South Dock Marina: Response to consultation document dated September 2009



Appendix 3

Issue date: March 2009

BWML Berth Definitions

BWML may request customers to move locations within the marina and berth-holders understand that they will not receive legal rights to occupancy within the marina or berth for longer than the maximum period of the contract. Terms and Conditions will aid the undertaking on both customers and BWML.

BWML at the commencement of a contract will notify the customer of the commencement and termination dates and it will be accepted by both parties that on the termination date the contract will cease. If customers require continuation of the mooring a new contract must be agreed and exchanged with BWML.

The following definitions of BWML's product mooring range will apply and aid understanding of the deliverables:-

Full Residential

Planning approved berth offering full 12 months or longer live aboard status 365 days per year. Customers requiring longer than 12 months status should discuss this with their Local Marina Management Team who will advise of the Berthing Lease requirements.

Service provision provided with a full residential berth will be:-

- 365 days Residential status
- Minimum 16 amp electrical supply
- Winterised water mains (subject to underground freezing caused by severe weather conditions)
- Guaranteed parking bay allocation (extra charge could apply at certain locations)
- Storage box provided (subject to land availability)
- Free use of marina facilities, some items are chargeable (laundrette, pump out etc)
- TV Ariel distribution to the craft (if available by the Utility Company)
- Telephone distribution to the craft (if available by the Utility Company)
- Sites accommodating up to 150 berths a minimum part time (10 hrs per week) customer/maintenance worker, above 150 berths a full time employee (37 hrs per week)
- The ability to receive post, using the marina address for private and electoral registration. Post box provided.
- BWML Chandlery delivery service direct from Sawley Marina with a maximum 10% discount on orders, terms and conditions apply, (check with Sawley Marina or your local marina office discount arranged prior to order), delivery charges applicable
- Berth compliant with industry manufactured and design code of practise.

- Emergency call provision (Free phone Canals 0800 47999 47)
- Ombudsman Complaints Procedure
- Domestic waste removal from site (by Local Authority). You will be required to remove furniture, carpets, white goods, electrical equipment etc at your own cost.
- 6 weeks on hard standing subject to marina facility (lifting fees applicable), additional weeks are chargeable at appropriate rates (subject to Marina location).

Grade One

Non residential approved status moorings, allowing unlimited leisure use within the marina. The vessel will be accommodated within the marina for 365 days within any one year. This is not a 365 day residential mooring although stays on boats summer and winter is an expectation. Vessels will regularly leave berths to refuel, pump out and cruise.

Service provision provided with a Grade One status berth will be:-

- Unlimited access to the vessel (Non Residential Status)
- Minimum 16 amp electrical supply (chargeable)
- Water connection all year round (subject to underground freezing caused by severe weather conditions)
- Parking arranged (extra charge could apply at certain locations)
- Storage box provided (subject to space availability) and site location
- Free use of site facilities, some items are chargeable (laundrette, pump out etc)
- TV Ariel distribution to the craft (if available by the Utility Company)
- Telephone distribution to the craft (if available by the Utility Company)
- Sites accommodating up to 150 berths a minimum part time (10 hrs per week) customer/maintenance worker, above 150 berths a full time employee (37 hrs per week)
- The ability for post handling.
- BWML Chandlery delivery service direct from Sawley Marina with a maximum 5% discount on orders, terms and conditions apply, (check with Sawley Marina or your local marina office discount arranged prior to order), delivery charges applicable
- Industry Code of Practice adopted for pontoon design where necessary
- Emergency call provision (Free phone Canals 0800 47999 47)
- Ombudsman Complaints Procedure
- Domestic waste removal from the marina. This does not include house waste ie. Furniture, carpets, white goods or electrical equipment.
- 6 weeks on hard standing subject to marina facility (lifting fees applicable), additional weeks are chargeable at appropriate rates (subject to Marina location).

Grade Two

Non residential approved status mooring utilised for leisure customers with occasional long holiday stays. Customers who predominantly utilise their craft between April – October each year with an occasional maintenance visit during November – March. Some customers may wish to have occupation during Autumn and Winter, however, not all site services may be available at this time especially during severe weather conditions. Local variation will be subject to management approval.

Service provision provided within a Grade Two status berth will be:-

- Stays between April – October each year
- Mainly weekend days and occasional holiday stays only during the winter months to check on craft and maintenance requirements
- Minimum 8 amp electrical connection (chargeable)
- Water connected (possible disconnection during months of November – March)
- Parking subject to availability

- BWML Chandlery delivery service direct from Sawley Marina with a maximum 3% discount on orders (check with Sawley Marina the discount arranged prior to order), delivery charges applicable
- Industry Code of Practice adopted for pontoon design where necessary
- Site accommodating up to 150 berths a minimum part time (10 hrs p/w) customer/maintenance warden will be available, over 150 berths a full time 37 hrs p/w warden will be available
- Emergency call provision (Free phone Canals 0800 47999 47)
- Ombudsman Complaints Procedure
- Domestic waste removal from the marina (non furniture, carpets, white goods, electrical equipment etc)
- 4 weeks on hard standing subject to marina facility (lifting fees applicable), additional weeks are chargeable at appropriate rates (subject to marina location).

Grade Three

A very basic mooring is provided, having little service provisions of non residential arrangements. Customer will predominantly be off site during winter (November – March).

Service provision provided within a Grade Three mooring arrangement:-

- Mainly utilises the vessel during April – October, very occasional overnight stays
- Water available on site, not at mooring (possible disconnection during Nov-March)
- Minimum 8 amp electrical connection (chargeable) available at the marina but not at the mooring.
- No guaranteed parking arrangement
- Occasional maintenance visit during November – March
- Emergency call provision (Free phone Canals 0800 47999 47)
- Ombudsman Complaints Procedure
- Domestic waste removal from the marina (non furniture, carpets, white goods, electrical equipment etc)

Platinum Services (Sawley Marina)

Exclusive to Sawley Marina in a small individual basin with customers recognised as Full Residential or Grade One who are provided the additional services listed below which are inclusive within the berth rate charge for the product.

- Annual engine service
- Recovery of vessel back to Sawley Marina within a 20 mile radius if the craft, RCR Silver standard break down cover
- Moored within a gated area
- Allocated parking Spaces
- Electricity inclusive (up to £500 inc vat supplied) rate per KWA subject to local supply charges.

Wide Beam

Wide Beam craft on any of the above mooring products that exceed 3.0m for inland waters and 4.5m for costal waters will be applicable to additional charges of a minimum 30% of the Grade of product they have purchased.

Occupancy of a berth that has been specifically designed and manufactured for Wide Beam craft will be charged at a berth rate (Kings Marina & Ripon Marina). Berth rates at these locations will be publicised.

Craft who occupy 2 narrow boat spaces will be subject to a 100% surcharge on the Grade of product they have purchased.

Hardstanding

Information will be held at your local marina office.

Note: These definitions may be changed by BWML at any time. Amended copies will be published on our web site www.bwml.co.uk and within local offices.

Table 1

Product	Residential	Grade1	Grade2	Grade 3	Platinum	Wide Beam
Residential Status	X				**	**
Non Residential Unlimited Use		X			X	X
Leisure Use (April – October)			X	X		
Winterised Mains Water	X				X	X
Water Connection All Year		X				
Water Supply (April – October)			X			
Water Connection on site (Not at Mooring)				X		
Electricity Supply 16 Amps	X	X	X		X	X
Electricity Supply 32 Amps						**
Electricity Connection in the Marina				X		
Designated Car Parking (Extra charge may apply)	X	X			X	X
Car Parking in Marina	X	X	X	X	X	X
Storage Box (subject to land take)	X	X				
Use of Marina Facilities	X	X	X	X	X	X
TV Ariel (If supplied by Utilities)	X	X			X	X
Telephone Connection (If supplied by Utilities)	X	X			X	X
Electoral Postal Address	X				**	**
Post Handling	X	X			**	**
Chandlery Discount 10%	X					
Chandlery Discount 5%		X			X	X
Chandlery Discount 3%			X			
Industry compliant berth	X	X	X	X	X	X
Emergency Call Provision	X	X	X	X	X	X
Ombudsman Procedure	X	X	X	X	X	X
Refuse Waste Removal	X	X	X	X	X	X

Platinum - Additional Service Product					X	

** Items are only applicable if Residential