



**Application to subscribe for shares in SYLVANIA WATERWAYS LTD and to obtain a license to maintain a sea wall and waterfront devices over the Company's land.**

**1. Applicant / Owner Details** (must be property Owner) "the Applicant/The Owner" as noted on the real property title.

Owner Name.....Family Name.....

Owner Name.....Family Name.....

Waterfront Property Address.....,Sylvania Waters, NSW, 2224.

Settlement Date.....

Postal Address (if different to above).....

Mobile..... Contact name.....

Mobile..... Contact name.....

Email..... Contact name.....

Email..... Contact name.....

Allow communications via SMS Yes  No

**FEES PAYABLE \$32,000**

- Share/member application fee of \$20,000 (one time only).
- Annual license fee \$12,000.

Members obtaining their waterfront license within 3 months of property settlement will be entitled to a full refund of the annual non-license fee.

Members issued a license after 3 months of property settlement will receive a refund of \$1,000 per month prorated. E.g. license issued 6 months after settlement will receive \$6,000 refund.

License fees of \$1,000 per month will be issued on the anniversary date of property settlement for all non-licensed members until such time as a license is issued. Prospective buyers of waterfront properties must request from the vendor a Waterfront Inspection by Sylvania Waterways Ltd and Conditions For Waterfront Licensing Report which will detail all items required to obtain a waterfront license.

Shares are not transferable; they are automatically forfeited upon sale of property to which they apply. New Owners must subscribe for new share allocation upon settlement.

**Electronic Funds Transfer (EFT) to be made on day of Property Settlement via PEXA**

Account: Sylvania Waterways Ltd  
Bank: Macquarie Bank  
BSB: 182 222  
Account: 303038897.

*Please Reference Property Address with Payment.*

**Completed share application forms to be sent to;**

Michael Corbett – Jones  
Simpson Freed Lawyers  
Ph: 9589 5200  
PO Box 149, Caringbah NSW 1495  
Email: [michael@simpsonfreed.com.au](mailto:michael@simpsonfreed.com.au)

**2. Declaration by Applicant.**

*I hereby acknowledge that I have read and agreed to be bound by the terms and conditions of a license to use the property of Sylvania Waterways Limited (“the Company”) as set out hereafter and those terms and conditions are both express and implied provisions of the license agreement to be granted to me.*

**2.1 Ownership of the Sylvania Waterways Estate:**

- (a) The waterway is owned and controlled by the Company in its position of registered proprietor of Lot 1 in Deposited Plan 615171 (“The Company Land”).
- (b) The Applicant has no right to use any part of the waterway except as permitted by the Company under a license granted to the Applicant.
- (c) The Company has an unfettered discretion whether it grants to the Applicant a license to use the waterway for the erection of a sea wall, mooring structures or to moor any vessel on the waterway adjoining the property.
- (d) The Applicant has no right to leave (or permit to remain) on the seabed (or in or on the waterway) of the Company land any debris whatsoever. Without limitation debris means rubbish, soil, mud, concrete, dirt, fill, waste, trees, grass, shrubs or any foreign material which trespasses onto the Company land as a result of the failure of the seawall or otherwise except as permitted by the Company during repair works and in accordance with its requirements. It is the sole responsibility of the Applicant to remove any debris from the Company’s seabed at the Applicant’s cost. The Applicant agrees that any debris remaining on land owned by the Company is a trespass upon the Company land.
- (e) The Applicant is responsible for ensuring any tenants are aware of and comply with the Company’s regulations.

**2.2 License personal:**

- (a) Any license granted to the Applicant is personal and cannot be transferred.
- (b) The Applicant must advise any purchaser of the property that a license issued by the Company for the use of the waterway is not transferable. Any purchaser must make a fresh application for a license to the Company and has no authority to use any structures on the waterway or to moor a vessel on the waterway next to the property until a license is granted by the Company.

### **2.3 Mooring structures:**

- (a) *The Applicant and any predecessor may not install or erect any waterfront device or mooring structure without the written authority of the Company, which authority may be withheld, refused or revoked in the Company's absolute discretion.*
- (b) The Company wishes to ensure that all mooring structures erected on its property are kept in a safe and serviceable state of repair and in strict compliance with the Company's regulations and the Sutherland Shire Council Local Environment Plan (LEP).
- (c) The Company has sole unfettered discretion, acting reasonably and in conjunction with a qualified engineer, at the Applicant's cost, in determining if any mooring structures erected pursuant to this license are unserviceable, dangerous or in need of repair or removal.
- (d) If the Company so concludes, the Applicant must remove or carry out maintenance or repair work on the mooring structures (as the case may be) in accordance with any notice issued by the Company.
- (e) If the Applicant does not attend to the removal or maintenance or repair works required hereunder then the Company shall be entitled to issue invoices for an amount determined by the Board of Directors in July of each year until the required maintenance or repair works are complete or the waterfront structures are removed. Invoices issued are with respect to licensing only and will not cover the cost of any repairs or maintenance, removal and storage or disposal.
- (f) The Applicant cannot alter the position of the mooring structures from that approved by the Company without the Company's written consent and necessary access permits.
- (g) Electrical Power and Water Supply connected to waterfront devices must comply with Section 12.8 of the Company's *Document 1016 Standards and Regulations for Waterfront Devices in Sylvania Waters*. An Electrical Compliance Statement from a licensed electrician must also be supplied by the Applicant clearly stating that electric power to the waterfront devices is installed in compliance with the following Standards; *AS/NZS 3000: 2018 -- Electrical Installations Wiring Rules AS/NZS 3004.2:2014 – Electrical Installations – Marinas and boats*

### **2.4 The seawall erected on the property at its boundary with the waterway:**

- (a) To protect the waterway and Company Land generally within the Sylvania Waterway Estate, the Company will not allow the use of the waterway by the Applicant if the seawall on the property is in a state which is a danger to the waterway through collapse, release of material and debris into the waterway or the like.
- (b) If the Company believes that the seawall on the property is in a state of disrepair which is a danger to the waterway, it may serve a notice on the Applicant requiring production of a report from a sea wall engineer, at the Applicants cost, certifying the structural stability of the seawall and, if works are required, specifying those works. The Applicant will be given six (6) weeks to produce that structural report.
- (c) If the structural report recommends work to be carried out on the seawall to preserve its integrity, that work must be undertaken by the Applicant in a proper and workmanlike fashion within four (4) months of the date of the certificate and the Company must provide written consent approving the repairs.
- (d) Following completion of the work on the seawall, the Applicant must supply to the Company a further report from the engineer who provided the structural report certifying that the work has been completed in a proper and workmanlike fashion.
- (e) If a seawall is required to be erected on/over the Company's land, then a separate agreement and easement is required. This agreement and easement is only available to members.
- (f) If the Applicant does not attend to the removal of the offending device or repair works required hereunder then the Company shall be entitled to issue invoices for an amount determined by the Board of Directors in July of each year until the required removal or repair works are complete. Invoices issued are with respect to licensing only and will not cover the

cost of any repairs.

- (g) If the Company determines that a waterfront device is unsafe or in such a state of disrepair as to pose a danger to the waterway and the community, and the Applicant does not remove the offending waterfront device within a reasonable period of time, the Company may remove the offending device and dispose of it (at the Applicant's expense on a full indemnity basis).

## **2.5 Indemnity**

- (a) The Applicant indemnifies the Company to the fullest extent permitted by law against any and all claims, costs, demands of any nature arising from an accident or other occurrence involving:
- i. The Company waterway within Lot 1 in Deposited Plan 615171.
  - ii. The mooring structures the subject of this license application;
  - iii. Any vessel moored on the waterway adjacent to the property;
  - iv. The use of any vessel by the Applicant within the waterway;
  - v. Any collapse or defect in the seawall on the property;
  - vi. Any mooring structure, slipway or vessel encroaching on the waterway without the consent of the Company; and
  - vii. Any mooring structure which falls into a state of disrepair and is removed and disposed of by the Company following failure by the Applicant to attend to such works.
- (b) If so required by the Company, the Applicant must produce evidence of insurance covering the risks referred to in this clause.
- (c) The Applicant also fully indemnifies the Company in relation to any notice, fine, or other demand issued by the Sutherland Shire Council in respect of the Applicant's non-compliant waterfront devices.

## **2.6 Vesting of mooring structures in the Company:**

- (a) The Applicant has no right to erect or use any mooring structures on the waterway except pursuant to a license granted by the Company.
- (b) Upon the termination of the license for any reason, the mooring structures are automatically vested in the Company and the Company may take steps to remove those structures if it deems fit at the property Owner's cost.
- (c) Any mooring structures approved by a license with the Applicant may be the subject of a new license granted to a purchaser of the property upon appropriate application.

## **2.7 Restrictions on the use of the property:**

- (a) The Applicant agrees that they will not use the property in any of the following ways:
- i. Apply for or allow more than one dwelling to be erected or remain on the property whether constructed for the Applicant or a predecessor in title. No other habitable building structure of any nature, whether attached or detached shall be applied to be approved, or constructed with or without approval, which the Applicant agrees and accepts is enforceable and reasonable;
  - ii. The property shall not be used for other than residential purposes;
  - iii. The property shall not be used for short term rental accommodation (e.g. AirBNB, Booking.com, Homestay and the like), renting rooms, a boarding house, a lodging house, a private hotel, motel or similar.
  - iv. The property shall not be used for commercial purposes, commercial amusement or adult services.
  - v. The main wall of any dwelling or structure on the property shall not be closer than 9.144m to the property boundary;
  - vi. No building or structure shall be erected within 9.144m of the seawall boundary without the consent of SWL and no structure shall be higher than the adjacent fence height to a

- maximum of 1.2m unless it is a pool safety fence.
- vii. No waterfront sea wall, concrete capping beam, concrete anchor or tie rods on the property shall be interfered with in any way.
  - viii. No excavation shall be made below the yard level without a prior search to determine the location of sea wall supports (e.g. tie rods).
  - ix. No fence shall be erected on the property between the water boundary and the nearest building line of a dwelling unless it is of a see-through type not more than 1.2m in height or as required to comply with local council pool fence codes.
  - x. No colorbond fencing is permitted within 9.144m of the set back from the waterfront boundary.
  - xi. All vegetation, hedging, or plantation on the property boundary must not exceed the boundary fence height.
  - xii. Any part of the fence above 1.2m must be constructed in material which does not impede the views available to your neighbour.
- (b) The Applicant must comply with the terms of the above restrictive matters affecting the property.
- I. With the exception of a breach pursuant to clause 2.7(a)(III), the Applicant must remedy any breach of the restrictions within one (1) month of being directed to do so by a notice issued by the Company.
  - II. In the case of a breach pursuant to clause 2.7(a)(III), the Applicant must remedy such breach of the restrictions within forty-eight (48) hours of being directed to do so by a notice issued by the Company.
- (c) If the Applicant does not remedy a breach within the timeframes required by this clause 2.7, then the Company shall be entitled to:
- I. issue invoices for an amount determined by the Board of Directors in July of each year; and
  - II. terminate the Applicant's waterfront license until the breach is remediated;
  - III. prosecute its rights under this agreement for specific performance and any other remedy available to it at law or in equity.

## **2.8 Identification marking on mooring structures:**

The Company may display an identification number on any mooring structures within the waterway.

## **2.9 License fee:**

- (a) The Applicant, shareholder, or member of the Company, must pay a license fee determined by the Company and advised to them annually in advance.
- (b) The Company reserves the right to vary the license fee from time to time.
- (c) Applicant A shareholder can apply for an exemption on further annual license fees provided all regulations are compliant at the waterfront property.
- (d) A license is issued as acceptance of the Conditions for Waterfront Licensing by the Applicant.
- (e) A license can only apply to compliant waterfront facilities or devices.

## **2.10 Regulation and procedures for mooring structures:**

- (a) The Applicant agrees that the Company may publish regulations and procedures for the installation and use of mooring structures from time to time.
- (b) The Company will produce to the Applicant with the formal grant of license a copy of the most up to date publication.
- (c) If there is any inconsistency between these terms of the license and the regulations, these terms will prevail.
- (d) The Applicant must comply with all relevant terms of the regulations and procedures issued by

- the Company.
- (e) The Company may serve a notice on the Applicant specifying any breach of the regulations and procedures and requiring that breach to be remedied within such reasonable time as stated in the notice.
  - (f) The Applicant should not assume that the existing waterfront devices comply with current waterfront device regulations and should request a Conditions for Waterfront Licensing report from the Company to determine their status.

#### **2.11 Termination by the Applicant:**

- (a) The Applicant may terminate any license granted by a notice in writing to the Company of one (1) month.
- (b) Upon termination of the license, the Applicant must remove all mooring structures erected pursuant to the license and cease to moor any vessel on the waterway adjacent to the property unless a fresh license agreement is entered into in relation to the property.

#### **2.12 Termination by the Company:**

The Company may terminate the license agreement:

- (a) Upon a transfer of the property by the applicant;
- (b) If the Applicant fails to repair any mooring structures as required by the Company pursuant to clause 2.3;
- (c) If the Applicant fails to remove mooring structures adjacent to the property which are not the subject of a license with the Company when required to do so by the Company;
- (d) If the Applicant erects mooring structures within the waterway without obtaining approval to do so from the Company;
- (e) If the Applicant moors more than one vessel on the waterway adjacent to the property;
- (f) If the Applicant moors an unapproved vessel on the waterway adjacent to the property;
- (g) If the information contained in this application is incorrect and is not corrected within one (1) month of the Applicant being required to do so by the Company;
- (h) If the Applicant fails to pay any license fee specified in the license agreement or as advised to the Applicant by the Company within one (1) month of the due date;
- (i) If the Applicant fails to produce certification from a structural engineer in relation to the seawall on the property when so required by the Company in accordance with clause 2.4(b);
- (j) If the Applicant fails to carry out repairs to a defective seawall on the property specified in a structural engineer's report in accordance with clause 2.4(c);
- (k) If the Applicant fails to produce the engineer's report required by clause 2.4(d);
- (l) If the Applicant fails to remedy any breach of the restrictions in accordance with a notice issued by the Company under clause 2.7(c); or
- (m) If the Applicant fails to remedy a breach of the regulations and procedures for the installation and use of mooring structures within the period specified in a notice issued by the Company pursuant to clause 2.10(e).
- (n) if the Applicant fails to comply with any condition of this agreement.

**3.** Share Certificates will be available for collection at the introduction to Sylvania Waters new member meeting.

**4.** Waterfront licenses will be issued once all items on the Conditions of Waterfront Licensing report are completed.

5. A waterfront license is personal to the Applicant (once issued) and cannot be sub-licensed, assigned, charged or the subject of any other like transaction. The rights hereby conferred are contractual only and do not create any estate or interest in or over the Company’s land or any part thereof and the rights of the Applicant shall be those of a licensee only.
  
6. The Owner(s) agrees that any unpaid fees owed to the Company or expenses paid by the Company on the Owners behalf under this agreement creates a caveatable interest over the Owners land herein described creating a charge in favour of the Company. The Owner consents to the Company registering a caveat upon the title to the Owners land for unpaid fees.

Any questions in respect of this application should be directed to Simpson Freed Lawyers (via the details on page 1).

*I confirm that I have sighted, read and understood the Sylvania Waterways Ltd Conditions of Waterfront Licensing report, the items noted, and my responsibility to address all items required of the new Owner in order to obtain a waterfront license.*

Signed by Share Applicant / Property Owner..... Date .....

Signed by Share Applicant / Property Owner..... Date .....

*(If a company, the application must be signed pursuant to s127 of the Corporations Act)*

\_\_\_\_\_  
Signed, as witness, by a Solicitor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Solicitor