

MESSAGE FROM THE BOARD

Dear Kelowna Yacht Club Members,

As we approach the General Meeting on September 4, 2024, at 7:00 PM PDT (available online and in person at the Kelowna Community Theatre), we want to provide you with an essential overview of the resolutions submitted in a Requisition for General Meeting on August 1, 2024.

Critical Concerns:

1. **Resolution #1 - Conversion to a Corporation:** This special resolution proposes converting the Kelowna Yacht Club (KYC, “the Club”) from a not-for-profit society under the Societies Act of B.C. to a company under the Business Corporations Act. This fundamental shift would have significant implications:
 - **Tax Liabilities:** The conversion will trigger substantial capital gains taxes and property transfer tax liabilities, estimated up to \$15 million. This would impose a severe financial burden on the new entity and require significant contributions from members. Additionally, annual income tax based on 2023 results could be an increase from \$0 to \$324K per year.
 - **Lease Risk:** Our current lease agreements with the City of Kelowna (“City”) and the Province of B.C. (“Province”) are contingent upon our status as a not-for-profit society. Converting to a corporation would jeopardize these leases and could result in the City potentially revoking our lease, creating substantial operational risks.
2. **Resolution #2 - Membership Transferability and Access Cards:** This resolution proposes changes including allowing members to sell or transfer their memberships and increasing the number of access cards available. However:
 - **Bylaw Conflict:** Our current Bylaws do not permit the transfer of memberships or the issuance of additional access cards. Implementing these changes would require Bylaw amendments that do not align with the existing legal framework and could lead to enforcement challenges.
 - **Revenue Impact:** Allowing membership transfers could undermine the Club’s revenue model, as it would shift significant initiation fees and access benefits away from the Club’s control, potentially affecting long-term financial stability.
3. **Resolution #3 - Moorage Contract Changes:** This resolution aims to amend moorage contract terms, including slip assignments and size restrictions. However:
 - **Incompatibility with Current Policies:** Our existing moorage policies and lease agreements with the City and Province take into account considerations such as

environmental conditions, navigable water, vessel load, and best practices to maintain order and safety within the moorage basin. These proposed changes may conflict with those agreements and pose risks to operational efficiency and safety.

- **Operational Challenges:** Allowing unrestricted moorage assignments and size changes could disrupt our current moorage management practices and undermine the Club's ability to manage resources effectively.

Why These Resolutions Should be Considered Carefully:

- **Dependence on Resolution #1:** Resolutions #2 and #3 are contingent upon the passage of Resolution #1. If Resolution #1 does not pass, the proposed changes in Resolutions #2 and #3 cannot be implemented effectively due to conflicts with our existing Bylaws and operational framework.
- **Implementation Feasibility:** Even if Resolutions #2 and #3 were to pass, they face significant hurdles regarding compliance with our current Bylaws, tax implications, and potential operational disruptions.

We strongly encourage all members to review the attached documents, which include detailed analyses from our legal, tax, and municipal advisors. Your informed participation is crucial in ensuring that any decisions made are in the best interests of the Club's long-term health and stability.

Thank you for your attention to this important matter.

KYC Board of Directors

INTRODUCTION

This information package has been compiled along with the Notice of General Meeting, in the Board's fiduciary duty to inform the voting membership of the Kelowna Yacht Club of any information relevant to the resolutions put forward by the recent requisition for a general meeting submitted on August 1, 2024. The resolutions, as detailed, are to be voted on at a General Meeting, taking place on **September 4, 2024 at 7:00 PM PDT**. This meeting will be available online, or in person at the **Kelowna Community Theatre**. The resolutions broadly call for:

- Converting KYC from a not-for-profit member-funded Society under the Societies Act of B.C. to a company under the Business Corporations Act (Resolution #1)
- Allowing for private membership sale and transferability to family members, also allowing for additional access cards (Resolution #2)
- Allowing for private membership sale and rental of moorage contracts between members, elimination of boat size restrictions, and perpetual assignment of the contracted slip (Resolution #3).

Given the far-reaching implications of the resolutions, it is imperative that our members take the time to review the proposals thoroughly in advance. **Meeting attendance, as well as your participation with an informed vote is very strongly encouraged.**

On August 1st, the Board received a requisition from member Mr. Daniel Clozza containing resolutions that significantly alter the structure and treatment of the Club, along with your rights and benefits as a member. The ideas presented by the now-formalized resolutions were previously presented to the Board by Mr. Clozza, though no language or specific details of the general ideas were available at the time of presentation. Upon initial review, it was the view of the Board that the broad ideas discussed presented an irreconcilable divergence not only from our present structuring as a not-for-profit under the Societies Act of B.C., but from the spirit of the Club and our underlying mission statement. As such, the ideas did not carry Board support, and no further action was taken to assist with their implementation. In absence of Board support, Club Bylaws outline procedures for member resolutions, which calls for the signed support of a minimum of 10% of voting Members in good standing. In addition, the Bylaws, in tandem with the Societies Act, also outline provisions enabling access of the member roster with restrictions as follows:

As a member in good standing of our KYC not-for-profit society within BC, you have a right to access the register of members for the following reasons:

- (a) the requisitioning or calling of a general meeting under section 75 of the Societies Act of B.C.,*
- (b) the submission of a proposal under section 81 of the Societies Act of B.C.,*
- (c) the calling of a general meeting under section 138 of the Societies Act of B.C., or*
- (d) an effort to influence the voting of members.*

The Board has received and acknowledged numerous complaints over the disclosure of member contact details, as well as the associated communications from the proposing member and their associates. While our operations team was assured that the reason for Mr. Clozza's roster access request was aligned with the reasons outlined, the Board remains concerned that the resolution language appears to have not existed at the time of roster request or during initial membership outreach. Further, it quickly became apparent that the roster had been shared with parties external to the Club. The potential member roster misuse is presently under separate investigation, with findings to be evaluated independently of these resolutions.

It had always been the intent of the Board to address each of the initiatives presented before membership, though this was not possible as the proposed resolution details were previously unavailable. Further, litigation initiated by the proposing member imposed a greater level of legal review required on any membership communication on the matter. Since receiving the formalized resolutions, the Board has sought and received reviews from third-party legal, tax, governance, and municipal consults that reaffirm that the resolutions are unintelligible in the context of our Club, our covenants, and agreements. Regardless of our view and in absence of Board support, the requisition submitted on August 1st did contain the required 10% of membership signatures to call a General Meeting, and our Bylaws provide a

framework and procedure for member evaluation that now must be followed, inclusive of a vote on each resolution.

It's important to understand that while any resolution may pass membership vote, whether it can be implemented is another matter entirely. After rigorous consult, the view of the Board is that under best interpretation, all three resolutions carry implications that directly prevent implementation, or would otherwise call for the full dissolution of the Club in its present form as a not-for-profit society. A resolution that obtains the requisite number of votes to pass in accordance with its terms but is incapable of being implemented due to a conflict with the Club's Bylaws is a non-compliant resolution and will result in an "irregularity" under the Societies Act. In such circumstances, a society, a director, or a member may petition the Court to quash a non-compliant resolution. As such, we have compiled all pertinent information on each resolution with findings from our third-party reviews, as well as general Board and operations team commentary for your urgent review in advance of the September 4th General Meeting.

Should one or all of the three resolutions pass, there will be substantial work to be done, in the way of addressing current Bylaws, regulations, and policies as all previous agreements and contractual obligations with the KYC as a society would be rendered null and void. You also need to be aware that the City's position is that the motions contemplated in the Requisition for a General Meeting are not consistent with the existing lease agreement in place between the City and the Club. More particularly, the current lease / sublease is between the City and Kelowna Yacht Club as a society incorporated under the B.C. Societies Act, and the City further leases from the Province of B.C. Any changes to our structure and operations would fall under Provincial review and give the City the right to revoke our lease in addition to a right of first refusal on the land. These are significant hurdles.

We would like to thank all of our members for taking the time to carefully review all of your options.

Third-Party Review

The Board has engaged third-party consultation to review these resolutions and highlight the implications of each. Our consult sources are as follows:

- **Tax:** Appointed Auditor BDO Canada LLP
- **Legal:** Farris LLP
- **Municipal:** City of Kelowna
- **Governance Consultant:** Ozone Advisory Group Inc.

SPECIAL RESOLUTION #1:

2/3 of the Vote Required to Pass

The special resolution is put forward as follows:

“PASSING A SPECIAL RESOLUTION OF THE MEMBERS OF THE SOCIETY to convert the Society from a member-funded society to a company under the Business Corporations Act, SBC 2002 Chapter 57 (the “Act”), pursuant to Section 267.2 of the Act.”

Board Review

While the following two resolutions call for amendments to Bylaws of a not-for-profit, member-funded society under the B.C. Societies Act, this particular resolution would seek to wind up our Society structure in favour of an incorporated structure, with membership interest represented by transferable ownership shares in the company. To confirm, this conversion from a society to a corporation would render the following two resolutions calling for Society membership alterations obsolete. **In the interest of preserving due process through the membership vote on September 4th, this resolution will be the first reviewed as it dictates both the relevance and legal jurisdiction of the other two resolutions.** While provisions exist within the Societies Act to allow for corporate conversion, our review has concluded that the satisfactory conditions for such conversion do not exist for our present circumstances. Further, our tax review conducted by BDO Canada LLP (Appendix C) suggests that the tax implications of such a resolution would recognize immense capital gains payable by the Society upon windup, in addition to the required new corporation shareholder capital call to fund the purchase of Club assets. All previous, favourable-rate debt contracts would have to be renegotiated with the new corporation directors, as well as all land and water leases negotiated with the City and in turn, the Province of BC.

This resolution does not comply with Sec.267.2(2) of the *Business Corporations Act SBC 2002* which states:

- (2)A member-funded society may apply to convert itself into a company under this Act if*
- (a)it is authorized to do so by a special resolution that*
 - (i)adopts, in substitution for the constitution and bylaws of the member-funded society,*
 - (A)a notice of articles that reflects the information that will apply to the converted company on its recognition, and*
 - (B) subject to paragraph (b), articles that comply with section 12 (1) and (2) and, if the converted company is to be*
 - (I) a community contribution company, section 51.92, or*
 - (II) a benefit company, section 51.992, and*

The resolution, as proposed, does not call for a conversion to a community contribution company or to a benefit company and as such, the conversion provisions would not apply. Pursuing conversion to a corporate structure would trigger a deemed disposition upon Society dissolution of all gains accrued by the Society, to be payable in tandem with the asset purchase obligations of any new corporation.

RESOLUTION #2: 51% of Vote Required to Pass

The resolution is put forward as follows:

“PASSING A RESOLUTION OF THE MEMBERS OF THE SOCIETY to amend the Society’s form of membership contract with Members and, at each Member’s option, to amend their respective existing membership contract with the Society, to allow:

- a. Existing good standing Members of the Society to sell or transfer their membership in the Society to a new or existing member subject to membership vetting procedures and applicable fees;*
- b. The Society to have a first right of refusal to purchase the membership from any Member who wishes to sell their membership;*
- c. Members to transfer their membership to an immediate family member whether as a gift during the Member’s lifetime or upon the Member’s death subject to applicable fees;*
- d. Each Member to have two annual access club membership access cards at no cost and allow each Member to request supplemental club membership access cards for immediate family members over the age of 19 at a cost of \$100 per annum”.*

Board Review

The direct responses to each subsection of this resolution are as follows:

Section (a):

- Our members do not have a membership contract and therefore there is no contract to amend.
- Unless the bylaws provide otherwise, membership in a society is not transferable as per subparagraph 67(4) of the B.C. Societies Act. Our Bylaws do not presently contain a transferability provision.
- The resolution presents the potential for loss of membership pricing control, which is presently linked to the Club’s accumulative equity. Sale prices above membership value carry tax implications for the selling member and more importantly present a member benefit unallowable under the Societies Act. Sale prices below membership value would allow purchasers to access significant accumulated equity in the Club, accomplished by member funding, at a discount.
- As the beneficial interest in the club represents equity-like ownership in KYC, this resolution is not possible without the passing of Resolution 1, which would call for the dissolution of the Society and the establishment of a new corporation with members as shareholders to buy out the Club assets. As such, passing this resolution through an amendment to any Society provision is moot.

Section (b):

- This effectively converts a substantial revenue source for the Club to a member financial benefit by exchanging new member initiation fees for private party compensation. The right of first refusal simply allows the Club to become the purchaser, to effectively resell the membership vacancy at applicable rates. The potential revenue loss is substantial and amounts to over \$700K annually, which is integral to ongoing Club operations, facility and basin maintenance and upgrades, and the funding of our long-term and capital reserves. The collection of transfer fees as presented would do little to offset the initiation fee revenue, as would any marginal loss or gain on Club purchase value vs. resale value.

Section (c):

- Currently this is only applicable to the member's spouse upon death at no fee. A bylaw with specific wording would have to be created to allow additional family transfers and this is possible under existing society structure.
- Members' children already benefit from graduated programs to become full members with due process, while preserving Club revenue over time.

Section (d):

- This would require changes to the Code of Conduct and Regulations, which is also possible under our present structure.
- Initial estimates indicate that this change would permit access to approximately 4,000 additional people to the moorage basin annually.
- The increased risk of key-card sharing, loss, and otherwise unauthorized access heightens already existing concerns over moorage basin security and access.
- The additional access equates to additional participants in the Club's accumulated equity, without membership dues from the additional family members contributing to ongoing maintenance and improvement. In short, new key-card holders would be beneficiaries of Club benefits that full members have spent years building up through initiation and annual dues, with no material cost or vested interest.

RESOLUTION #3:

51% of Vote Required to Pass

The resolution is put forward as follows:

“PASSING A RESOLUTION OF THE MEMBERS OF THE SOCIETY to amend the Society's form of moorage contract with Members and, at each Member's option, to amend their respective existing moorage contract with the Society to allow:

- a. Assignment of moorage slip to continue without change so long as the Society has a valid and existing foreshore lease with the applicable governmental authority;*

- b. *Rights under the moorage contracts to be transferred or sold to other members. It can also form part of an estate or otherwise be sold in conjunction with the sale of a Member's membership;*
- c. *No requirement or restrictions on the size of the boat they keep in their moorage slip except for oversized boats and boats that present navigational hazard;*
- d. *Members to rent their moorage slip to another Member provided that the rental fee shall not exceed 120% of their annual cost of moorage charged by the Society;*
- e. *The Society to reserve the right to reconfigure the moorage basin and move any Member in the event of such moorage reconfiguration or due to an environmental or other catastrophic event”.*

Board Review

Presently, the Crown Lease (Appendix G) states that:

7.1 You must not sub-lease, assign, mortgage or transfer this agreement or permit any person to use or occupy the land without prior written consent, which consent we may withhold.

7.2 For the purpose of section 7.1, if you are a corporation, a change in control (as that term is defined in subsection 2(3) of the Business Corporations Act will be deemed to be a transfer of this agreement.

The direct responses to each subsection of this resolution are as follows:

Section (a):

- This is void after reading section (e). If section (e) dictates that the Society reserves the right to reconfigure the moorage basin and move any Member due to reconfiguration, then assignment of a moorage slip in perpetuity is not possible.
- Appendix F and G of this document outline the City's water and land lease from the Province of B.C., and in turn, the City's sublease agreement and purchase and sale terms for the Club's usage and access. Appendix B of this document outlines the City's position that they would be unwilling and unable to renew the leases expiring in 2041 should the Club's operations materially change, even without conversion to a company. The leases presently enjoy non-market rental rates due to our not-for-profit status.

Section (b):

- As with membership transferability, rights of transfer or sale of the moorage contract along with membership would stifle any turnover or initiation fee income to fund capital requirements and to maintain the facility.
- As with membership transferability, this resolution presents the potential for loss of moorage pricing control and is unallowable within the Societies Act.
- As with membership transferability, the beneficial interest in the moorage slip represents equity-like ownership in KYC, and this resolution is not possible without the passing of Resolution 1, which would call for the dissolution of the Society and the establishment of a new corporation

with members as shareholders to buy out the Club assets. As such, passing this resolution through an amendment to any society provision is moot.

Section (c):

- The resolution appears to be self-contradictory, as the size restrictions placed on each slip are in place to avoid oversized boats that would present a navigational hazard and threat to the safety and security of boats navigating the basin. Putting a resolution in place to void size restrictions while preserving the navigational safety restrictions of those same size restrictions is policy that supersedes itself. All existing requirements or restrictions on the size of vessels are based on maintaining navigation, safe docking, and take into account loads on dock systems and distribution of services.

Section (d):

- Subletting is already allowable within our current structure and policies.

Section (e):

- This is current practice, and replaces section (a), as outlined in Appendix D Section 8.0 (Sublets).

Conclusions

The resolutions, as proposed, present substantial threats to the Club as a going concern, particularly in the event that Resolution 1 passes. The assumptions that have driven all previous strategic and capital reserve planning for the maintenance, upgrades, and improvements to the Club as a society would no longer hold any relevancy to a corporate structure, with all debts, leases, and City partnerships to be renegotiated. A conservative estimation of capital gains and associated taxes recognized upon dissolution of the Society would amount to \$15 million. Additionally, upon conversion, the receiving corporation would exist as a taxable entity, with anticipated tax liabilities of \$270k on every \$1M in earned income. Simultaneously, Resolutions 2 and 3 pose a threat to key revenue drivers that the Society and Club operations rely upon, even under our present not-for-profit and nontaxable status.

Under stringent review, it is with this background and context that the Board of Directors for the Kelowna Yacht Club calls for your urgent attention to the resolutions proposed, and your voting participation in the upcoming **General Meeting of September 4th, 2024**.

APPENDICES

Appendix A – [Resolutions as Presented with Signatures of Membership](#)

Appendix B – [City of Kelowna position](#)

Appendix C – [BDO Tax Treatment position](#)

Appendix D – [Club Code of Conduct and Regulations](#)

Appendix E – [Societies Act of B.C.](#)

Appendix F – [City and KYC Purchase and Sale Agreement](#)

Appendix G – [Provincial Crown Lease - City Sublease and KYC Water Lease](#)

To access the documents, you must log into your Member account online. The documents provided are intended solely for access by Kelowna Yacht Club Members. Unauthorized distribution, sharing, or further circulation of these documents, except to professional advisors and parties who are under confidentiality obligations, is strictly prohibited.