



Information for Members Regarding Marina Funding Resolutions

A. INTRODUCTION & BACKGROUND

1. The BYS Marina is the jewel in the crown of the facilities we enjoy as members of BYS. The Clubhouse on its own is a magnificent enough facility, but add the Marina, with its location, size and facilities, the effect is to lift the Clubhouse and surrounds we enjoy at BYS to a position that is surely unique and the envy of many, particularly in the southern part of the Bay.
2. The Marina has performed well over its life to date and continues to do so. The Marina was constructed in two stages. The first, comprising 171 berths, was built in 2000. The second was built in 2015 and comprised an additional 154 berths and the hardstand.
3. At present, the Marina is comprised of 325 berths, of which:
 - (a) 224 are licensed to private licensees (all of whom are required to be members of BYS) with terms of varying length, but none of which extend beyond 2041 (**Berth Licensees**);
 - (b) 38 are held by the Club for short-term rental; and
 - (c) 63 are held by the Club for Club and community purposes.
4. The Marina is located in a harsh environment. Climate change and rising sea levels will also have and will continue to have a detrimental effect on the Marina infrastructure. Operating, maintaining and repairing the Marina, complying with the Operational Environmental Management Plan (**OEMP**) (which also involves the dredging and relocation of the sand build-up in the area) required by our Lease is expensive.
5. The Marina Committee has been operating a repair and maintenance program in response to the various infrastructure failures and end of service life events observed. Generally, these have been funded by the annual repair and maintenance budget or in the case of some larger items, the Capital Repairs and Maintenance Fund (**CRM Fund**) or by the Club directly.
6. As a condition of its lease of the area on which the Marina is located, BYS is required to conduct a condition audit report. The most recent report was prepared by AW Maritime in October 2023 (**AWM Report**). That report provides BYS with a short, medium and long-term outlook of a large part of the likely costs associated with future capital expenditure on the Marina over its expected service life.
7. The Marina Committee has considered the AWM Report in detail. On the basis of that report, and BYS expertise in relation to the Marina, the Marina Committee estimates that we are facing costs of approximately \$3 million in the next three years for a range of projects, including through-rod replacement and replacement of a number of damaged piles. Some larger infrastructure elements are also now approaching the end of their service life. The process now requires some remediation works and a formal capital replacement program to address the ageing of the infrastructure and to provide an accurate outlook for the future funding requirements.
8. Sand management within the Marina lease area is also an ongoing OEMP compliance requirement. Under current marina lease obligations this must continue. As this work is part of the ongoing operational maintenance of the marina, funding for sand management has been, and will continue to be,



borne by the Berth Licensees and the Club. For member reference, sand management when conducted on a periodic basis, typically costs approximately \$150,000 – \$200,000.

9. Contributions to the CRM Fund by Berth Licensees and the Club are currently averaging \$150,000 per annum. Over the past 20 or so years Berth Licensees have contributed approximately \$1.8 million to the CRM Fund, of which approximately \$1.2 million has been spent and \$0.6 million is currently the balance of the CRM Fund. The CRM Fund continues to accumulate at a rate in excess of \$100,000 per annum.
10. The cost of maintaining the Marina is substantial and far greater than what was originally contemplated in the early years of its operation.
11. Membership approval is sought to undertake the remediation expenditure and the capital program in the outlook period.

B. SHARING OF COSTS

12. By their licence, Berth Licensees are required to pay an annual levy, known as **Variable Outgoings**, which comprises:

"all costs, charges, rent, fees, expenses, utilities, municipal charges and other outgoings paid or payable, charged or chargeable or otherwise incurred or a future provision being made by [BYS] concerning the occupation, management, supervision, cleaning, lighting, painting, operating, maintenance, repairs, replacements and security of [the Marina] or for the protection of the environment in the vicinity of [the Marina], and without limiting the generality of the above include:

- (a) maintenance and repairs to [the Marina], including forward contributions to a Capital Repairs and Maintenance Fund for this purpose;*
- (b) sand by-passing and other works of an environmental nature relating to or due to the presence of [the Marina], including forward contributions to a Capital Repairs and Maintenance Fund for this purpose;*
- (c) insurance premiums, including for public liability, personal injury, theft, damage or loss to property, common law, statutory liability and other risk insurance, breakdown insurance on the plant and machinery and any other insurance effected by the Licensor at its discretion against Liabilities for any risk concerning [the Marina];*
- (d) provision and maintenance of fire prevention control and suppression systems in [the Marina];*
- (e) the disposal of waste and garbage;*
- (f) occupation, administration, management and operation of [the Marina];*
- (g) the supply of fresh water and power;*
- (h) compliance with all relevant legal requirements, including the Lease and any planning or other permits for the time being applicable to [the Marina]; and*
- (i) any other outgoings or expenditure properly incurred by the Licensor in the operation of [the Marina]"*.

13. The CRM Fund is:

*"a fund held and managed by [BYS] from funds contributed by [BYS] itself and from forward contributions to **Variable Outgoings** for future capital repairs, maintenance and replacement of components of [the Marina], sand by-passing and other works of an environmental nature..."*

14. BYS contributes to Variable Outgoings in accordance with the proportion of berths held by it, save for those allocated to the Club's operations and those allocated to community purposes. Thus, BYS contributes approximately 29% of Variable Outgoings (as a holder of 100 berths).



15. There has been some discussion as to the extent to which the above clauses in the Berth Licences impose liability for capital repairs, maintenance and replacement of components between the Berth Licensees and the Club.
16. A Variable Outgoings figure that includes the anticipated expenditure on capital repairs, maintenance and replacement of components required to keep the Marina in a safe operating condition would make the cost of the license commercially unviable. By not maintaining the infrastructure adequately it will devalue the berth licenses and the Marina due to the rising capital repairs and replacement costs as the Marina ages.

C. CURRENT POSITION

17. When considering how to manage capital repairs and maintenance of an asset like the Marina, at its simplest, there is a choice to be made. Does the Club spend only what is required to keep the Marina operating, accepting that once it reaches its end of life the Marina will be demolished and rebuilt, or does the Club engage in a program of continuous capital repairs, maintenance and replacement of components such that its expected life continues for a far longer period than currently estimated?
18. The Marina Committee, with the full support of the Executive Committee, has determined that the correct approach in managing the Marina is the development of a program of continuous capital repairs, maintenance and replacement of components designed to keep the Marina operating at a high level of safety and amenity for the Club.
19. Minimal replacement and repairs are a recipe for a deteriorating Marina that will most likely lead to the need for complete demolition and replacement of the Marina at the end of its service life – currently estimated to be around the 2040's. It is worth bearing in mind that the estimated cost of demolishing and rebuilding the Marina at that time is likely to be in the order of \$100 million (estimated by AWM survey) to be required at around 2041.
20. The Club and the Marina will clearly be far better off by engaging in a program of continuous repairs and replacements in a structured and managed way that smooths out the expenditure and extends the life of the marina far beyond the 2040's.
21. Analysis by the Audit & Financial Risk Committee (**A&FR**) suggests that BYS has the capacity to fund the current \$3m remediation works discussed here and the ongoing capital repairs and replacement program as detailed by the AW Maritime audit.
22. A&FR has also confirmed that the costs of the capital replacement and repair program extending beyond greater than 3 to 5 years can be met from the expected income from general Club revenue including, where necessary and appropriate, future berth license renewals or sales, without adversely affecting Club operations.

D. THE WAY FORWARD

23. In seeking to find a balance between the Berth Licensees and the Club in relation to the cost of those items that ought reasonably and fairly be borne by the Club vs those items that ought reasonably and fairly be borne by the Berth Licensees, it is the present intention of the Executive Committee that Marina capital repairs, maintenance and replacement of components be apportioned as follows:



- (a) With the exception of those items in paragraph (b), all expenses as are currently included in the definition of **Variable Outgoings**, including:
- (i) sand bypassing and other works of an environmental nature (which includes works required by the Operational Environment Management Plan); and
 - (ii) expenditure that reflects fair wear and tear relating to the use of the berths, shall continue to be borne by Berth Licensees.
- (b) BYS will pay for capital repairs, maintenance and replacement of components in respect of the Marina, except for expenditure that reflects fair wear and tear that relates to the use of the berths.
24. In order to give effect to that position without amending every single Berth Licence, the first resolution set out in the Notice of Meeting:
- (a) authorises the EC to approve expenditure by BYS in respect of capital repairs, maintenance and replacement of components in respect of the Marina; and
 - (b) relieves the Club of any obligation to seek recovery from the Berth Licensees in respect of such expenditure, noting that it is understood that recovery will be made where BYS considers the expense to be expenditure that reflects fair wear and tear relating to the use of the berths.
25. The second resolution seeks authorisation for the EC to expend up to \$3million over approximately the next three years on capital maintenance and repair as follows:
- (a) Pile repairs;
 - (b) New through-rods;
 - (c) Concrete repairs;
 - (d) Knee brackets;
 - (e) Replacement of handrails; and
 - (f) Other unforeseen items of a capital nature that comply with the intent of the remediation program.
26. It should be noted that nothing proposed diminishes or increases the Club's existing obligation to contribute to Variable Outgoings in accordance with the proportion of berths held by it (currently 100 berths of a of total 344 berths excluding those used for Club operations and those allocated to community purposes).
27. In accordance with Rule 23.5.3, A&FR has reviewed the above proposed expenditure and has recommended it to the Executive Committee.
28. The Executive Committee thanks the Marina and the Audit & Financial Risk Committees for their work in connection with this complex and important proposal, and unanimously recommends its approval by Members.