



# DOVEY YACHT CLUB

The Wharf, Aberdyfi, Gwynedd, LL35 0ED Tel: 01654 767607

**Minutes of the  
EXTRAORDINARY GENERAL MEETING  
Held in the Club House Aberdyfi on Friday 31<sup>st</sup> July 2015**

**Present.** Commodore Robert Usher and 27 full members and 1 Social Member.

**Apologies for absence** received from Robert Longworth, Meryl Gover, Tim Brown, Phil Morgan, Robert Gillespie, John Dennett, David Taylor, Betty Gillespie, Mr and Mrs J Gould

The Commodore Robert Usher opened the meeting. He advised members that this was single item agenda to consider the proposal

“To change the status of the club to a Company limited by Guarantee. The Club is to be known as **DOVEY YACHT CLUB / CLWB HWYLIO DYFI**”

The Proposal is set out in full at the end of these minutes.

He detailed the way the meeting was to be conducted in accordance with the strict Companies Act regulations. He then invited Michael Blamire-Brown to make the proposal.

Michael Blamire – Brown said :

“Mr Commodore – I wish to propose the resolution before the meeting which (is fully set out in the Prospectus document) and which if passed will authorise the transfer of DYC to the DYC Company which is called Dovey Yacht Club / Clwb Hwyllo Dyfi”.

Back in April you asked me if I could assist a small sub-committee consisting of yourself, David Inman, Des George and Steve Lister to look at the prospects of DYC achieving corporate status.

As the Club is a member of the RYA we drew on their resources and advice to Clubs on becoming incorporated. Throughout the process we have followed their guidance. These resources have proved invaluable.

First of all what does incorporation mean? The existing club is “unincorporated” meaning that it has no separate status in law. All its dealings have in theory to be through the medium of individual members so that its property – the leases of the Clubhouse and the Dinghy Park are held not in the name of DYC but in the name of

Trustees who undertake the ultimate responsibility on behalf of us all for payment of the rent and observing the terms of the leases.

Any contracts entered into have to be in the name of individual members of the Committee who contract on behalf of all members.

Although the Club is insured against likely third party claims, it is individual members of the Committee who are on the receiving end.

Incorporation involves the creation of a separate legal entity – a corporation - which is separate to its members so that it can hold land and enter into contracts. A company incorporated under company law.

An increasing number of sailing and yacht clubs have in recent years gone down the incorporation route and in my view the time is right for DYC to follow the trend.

The upside is that as all transactions are undertaken in the name of the company so that no individual committee member or indeed any other member of the club will have personal liability if through no fault of their own something goes wrong. All liabilities fall on the company and the maximum liability which an individual members faces is the maximum sum of £10 in the unlikely event of the Club being unable to continue and being wound up.

The downside is that there is an element of bureaucracy and formality involved in the governance of the Club. However that element is entirely manageable and in any event the Club has to satisfy the requirements of the taxman and the licensing authorities.

The Committee which you have elected will become directors of the Company. They will have duties as directors to act in the interests of the Club and its members as indeed they do at the moment but significantly they will not need to fear any personal liability for their actions undertaken in good faith.

The Company does not have shareholders or any share capital as it is what is known as a company limited by guarantee. That is the guarantee of its members for the debts of the Company which is limited to £10 for each member. There are two important documents which underpin the working of the Company, which are the articles of association and the bye laws. These documents have been published on the Clubs website for some time. They provide for the running of the Club in the same way as the existing constitution.

In general the articles and bye laws replicate as far as possible the terms of the existing constitution in that the Club must apply its income and property in promoting its objects and no capital or profits can be paid to members. If the Club is wound up any surpluses must be paid to another Club with similar objects or a CASC or the RYA.

All existing full members of the Club have a guaranteed status under the articles and will be full members of the Company which will entitle them to vote at the AGM and any other general meetings held. Members will be asked to confirm membership of the Company on renewal of subscriptions at the end of this year. Associate members will become associate members of the company but as now will be unable to vote at meetings but can of course attend and speak.

The financial implications are not significant. The treasurer has received “tax clearances” from HMRC that the incorporation will be a reconstruction and will not be a disposal which might attract tax. There will be a seamless transition on VAT and importantly HMRC is satisfied that the constitution of the Company is “CASC Compliant” – that is that the tax exemption that applies currently. The Company will however need to make a new application for CASC status.

The leases held by the trustees will need to be transferred to the Company and some costs are involved in this. It has been necessary to obtain the consent of the local Council, as the Landlord to this transfer. Apart from these costs, the costs of setting up the Company have been nominal.

If you agree the proposed resolution tonight you are giving approval to transfer the operation of the Club to the Company. That will not happen immediately but is fully expected to happen on or from 1<sup>st</sup> September this year. It is just possible that date could overrun and the resolution does give some flexibility to the directors and the Committee to revise that date should it be necessary.

The existing Club will cease to exist once the transfer has become fully effective and next year the first AGM will be held and full members will be able to elect the officers and the Committee in much the same way as now.

Incorporation will modernise the way the Club is governed and will give an important protection to all members particularly those involved in its management. I ask you to support the resolution”.

Terry Whitburn declaring that he was in favour of the resolution asked to what extent were the members guaranteeing the new company. Each member would on paying their 2016 subscription become a shareholder having a liability of £10 in the event of a winding up of the Club.

Andrew Scott declaring that he was in favour of the resolution asked where were we up to in regards to the Insurance Claim? The response was that it is an on going matter that is not affected by the change of status of the Club. The insurers have confirm that the proposed change is acceptable to them.

Niki Whitburn declaring that she was in favour of the resolution asked “What are the benefits?” The response was that members should hardly notice any difference to the day to day membership of the club. The benefit is in the legal aspect and the removal of personal liability from three Trustees.

Josh Cooper seconded the proposal. He emphasized the point that it is to protect the club and its members in this increasingly litigious society.

The meeting was then adjourned to allow for a ballot to take place.

On the resumption of the meeting it was declared that the resolution had been passed.

78 votes in favour.

0 votes against

0 spoiled ballot papers.

The meeting was then told that the date chosen by the Directors for the change to the new organization was to be the 1<sup>st</sup> September 2015.

The meeting came to a conclusion at 22.15hrs

# The Resolution

1. The Club delete current Rule 15 of the Constitution and substitute therefore with immediate effect and adopt as new Rule 15 of its Constitution, the following rule:

"15. Distribution of Assets by way of Reconstruction

A proposal that the Club distribute its assets by way of a scheme of reconstruction to a limited company with similar objects to the Club and then dissolve, shall be passed if supported by two thirds or more of those members present in person or by proxy and voting at a general meeting."

2. Pursuant to new rule 15, subject to obtaining the necessary tax clearances, the Club would convey, transfer, assign and/or deliver with effect from **1<sup>st</sup> September 2015** ("the Effective Date") to **Dovey Yacht Club / Clwb Hwyllo Dyfi** ("the Company") and the Company would acquire and take over:
  - (a) all office equipment, vehicles, stationery, books, publications and other stocks, furniture, fixtures and fittings of the Club;
  - (b) the leasehold premises described in the Schedule hereto ("the Premises");
  - (c) the benefit of all subsisting contracts, commitments, engagements, orders and covenants including the right of the Company to novate the same (subject to the consent of the other parties thereto) and including all book debts due and owing to the Club;
  - (d) the cash in hand and at banks and investments in the name of or held on behalf of the Club;
  - (e) the benefit of any policies of insurance existing up to the Effective Date covering any liabilities of the Club taken out by the Club and of any claims pending thereunder;
  - (f) all intellectual property rights together with the benefit and subject to any contracts with third parties for the exploitation thereof; and
  - (g) all other (if any) assets liabilities and undertakings including the goodwill of the Club;
3. The Transfer of Undertakings (Protection of Employment) Regulations 2006 apply and accordingly the contracts of employment of all persons currently employed by the Club ("the Employees") will be transferred to the Company with effect from the Effective Date;
4. The Club shall give notice of the transfer of the assets and undertaking contemplated by this Agreement to each Employee on or before the Effective Date;
5. Completion of the transfer of assets and undertaking shall take place on the Effective Date

or at such later date as the Club and the Company may agree whereupon the Club shall:

- (a) cause to be delivered to the Company all the assets hereby agreed to be transferred which are capable of passing by delivery and a duly executed assignment of all the other assets to be transferred hereby not capable of passing by delivery;
  - (b) cause to be delivered to the Company a duly executed conveyance, transfer or assignment (in terms mutually agreed) vesting title to the Premises in the Company together with all deeds and documents relating to the title of the Club to the Premises and shall give full vacant possession of the Premises to the Company; and
6. In cases where the Club has entered into agreements or contracts with third parties on terms whereby the purported assignment or novation thereof would be a breach of or otherwise cause or entitle such third parties to terminate such agreements or contracts, the Club shall use its best endeavours to obtain the agreement of such third parties to such assignment or novation, and if that agreement is not obtained, then such agreements or contracts shall not be or be deemed to have been so assigned or novated and the same shall continue and subsist in the name of the Club but on the basis that:
- (a) the Club shall not incur any liability thereby;
  - (b) the obligations of the Club under such contract shall be performed by the Company in accordance with their respective terms;
  - (c) in consideration of such performance, the Club shall direct or procure that all payments due to it under such contracts in respect of work carried out by the Company after the Effective Date shall be paid to the Company; and
  - (d) the Club shall on behalf of the Company take such action and enforce all claims arising under such agreements or contracts against such third parties upon receiving the written request of the Company so to do together with an indemnity from it in terms reasonably satisfactory to the Club against all costs claims or losses arising or to be incurred by the Club in respect thereof;
7. The Club will warrant that with regard to the property and assets herein agreed to be transferred, all documents of title shall on being requested be produced to the Company and insofar as the title to any of the property or assets is as a result of such inspection found not to be properly vested in the Club the Club shall procure the execution of all such other documents and do or procure the doing of all such other things as may be necessary to vest the same in the Company;
8. The assets transferred in accordance with this Resolution are being transferred in their present state and no warranty, condition, term or representation, express or implied, statutory or otherwise, as to the condition, quality, accuracy, performance, merchantability or fitness for intended purpose of the said assets or the existence or extent of any third party rights or claims in relation thereto is given or assumed by the Club and all such warranties, conditions, terms and representations are excluded to the fullest extent permitted by law;
9. The Club shall take all necessary steps and co-operate fully with the Company to ensure that it obtains the full benefit of the assets and undertaking of the Club and shall execute such documents and take such other steps (or procure other necessary parties so to do) as

are reasonably necessary or appropriate for vesting in the Company all their rights and interests in such assets and undertaking; and

10. On completion of the transfer of the assets and undertaking to the Company, the Club would thereupon dissolve.

#### **The Schedule (The Premises)**

1. Premises demised to the trustees of Dovey Yacht Club under a leased dated 15 July 1991 of the club premises for a term of twenty-eight years from 1 July 1990.
2. The land demised to the trustees of Dovey Yacht Club under a leased dated 19 June 2007 of the club premises comprising the boat parking area for a term of twelve years from 1 July 2006.