KITS POINT RESIDENTS' ASSOCIATION

July 17, 2026

Via Email To:
Vancouver City Council

and

Submitted online at:
https://vancouver.ca/your-government/contact-council-public-hearing.aspx

Re : **Submission to Public Hearing July 21, 2026**
CD-1 Rezoning: 1905 Ogden Avenue
Rezoning of Hadden Park to permit a floating barge with hydrotherapy activities

Dear Mayor and Council,

I am writing further to my earlier correspondence of June 2, 2026, which has been resubmitted for consideration in this public hearing. In that letter KPRA raised issues about the requirements of the trust established under the crown grants of the lands proposed to be rezoned, and the fiduciary obligations of the City as trustee with respect to those lands.

The issues raised are issues of law and our concern at this point is to ensure that Council is obtaining the necessary legal advice. A trustee has a legal duty to seek professional advice when faced with complex decisions outside their personal expertise. That duty of care is not substituted by obtaining public comment such as at a public hearing.

In our view the terms of the trust and the obligations of the City of Vancouver as trustee do not permit it to proceed with the proposed rezoning and use. We are concerned that the staff report relied on by Council on June 2, 2026, in referring this matter to public hearing, failed in any meaningful way to consider the trust issues. If legal advice has been obtained it is not reflected in the staff report.

The key duties of trustee discussed in our earlier letter are:

1. The trustee is responsible for understanding the terms of the trust and must deal with the trust property strictly in accordance with the terms of the trust.

2. In fulfilling its duties under the express terms of the trust a trustee must do so in accordance with its fiduciary duties as trustee under the common law. It is a primary duty of a trustee that in dealing with the trust property the trustee cannot act in its own interest, or advance the interests of any person or party other than the beneficiaries of the trust. The trust must must be administered for the sole benefit of the beneficiaries under the express terms of the trust. The trustee's duty of care means that trustees must carry out their functions in a competent manner.

In this letter we offer some additional comments about these issues with the intention of assisting Council and staff in their understanding of the points previously raised and the need for legal review.

In addition we wish to highlight that trust law also requires that income from the trust property be held in trust and applied for the purposes of the trust. That issue in and of itself means the proposal to permit this commercial use cannot be used to benefit the Vancouver Maritime Museum.

A further issue that has been brought forward, of which Council should be cognizant, is that if this proposal proceeds the Vancouver Maritime Museum (VMM) may be at risk of losing its charitable registration under CRA rules. This would affect its ability to fundraise in other ways and would seem to undermine the whole purpose of what is being proposed here. Perhaps VMM has provided assurances to the City on this issue but we have seen no evidence of that.

The Record

The record shows that the purpose of the proposed rezoning is to financially support the VMM.

The Background is provided in the Staff Referral report dated May 19, 2026 (at page 3):

> "Background
> In summer 2025, the City was approached by The Vancouver Maritime Museum Society (VMM) about a partnership to locate a new sauna and spa facility on a floating barge (spa) at the Heritage Harbour Marina (marina) in Hadden Park. The proposed spa operator, HAVN Saunas Inc. (HAVN Saunas) already has an existing operation in the City of Victoria's harbour. VMM is seeking the partnership because it can provide additional funding to the museum, provide marina infrastructure upgrades, and increase waterfront activation and foot traffic for VMM.
>
> In November 2025, Council passed a motion, Buoying Up a Vibrant Vancouver, expressing its support for the VMM partnership opportunity and directed staff to support the potential addition of the spa to the marina by identifying the simplest process to enable this opportunity to move forward. In January 2026, to action the Council motion, the Director of Planning initiated this rezoning."

As noted, the proposal first came before Council at a Council meeting on November 26, 2025. Council supported the proposal and *directed staff to find the easiest way to accomplish it*:

> "THEREFORE BE IT RESOLVED
>
> > THAT Council expresses its support for the Vancouver Maritime Museum's partnership opportunity with HAVN Sauna Inc. and direct staff to work with the Vancouver Maritime Museum and HAVN to support the potential addition of a HAVN Saunas vessel and wellness experience to the Museum's leased and managed water lot and marina, by identifying the simplest process to enable this opportunity to move forward."

The reasons for support of the proposal as set forth in that Council resolution were:

> "1. Vancouver City Council is committed to supporting and enabling a vibrant Vancouver that creates a fun city and offers a diversity of activities and experiences, as well as supporting entrepreneurship, local businesses, and a strong economy;
>
> 2. Vancouver values our Cultural sector. Arts and culture are experiencing challenging economic times. While Vancouver has committed to maintaining its grant funding support for the

arts, other levels of government are not sustaining their past levels of funding support, and corporate support and contributions are also under threat;

3. The Vancouver Maritime Museum showed an operating deficit in 2024 with projections for another one in 2025. This impacts their ability to create dynamic exhibits and programming, and to represent the City's rich maritime history to locals and tourists alike;

4. Opening up pathways for cultural organizations when unique partnership opportunities arise can help support longer-term stability. The Vancouver Maritime Museum has shown exceptional progress in increasing earned revenue in recent years and has an appetite for proactive business development;

5. Vancouver is also committed to A Healthy City Strategy. Recently, Council has supported the growing interest in wellness experiences by modernizing regulations, recognizing the burst in cold plunges establishments and related offerings;

6. HAVN opened its first floating hydrotherapy facility in Victoria's Inner Harbour in 2023 reimagining a historic marine experience to connect people with the past, the sea, and themselves. HAVN reimagined and was built on a reclaimed 1943 WWII naval vessel. HAVN would like to site its second ship and wellness facility in Vancouver;

7. HAVN offers a people-centred, low-impact waterfront activation — a calm, wellness focused experience that creates healthy third spaces for our residents. The Vancouver Maritime Museum sees strong alignment in welcoming HAVN to its marina, generating a vital new revenue stream to support the Museum's sustainability while introducing a unique, restorative experience on the water that feels authentically Vancouver;

8. Introducing an innovative, low-impact wellness destination like HAVN would help strengthen the city's visitor economy while contributing to a more vibrant City. HAVN offers the type of modest, thoughtfully designed experience that supports waterfront vitality without creating significant traffic, noise, or operational impacts;

9. In addition to HAVN's Victoria location, benchmarks and successful facilities include Loyly in Helsinki, Salt in Oslo and Bota Bota in Montreal;

10. It has been years since Vancouver has welcomed a significant new tourism attraction. Having an innovator and experience like HAVN locate here will also help buoy Vancouver's visitor economy;

11. Other municipalities are finding ways to welcome new experiences and overcoming red tape to make that happen, as a result they are landing new attractions at Vancouver's expense. Losing this opportunity would mean loss of moorage revenue that would support sustaining the Vancouver Maritime Museum, advancement of Council's goals, and related benefits and improvements for the city-owned dock and the marina; and

12. This will also bolster Vancouver's existing waterfront amenities and institutions in the existing museum district in Kitsilano as one of the city's hidden gems. The Heritage Harbour marina is an ideal location on Vancouver's waterfront complementing the adjacent H.R. Macmillan Space Centre, Museum of Vancouver and new Senakw development, and is well served with an existing parking lot and water ferry service from False Creek Ferries."

Nowhere in this material explaining the Council's decision to support the proposal is there any mention of the interests of the public in their use, recreation and enjoyment of the property.

The clear purpose for the proposal is to address:

- the operating deficit of the VMM in the context of challenging economic times for cultural organizations and reductions in funding support, by creating a new revenue stream to support the Museum's sustainability

while at the same time:

- providing support for business, strengthening the economy and creating a new tourist attraction,
- not loosing the moorage revenue, and
- bolstering neighbouring amenities and institutions

In the result the City initiated a process to rezone the subject property to permit the health and wellness use of the HAVN operation. The rezoning application booklet states that the *purpose* of the rezoning is as follows :

> "The proposed changes will secure the museum in its current location through long-term financial viability to support the VMM Society's operational needs, conservation of historical collections and archives, and much needed building and site maintenance while enhancing public access to Vancouver's waterfront.
>
> VMM proposes this rezoning to expand use of Heritage Harbour as a moorage site for higher rent vessels such as commercially operated floating businesses, in particular health and wellness facilities that expand public recreation and draw visitation to the museum site. This is a unique opportunity for the VMM to increase earned revenue to cover the funding gap as operational costs continue to increase and government grants have stagnated for the last 20 years.
>
> Creating self-sustaining revenue is consistent with Council approved Arts and Culture policies. It will cover shortfalls to address deferred maintenance of the museum structures, revitalize exhibits, reimagine programming, and diversify curatorial opportunities." *(at page 5)*

and that the *rationale* of the rezoning is:

> *"The proposed rezoning from R1-1 to CD-1 would provide a land use framework that:*
>
> 1. *Aligns the existing Museum or Archives use on site with zoning, and*
>
> *2. Enables limited, complementary Beauty and Wellness Centre (Hydrotherapy) use to support the long-term funding, stewardship, and operations - securing the VMM as a civic and cultural asset." (at page 7)*

and that the *intention* of the rezoning is:

> "The proposed land-use amendments are intended to support operational continuity, increase program flexibility, and reinforce the museum's longevity. Allowing complementary wellness-oriented and recreational uses provides the necessary foundation to broaden programming potential, enable earned revenue, and ensure stable, long-term public benefit consistent with Council priorities." *(at page 8)*

Again it is clear that the primary driver for the proposal is financial in support of the VMM: the opportunity for the VMM to carry on a commercial endeavour to support operations and the conservation of historical collections and archives.

The Application Booklet also speaks to the City's own goals of finding alternative funding strategies for cultural institutions:

> "Through its strategic directions, the Culture|Shift Plan emphasizes building resilient, self-sustaining cultural organizations through investment, diversified revenue, prevention of displacement, and reducing regulatory barriers to secure cultural spaces into the future. Consistent with these Plan directions and the Vancouver Plan, the application responds to a unique partnership opportunity to address the VMM's operating deficits while strengthening its capacity to deliver dynamic programming and continue to share Vancouver's maritime history with local residents and visitors. Supporting the VMM's proactive approach to business development advances both the Culture|Shift Plan and the Vancouver Plan's goals for long-term cultural vitality and public access." (at page 9)

City staff were tasked by Council with finding the simplest process to move this forward, and to action Council's direction they initiated the rezoning process and presented the referral report dated May 19, 2026 to the June 2 meeting of Council.

That Referral Report responds to Council's direction but refers in only perfunctory ways to the trust conditions attached to the lands. It does not refer in any way to the City's obligations as trustee.

The Referral Report acknowledges that "The proposed land use change has the potential to impact park users, park amenities and park operations" *(at page 7)*. The Report identifies things that will be detrimental to the public's "use, recreation and enjoyment" which are the purposes of the trust, and then proposes conditions "that seek to minimize and mitigate some of the potential impacts to ensure the CCM park lands within this rezoning continue to provide meaningful public park space and enjoyment by the public."

The Referral Report further identifies *(section 9, page 9)* the public benefits of the proposal. While the points covered are civic concerns, none have anything to do with the use, recreation and enjoyment of the lands by the public.

The conclusion of the Referral Report is :

> **Conclusion**
>
> The proposed land uses are consistent with the Vancouver Official Development Plan. The proposed spa can provide sustained funding to the Vancouver Maritime Museum, provide marina infrastructure upgrades and increase waterfront activation and foot traffic for the museum. The General Manager of Planning, Urban Design and Sustainability recommends approval in principle of the CD-1 By-law in Appendix A subject to conditions contained in Appendix B.

Again, the recommendation to proceed wth the rezoning permitting the HAVN use has nothing about the public use for recreation and enjoyment of the lands, but is focussed on the spa business as a source of funding and foot traffic for the VMM .

Issue 1 - Is the proposed use within the terms of the trust?

In our earlier correspondence we addressed the interpretation of the stipulation contained in the crown grant that the water lots (now filled land and water lots) be held in trust for the use, recreation and enjoyment of the public. A number of case authorities were set out and I don't propose to revisit that discussion except briefly.

The case law establishes that "for the use, recreation and enjoyment of the public" means "for the use of the public for recreation and enjoyment". The word "use" is not intended to broaden the permitted uses beyond "recreation and enjoyment".

The proposed use is a health and wellness use and not a recreational use. As stated in *Victoria (City) v. Capital Region Festival Society* (1998), 1998 CanLII 6836 (BC SC), 62 B.C.L.R. (3d) 143 (S.C.), the use must be considered according to the standards of the day in which he trust was created, and in that light this type of business cannot be considered a use of the water lot for the recreation and enjoyment of the public. Contemporary standards, should they differ, will not be applied.

Further as evidenced by the record the proposed use here is a commercial use and is advanced by VMM and Council for that purpose. The purpose is profit. In *Anderson v. Victoria (City)* (1884), 1 B.C.R. (Pt. 2) 107 (S.C.) the court found that a permanent agricultural exhibit was not consistent with the trust condition that the lands be held for the use, recreation and enjoyment of the public. It was stated at page 110 that :

> "The park, *alias* the pleasure ground, is to be used for recreation and enjoyment; and therefore, I think, in no other manner; not for general purposes of profit, or utility, however great the prospect of these may be. A trustee cannot go beyond his express trust; at least, cannot do anything inconsistent with it."

The court stated that all establishments addressing themselves to profit or utility are excluded by the terms of the trust, except profit or utility from open air recreations and buildings as are ancillary to public recreations there.

This is not a case of revenues being generated from open air recreations or buildings ancillary to such public recreations. The spa use proposed is not ancillary to the public's use of the water (the water lot) in which it is to be situated. The proposed spa does not use the water, it merely takes up space in it. This kind of health and wellness use could be established anywhere in the City.

Notably the business is also not being proposed as a park use, and is not considered by the City to be within the jurisdiction of the Park Board because it is a non-park use.

The business use has been proposed for the purpose of profit for the financial support of the VMM. As such, this proposal cannot be considered a use consistent with the public trusts which govern use of all of Hadden Park and the adjoining water lot areas.

Issue 2: The City's Fiduciary Duties: Will the City be in breach of its fiduciary duties as trustee if it proceeds with this proposal by reason of using the trust assets for extraneous municipal purposes, and not to advance the trust's objectives in the interests of the beneficiaries? Will it be in breach of its fiduciary duties by failing to obtain and hold financial benefits generated by the trust property in trust for use for the purposes of the trust? Will the City be in breach of its duty of care in considering only the proposal put forward by VMM?

A trustee's holding of property for the benefit of the beneficiaries of the trust is subject to strict fiduciary obligations requiring the trustee to act in the best interests of the trust.

> "The basic function of the fiduciary concept is known: fiduciaries are obliged to abnegate all self-interest, as well as those of third parties, and focus solely on the best interests of their beneficiaries. This requires that fiduciaries not benefit themselves or third parties, whether financially or otherwise, from their positions as fiduciaries, nor confer a benefit upon third parties at the expense of their beneficiaries' interests if the latter are tangibly related to the fiduciary nature of the parties' interaction. These prohibitions are enforced by the fiduciary rules against conflicts of interest. The rule against conflicts includes both conflicts of interest and conflicts of duty, such that any combination of these two can give rise to the prohibition. The correlation to the strict duties imposed on fiduciaries is that their beneficiaries are entitled to rely upon the fiduciaries' good faith in discharging their duties without the need for this performance to be monitored."
>
> ***Understanding Fiduciary Duties and Relationship Fiduciarity*** by Leonard I. Rotman (2017) 62:4 McGill LJ 975 — (2017) 62:4 RD McGill 975 (at page 984). 2017CanLIIDocs427, https://lawjournal.mcgill.ca/article/understanding-fiduciary-duties-and-relationship-fiduciarity/

Under the proposal considered by Council in this rezoning application, the water lot area to be used for the HAVN barge business is comprised within Heritage Harbour and is licensed to VMM for the museum's purposes. The business arrangement with HAVN whereby HAVN licenses or leases space in Heritage Harbour will be made by VMM, and VMM has requested the rezoning to accommodate their proposed use for financial purposes. This will also require an amendment of the lease from the City to VMM to permit the use in the Heritage Harbour licence area.

As set out clearly in the record, none of this has come forward as a consideration of the best way to utilize the lands in the interests of the beneficiaries for the purposes of the public trust - the driver of all this is the financial difficulties of the VMM, the poor funding environment generally, the lack of willingness of the City to increase their funding (I understand that a request to the City for additional funding was recently refused) and, in the background, tourism and the economy.

The record shows that Council's decision to support the barge proposal was not made based on a consideration of the interests of the public in their use of the lands for recreation and enjoyment, but rather was driven by a desire to support the request of VMM and to financially support VMM.

Indeed when the impacts of the proposal on use of the lands and waters subject to the trust conditions are considered in the Referral Report the discussion is around "mitigating" the negative impacts on public use *(Referral Report page 7).*

In response to public concerns that the proposed barge is out of scale with the Heritage Harbour and would obstruct views for users of the park and swimming beach, reducing public enjoyment of the waterfront, staff counter that there are no applicable Council adopted policies and no protected views in that location. The absence of general civic policies around protected views in the area does not reduce the trustee's duty to consider these impacts in their consideration of how to best maintain and enhance the use of the trust land and water lots for the recreation and enjoyment of the public.

In response to public concerns about the use of the lands for primarily commercial purposes, staff counter that:

> “The proposed spa would provide financial contributions to the museum, a publicly owned facility operated by The Vancouver Maritime Museum Society, a non-profit society.” *(Staff Report page 28)*

Essentially when concerns that are within the mandate of the trust are raised they are dismissed in favour of considerations that are not. The City’s approach in the analysis has consistently been to second concerns about impacts on public use of the lands and waters for recreation and enjoyment to the financial interests of the VMM.

Even if the City thinks the barge spa business can be “fit” within the terms of the trust language itself, the fact remains that the decision to use the lands for this specific purpose has been made based on improper considerations not solely in the interests of the beneficiaries. The decision was driven by the trustee’s own municipal interest in finding alternate funding support for the VMM.

In considering, and indeed primarily focusing on, the financial interests of the Maritime Museum and the City’s own funding issues for arts and culture and other municipal policy issues, it is our clear view that the City will be in breach of its fiduciary obligations as trustee if it moves forward with the rezoning and use. **A trustee cannot advance the interests of any person or party other than the beneficiaries of the trust**.

In our view the City will also be acting in a conflict of interest with respect to the income from the proposed commercial activities. Under the proposal the benefits generated from the business transaction with HAVN will be provided by the City to VMM for their own purposes unrelated to the purposes of the trust (ie. for the purpose of financially supporting the VMM) by virtue of the nominal value lease they will provide to VMM allowing them to use the lands for this commercial purpose. The City is certainly not obliged to permit this use.

The income earned from the trust property is not proposed to be used for the purposes of the trust. Diverting that benefit to support the City’s own broader municipal purposes—even to financially support a non-profit museum—is not permitted under the trust. **A trustee cannot profit from their dealings with the trust property.**

West Vancouver (District) v British Columbia (Attorney General), 2020 BCSC 966 (CanLII), <https://canlii.ca/t/j8gbd> is authority for the position that any benefits generated from trust property accrues to the trust (at paragraphs 25 and 26). The court found that the proceeds of the District of West Vancouver’s rental of trust property in that case (a park building) must be treated and accounted for as trust property.

This court decision also makes it clear that the broader municipal purposes of the City are not synonymous with the purposes of the trust.

To reiterate - under the present proposal the City will convert the benefits generated from the water lot licence for its own municipal purposes and use them to financially support a third party, VMM. The proposal is to amend the current lease to VMM to permit its licensing of the water lot to HAVN. **The lease is provided at nominal value and so the value of the lease opportunity to HAVN is considered financial support provided by the City.**

While this contribution to support the operations of the VMM may be within the municipal purposes of the City, it is not within the purposes of the trust. All benefits to be gained from the trust property must be held in trust and applied to support the use, recreation and enjoyment of the trust lands by the public.

As to the amount of the rent to be generated by the trust property, we see in the "Yellow Memorandum” dated July 14, 2026 forming part of the public hearing documents, that the amount of the financial benefits to VMM has now been made public by VMM. Staff say this in their memorandum dated July 14:

> “Please note that this financial contribution is a commercial arrangement between HAVN Saunas and VMM that is not being secured by the City as a public benefit.”

This ignores the fact, however, that a new lease will be entered into to allow this commercial use by VMM and the value of the City’s contribution is determined by the value of the types of uses and rights granted under the lease. In that the rental fees will be retained by VMM and not “secured as a public benefit”, the amount of that rental income is considered a financial contribution by the City to VMM. The City proposes to provide the benefits of commercial rental opportunities *on trust lands* to VMM for less than their value. The duties of trustee, however, dictate that the benefits generated by the trust property accrue to the trust.

Finally, *contrary to its duty of care as trustee,* the City has not undertaken any review of alternate proposals for maintenance or enhancement of the water lot area for public use for recreation and enjoyment, or undertaken any public tendering for the specific proposal. There is no indication of City due diligence being conducted with respect to the amount of the fees to be paid by HAVN for the trust property. The reason for all this is that the City is - incorrectly - advancing the interests of the third party, the VMM, and their independent business decision and interests. The only proposal considered was the one advanced by VMM.

In our view, should Council proceed, none of this meets the standard of care required of a trustee for dealing with trust property.

Issue 3 - Does the Proposal Put the VMM at risk of losing its charitable registration?

If the VMM were to lose its charitable registration this would have serious consequences for VMM and its ability to fundraise, and would seem to undermine the whole purpose of what is being proposed here. There may also be other consequences arising as a result of loss of charitable registration, such as with respect to property taxes.

We are raising this issue, which arises under charities law, as it seems it may have been overlooked. The intention is to simply scope out the concerns for legal review and City due diligence.

The Income Tax Act says that charities can lose their charitable registration if they carry on an **unrelated** business.

> https://www.canada.ca/en/revenue-agency/services/charities-giving/charities/policies-guidance/policy-statement-019-what-a-related-business.html
>
> https://www.centreforsocialenterprise.com/five-easy-ways-to-jeopardize-your-charity/
>
> https://carleton.ca/profbrouard/wp-content/uploads/NoteTAXNPOcharitiestaxation20220509.pdf?utm_source=chatgpt.com

Subsection 149.1(1) of the Income Tax Act defines “related business”:

> **related business,** in relation to a charity or Canadian amateur athletic association, includes a business that is unrelated to the purposes of the charity or association if substantially all persons employed by the charity or association in the carrying on of that business are not remunerated for that employment; (activité commerciale complémentaire)

This means that a related business is either a business that is related to a charitable purpose (linked and subordinate), or a business that is unrelated to the charitable purpose but run substantially all by volunteers.

Earth Fund v. Canada (Minister of National Revenue), 2002 FCA 498, is a Federal Court of Appeal decision that established that directing all business profits to charitable causes does not automatically make the business itself "charitable" or “related".

> https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/31795/index.do

If the proposed business arrangement is found to be an unrelated business of the VMM, VMM may be vulnerable to losing its charitable registration.

Depending on the details of the “partnership” with HAVN, and VMM’s other activities at Heritage Harbour, VMM’s proposed contract with HAVN might not be considered by CRA as the carrying on of a *business* (whether related or non-related) but rather the earning of income from property. For the distinction see and guidelines for the determination see:

> https://www.canadiancharitylaw.ca/blog/cra-guidance-classifying-income-earned-by-registered-charities-from-their-rental-of-real-estate/
>
> https://www.canadiancharitylaw.ca/wp-content/uploads/2022/04/CRA-Guidance-Classifying-income-earned-by-registered-charities-from-their-rental-of-real-estate.pdf

Where the income is considered to be income from property CRA states that the organization will be eligible for charitable registration only if the activity is an incidental means of furthering an exclusively charitable purpose. According to the CRA guidance this will be assessed under the common law.

> https://www.canadiancharitylaw.ca/wp-content/uploads/2022/04/CRA-Guidance-Classifying-income-earned-by-registered-charities-from-their-rental-of-real-estate.pdf (at page 1)

The reason for this requirement is that a registered charity must further exclusively charitable purposes and devote all of its resources (funds, personnel, and property) to its charitable purposes and activities.

> “The requirement of the ITA, and of the common law, is that all resources be dedicated to charitable activities or that purposes be exclusively charitable. Therefore, finding that a charity devotes only a small portion of its resources to non-charitable purposes or activities would not save its charitable nature unless those purposes or activities were also ancillary and incidental to a charitable purpose. Using only a small proportion of resources on non-charitable purposes is not sufficient to make those purposes ancillary and incidental.”

'Ancillary', 'Incidental' and Canadian registered charities –Concepts and Meanings by Leigha Haney, © 2028 The Pemsel Foundation, at page 11.

https://www.pemselfoundation.org/wp-content/uploads/2018/05/Haney-Ancillary-and-Incidental-OP-May-24-2018-pv.pdf

This is not of course intended as a comprehensive review of these issues, but it is our view that such a review needs to be undertaken and provided to the City as a part of the City's due diligence. It would be indeed be unfortunate to proceed with this proposal in the interests of VMM and *then discover it placed VMM in peril due to these charity law issues.*

Conclusion

The key points advanced by KPRA to Mayor and Council in connection with this public hearing are with respect to the trust created under the crown grant of the land and water lots proposed to be rezoned. Our concern at this point is that, if it has not now done so, Council should seek a full legal review to understand the City's obligations as trustee.

In our view the barge spa rezoning proposal is not consistent with the public trusts under which the City holds the land it seeks to rezone. In addition it is our view that the City will be in breach of its duties as trustee in approving the rezoning and use, in that the focus has throughout been on the interests of the third party VMM, and on the City's own interest in finding alternate funding arrangements for cultural institutions, rather than the purposes of the trust. The focus on the interests of VMM, and on the City's own interests outside the purposes of the trust, is in our view fatal to the decision making process.

The proposal also ignores the requirement that any benefit generated from the trust property is itself trust property and must be expended for the purposes of the trust. Once this is understood the whole basis of the proposal falls away.

In our view the City will further be in breach of its fiduciary duty of care by:

- failing to consider how use of the lands can be best maintained or enhanced for the use, recreation and enjoyment of the public as opposed to how negative impacts can be mitigated,
- failing to consider other options,
- failing to go to tender,
- indeed failing to look past the proposal advanced by VMM.

I would be hopeful that any legal review obtained by the City would acknowledge these points. Ultimately on a significant issue such as this the City has the option to seek the guidance of the court under section 86 of the Trustee Act, as previously suggested.

Respectfully,

Eve Munro

Eve Munro
Chair, Kits Point Residents' Association