

NELSON BAY BOWLING AND RECREATION CLUB LIMITED

ACN 071 145 287

NOTICE OF SPECIAL RESOLUTION

SPECIAL RESOLUTION:

That the Constitution of Nelson Bay Bowling and Recreation Club Limited (the Club) in the form presented to the meeting (and having previously been made available to members) be adopted as the Constitution of the Club in substitution for and to the exclusion of the existing Articles and Memorandum of Association.

NOTES TO MEMBERS ON SPECIAL RESOLUTION

1. The Special Resolution proposes that members approve the adoption of new Constitution of the Club.
2. Following discussions with the Club's Solicitors, the Board was advised that the Club's Articles and Memorandum of Association should be regularly reviewed and updated to ensure compliance with best practice and relevant legislation.
3. As opposed to making a number of piecemeal amendments to the Club's current Articles and Memorandum of Association, the Club engaged its solicitors to prepare a new constitution which reflected best practice and the relevant legal requirements whilst retaining the existing practices and operations for the Club.
4. Copies of the current and proposed Constitution are available on request from the Club's reception. An Explanatory Memorandum is also set out below.
5. The Explanatory Memorandum outlines principal features of the proposed Constitution and its significant variations from the existing Constitution. This Explanatory Memorandum is also intended to assist members with understanding the proposed new Constitution and why it is appropriate to adopt it.
6. To be passed, a Special Resolution must receive votes in favour from three quarters (75%) of those members who, being eligible to do so, vote in favour of the Special Resolution at the meeting.

EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION

At the General Meeting of the Club, members will be asked to consider and if thought fit pass a Special Resolution to adopt a new Constitution for the Club to replace the existing Memorandum and Articles of Association.

This Explanatory Memorandum is intended to assist members with understanding the proposed new Constitution and why it is appropriate to adopt it.

Copies of the proposed new Constitution and the existing Memorandum and Articles of Association are available on request from the Club.

A summary of the proposed new Constitution and its principal features is set out below.

Significant changes from the existing Memorandum and Articles are set out in bold. However, the new Constitution also updates references to legislation and makes other drafting changes. These types of changes are not set out in bold.

NAME

1. Rule 1 states that the name of the Club is Nelson Bay Bowling and Recreation Club Limited.

PRELIMINARY COMPANY MATTERS AND INTERPRETATIONS

2. Rule 2 sets out preliminary and introductory rules relating to the Club's status and the nature of the Constitution such as stating that the Club is a company limited by guarantee and a non-proprietary company, it is established for the purposes set out in the Constitution, that the replaceable rules referred to in the Corporations Act are displaced or modified as provided in the Constitution and that every member is bound by and must comply with the Constitution and By-laws of the Club and any other determination, resolution or policy which may be made or passed by the Board.

DEFINITIONS

3. Rule 3 sets out definitions and terms used in the proposed new Constitution.

OBJECTS

4. Rule 4 sets out the objects for which the Club was established and they remain unchanged.

LIABILITIES AND GUARANTEE

5. Rule 5.1 provides that the liability of members is limited.
6. Rule 6.1 provides that each member of the Club undertakes to contribute an amount not exceeding two dollars (\$2.00) if the Club is wound up and the assets of the Club are insufficient to discharge the liabilities. This undertaking continues for a period of 12 months after the person ceases to be a member. This reflects the current Memorandum.

WINDING UP AND MEMBER'S LIABILITY

7. Rules 7.1 and 7.2 provide that on the winding up of the Club, if any assets remain (after the satisfaction of all debts and liabilities), those assets shall not be distributed among the members but shall be given or transferred to another institution which has objects similar to that of the Club and which has a prohibition on distribution of its assets to members to the same extent as the Club. This reflects the current Memorandum.

PROPERTY AND INCOME

8. Rule 8.1 provides that the property and income of the Club must be applied solely towards the promotion of the objects of the Club.
9. Rules 8.2 and 8.3 set out specific requirements of the Registered Clubs Act in relation to benefits available to members.
10. Rules 8.4 to 8.6 deal with payments to Directors and employees and reflect the Registered Clubs Act.

LIQUOR & GAMING

11. Rules 8 and 9 set out a number of provisions relating to liquor and gaming compliance which are consistent with the Gaming Machines Act, Liquor Act and Registered Clubs Act.
12. **Rule 9 contains new provisions which refer to the Club's responsible service of alcohol policy and responsible conduct of gaming policy and provide that the Club can take action to enforce those policies, including removing persons from the premises, and denying them access to the premises. This reflects a pro active approach to harm minimisation.**

MEMBERSHIP

13. Rule 10.1 states that no person under the age of eighteen (18) years is to be admitted as a member of the Club unless as a Junior member.
14. Rule 10.2 states the categories of Full membership of the Club are Bowling members, Social members, Junior members and Life members.
15. Rule 10.3 provides that persons who are not Full members may be admitted to the Club as Provisional members, Honorary members and Temporary members.

16. Rule 10.4 provides that the number of Full members having the right to vote in the election of the Board shall not be less than the minimum number required by the Registered Clubs Act.
17. Rule 10.5 provides that the rights of a class of membership may be varied or cancelled by way of eligible members passing a special resolution in accordance with Rule 51 of the Constitution and without the need for a separate resolution to be passed by members of that class of membership.
18. Rules 10.6 to 10.23 inclusive set out the eligibility requirements and membership rights of the various categories of Full membership. Under the proposed new Constitution, only Life members and Full Bowling members can be elected to the Board. This reflects the current Articles.
19. Rule 11 contains rules for the transfer between different classes of membership.

HONORARY, TEMPORARY AND PROVISIONAL MEMBERS

20. Rules 12, 13 and 14 deal with Honorary, Temporary and Provisional membership respectively. All of these rules are consistent with the requirements of the Registered Clubs Act for those categories of membership.

ELECTION OF MEMBERS

21. Rule 15 sets out the procedure to be followed in respect of applying for and being admitted to membership of the Club. The Rules have been updated to allow for electronic applications for membership.

JOINING FEES, SUBSCRIPTIONS AND LEVIES

22. Rule 16 deals with joining fees, subscriptions and levies in a manner which is consistent with the Registered Clubs Act and the existing practice of the Club. The Registered Clubs Act no longer contains a minimum subscription.

NON-FINANCIAL MEMBERS

23. Rule 17 clarifies that non-financial members or members who do not renew their membership by the renewal date cease to be entitled to all of the rights and privileges of membership whilst they are an unfinancial member of the Club.

REGISTERS OF MEMBERS AND GUESTS

24. Rule 18 sets out the various members and guests registers that the Club must maintain under the Registered Clubs Act.

NOTIFICATION OF CHANGE OF CONTACT DETAILS

25. Rule 19 requires members to advise the Club of any change in their contact details within seven (7) days.

DISCIPLINARY PROCEEDINGS

26. Rule 20 deals with powers of the Board to discipline members. **The provisions generally reflect the existing Articles of Association but have been updated to clarify that:**
 - (a) members can call witnesses, but that the Club cannot force any person to attend as a witness;
 - (b) the Board can adjourn the meeting at any time;
 - (c) if the Board has adjourned the meeting before determining the question of penalty, the Board can decide whether further submissions in relation to penalty are to be given verbally or in writing.
27. **The new Constitution also contains new Rules:**
 - (a) **to provide that a member can be suspended pending a hearing of a charge (the Articles limit this period to five (5) weeks); and**

- (b) giving the Secretary the power to suspend a member for a period up to 12 months. If the member wishes to challenge that decision, they can give notice to the Club and a disciplinary hearing will be convened by the Club to determine the charge.**

28. These changes are proposed to improve the disciplinary process.
29. Rule 21 allows the Board to delegate its disciplinary powers to a disciplinary committee comprising three (3) Directors.
30. Rule 22 clarifies that a suspended member is not entitled to the rights and privileges of membership during their period of suspension.
31. Rule 23 deals with the power given to the Secretary and employees of the Club under the Liquor Act to remove persons from the Club's premises and to prevent them from returning to the Club. These powers are no wider than those given under the Liquor Act.
32. Rule 24 deals with the procedure for a member to resign from the Club.

GUESTS

33. Rule 25 deals with guests of members and it reflects the provisions of the Registered Clubs Act.

PATRONS

34. Rule 26 states that the Club can appoint a Patron at a general meeting of the Club.

BOARD OF DIRECTORS

35. Rule 27.1 provides that the Board will consist of seven (7) directors comprising a Chairperson, Deputy Chairperson and five (5) Ordinary Directors. This remains unchanged.
36. Rule 27.2 refers to the two Directors who can be appointed by the Board under special provisions of the Registered Clubs Act and Regulations. Rule 27.2 reflects those laws. Any Director so appointed will be in addition to the seven (7) elected positions.
37. Rule 27.3 provides that the Board will continue to be elected biennially, i.e. the whole of the Board will be elected every 2 years for 2 year terms.
38. Rule 27.4 provides that Life members and Bowling members who have been members for at least two (2) continuous years can be nominated for and be elected to the Board. This reflects the current Articles.
39. Rule 27.6 sets out certain circumstances in which members are ineligible to stand for or be elected or appointed to the Board, including if the member is an employee of the Club, currently suspended from the Club or not a financial member of the Club.
40. **Additional reasons which would prohibit a member from being a Director are included in the proposed new Constitution. These include if a member is convicted of an indictable offence, was a former employee for the first two (2) years after the employment ended, has been found guilty of a disciplinary charge and suspended or is a director of another registered Club within 50 kilometres of the Club's premises.**
41. Rule 27.7 provides that any person who is elected or appointed to the Board must complete mandatory training requirements for Directors as prescribed by the Regulations made under the Registered Clubs Act (unless exempted).

ELECTION OF BOARD

42. Rule 28 deals with the election of the Board. **The Rules also provide that if there are any positions unfilled at the close of nominations, those vacancies will be casual vacancies to be filled by the Board after the Biennial General Meeting.**

POWERS OF THE BOARD

43. Rule 29 deals with the Board's powers. These reflect the current Articles.

PROCEEDINGS OF THE BOARD

44. Rule 30 deals with proceedings of the Board. The provisions reflect the existing Constitution and the requirements of the Corporations Act including amendments to be made to allow for virtual meetings.

MATERIAL PERSONAL INTERESTS OF DIRECTORS AND REGISTERED CLUBS ACCOUNTABILITY CODE

45. Rules 31 and 32 deal with the Club's accountability and corporate governance requirements under the Corporations Act and Registered Clubs Act.

REMOVAL FROM OFFICE OF DIRECTORS

46. Rule 33 provides that the members in general meeting may by ordinary resolution remove any Director, or the whole Board, before the expiration of their period of office and appoint another person or persons in their place. This is consistent with the Corporations Act and the existing Constitution.

VACANCIES ON THE BOARD

47. Rule 34.1 clarifies how a casual vacancy on the Board arises.
48. Rule 34.2 states that the Board has the power to fill a casual vacancy. In accordance with the triennial rule, any person appointed to fill a casual vacancy will hold office only until the next Biennial General Meeting.

GENERAL MEETINGS

49. Rule 35 deals with various matters regarding general meetings (and Annual General Meetings of the Club) and they reflect the Corporations Act. These Rules have been updated from the Club's current Articles to take into account changes made to the Corporations Act over recent years as part of that law's amendments and adoptions to the Covid-19 pandemic.

MEMBERS' RESOLUTIONS AND STATEMENTS

50. Rule 36 deals with members resolutions and statements and reflect, the existing Constitution and the requirements of the Corporations Act.

MINUTES

51. Rule 37 provides that minutes of all resolutions and proceedings at general meetings must be entered in a minute record within one month of the meeting and signed by the chairperson of that meeting or the chairperson of the next succeeding meeting.

FINANCIAL RECORDS, FINANCIAL ACCOUNTS AND REPORTING TO MEMBERS

52. Rule 38 deals with the financial records, financial accounts and reporting to members and it is consistent with the Corporations Act and Registered Clubs Act.

FINANCIAL YEAR

53. Rule 39 provides that the financial year of the Club shall commence on the first day of July in each year and will end on the last day of June in the following year or such other period as permitted by the Corporations Act.

AUDITOR

54. Rule 40 requires the Club to appoint an auditor. The auditor holds office until removed by the members in general meeting or resigns from office or dies. This is a requirement of the Corporations Act.

SECRETARY

55. Rule 41 requires the Board to appoint one (and only one) Secretary who will be the Secretary Manager of the Club for the purposes of the Registered Clubs Act.

EXECUTION OF DOCUMENTS

56. Rule 42 deals with execution of documents by the Club and it is consistent with the Corporations Act.

NOTICES

57. Rule 43 deals with the requirements of giving notice to members and it reflects the requirements of the Corporations Act. However, the provisions have been updated to allow for electronic notification, e.g. by email and text messages.

INDEMNIFICATION OF OFFICERS

58. Rule 44 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the Corporations Act.

INTERPRETATION

59. Rule 45 provides a decision of the Board on the construction or interpretation of the Constitution or any Rule, or any policy of the Club made pursuant to this Constitution, shall be conclusive and binding on all members of the Club

AMENDMENTS TO CONSTITUTION

60. Rule 46 provides that the Constitution can only be amended by way of Special Resolution passed at a general meeting of members.

It is hoped that this summary will provide members with sufficient background and information to enable them to make an informed decision in relation to the proposed special resolution to adopt the new Constitution. However, there may be matters about which members may have questions not covered by this Memorandum. In these circumstances, they are invited to raise their questions with the CEO at least seven (7) days before the meeting to allow for a response to be prepared.

The Board of the Club considers the proposed new Constitution as being a significant improvement on the existing Memorandum and Articles and recommend that members vote in favour of the Special Resolution. To be passed the Special Resolution will need votes from not less than three-quarters (75%) of those members who being eligible to do so vote in person at the meeting.