

CONSTITUTION OF NEPEAN ROWING CLUB LIMITED
ACN 000 554 807

EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION

At the Annual General Meeting of the Club, members will be asked to consider a Special Resolution to adopt a new Constitution for the Club to replace the existing Memorandum and Articles of Association (**Articles**).

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 Articles are displayed on the Club's noticeboard and website and they are also available on request from the Club.

A summary of the proposed new Constitution and its principal features is set out below. **Significant variations from the existing Articles are set out in bold.** However, there are many additional new provisions which reflect the requirements of various pieces of legislation which impact on the Club. These have not been set out in bold.

NAME

1. Rule 1 states that the name of the company is Nepean Rowing Club Limited. **The company name remains unchanged.**

PRELIMINARY

2. Rule 2.1 states that the Club is a company limited by guarantee and a non-proprietary company.
3. Rule 2.2 provides that the company is established for the purposes set out in the Constitution.
4. Rule 2.3 provides that the replaceable rules referred to in the Corporations Act are displaced or modified as provided in the Constitution.
5. Rule 2.4 provides that the Club must supply a member with a copy of the Club's Constitution if a copy is requested by a member as prescribed by the Corporations Act.

DEFINITIONS

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

OBJECTS

7. Rule 4 sets out the objects for which the Club was established. **The objects of the Club remain unchanged.**

WINDING UP AND MEMBER'S LIABILITY

8. Rule 5 states that the liability of the members is limited. That limit is two dollars (\$2.00) as set out in Rule 6.
9. Rule 6 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.
10. Rules 7.1 and 7.2 provide that on the winding up of the Club, if there remains any assets (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. The institution shall be chosen by the members of the Club at a general meeting or in default of that then by the Supreme Court of New South Wales. This remains the same.

PROPERTY AND INCOME

11. 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.
12. Rules 8.2 and 8.3 set out specific requirements of the Registered Clubs Act in relation to benefits available to members.
13. Rule 8.4 provides that a director of the Club cannot be appointed or elected to any office of the Club paid by salary or wages or any similar basis of remuneration.
14. Rule 8.5 provides that the payment in good faith of reasonable and proper remuneration to any officer, employee or to any member of the Club for services actually rendered is not prohibited.
15. Rule 8.6 specifies that a director shall not receive from the Club remuneration or any other benefit in money or monies worth except by way of an honorarium, reasonable out of pocket expenses or interest on money lent by the director to the Club or rent on property leased to the Club by the director.

LIQUOR & GAMING

16. Rules 9.1 and 9.2 provide that liquor shall only be supplied to persons of or over the age of 18 years in accordance with the Registered Clubs Act.
17. Rule 9.3 states that a person using the gaming facilities of the Club must be of or over the age of 18 years.
18. Rules 9.4 to 9.6 inclusive prohibit a person associated with the Club from receiving direct or indirect benefits including but not limited to monetary payments or commissions from liquor sales and/or the use of poker machines at the Club.

MEMBERSHIP

19. Rule 10.1 states that no person under the age of eighteen (18) years is to be admitted as a member of the Club other than as a Junior member. **Rule 10.2 provides that the categories of Full membership of the Club are Life members, Club members, Permanent Club, Social and Junior members. The existing categories of Ordinary membership and Permanent Ordinary membership will cease to exist and members in these categories will be transferred to the new categories of Club membership and Permanent Club membership respectively. There will be no change in the membership rights of these members.**
20. Rule 10.3 provides that persons who are not Full members may be admitted to the Club as Provisional members, Honorary members, or Temporary members.
21. 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.

Eligibility Requirements and Membership Rights

22. Rules 10.6 and 10.7 set out the eligibility requirements and membership rights of Club members.
23. Club members (the former Ordinary members) will continue to have "full membership rights" and they will be entitled to:
- (a) such playing and social privileges and advantages of the Club as may be determined by the Board; and
 - (b) attend and vote at general meetings (including Annual General Meetings) of the Club;
 - (c) nominate for and be elected to hold office on the Board;
 - (d) vote in the election of the Board;
 - (e) vote on any Special Resolution (including a Special Resolution to amend the Constitution);
 - (f) propose, second, or nominate any eligible member for any office of the Club;
 - (g) propose, second or nominate any eligible member for Life membership;
 - (h) introduce guests to the Club.
24. Under rule 10.7 any Club member shall be given the option at any time to pay a subscription as determined by the Board from time to time to cover all future annual subscriptions for the lifetime of the member concerned and these members shall be known as Permanent Club members.
25. Permanent Club members shall have all the rights and entitlements of a Club member.
26. Rules 10.8 to 10.10 inclusive set out the eligibility requirements and the entitlements of Social membership.
27. The membership rights of Social members remain unchanged.
28. Rules 10.11 to 10.13 set out the eligibility requirements and the entitlements of Junior membership.
29. Rules 10.14 to 10.21 inclusive set out the eligibility requirements and entitlements of Life membership. Amongst other things, Life members will continue to have the same entitlements as Club members (i.e., "full membership rights"). This reflects the existing practice of the Club and the Articles.

Transfer between classes of membership

30. Rule 11 deals with the transfer of members between classes of membership.

Provisional Members

31. Rule 12 deals with Provisional membership. Any person may apply for Provisional membership upon completing and submitting the appropriate membership form and paying the membership subscription in advance. The eligibility requirements and entitlements of Provisional members reflect the existing practice of the Club.

Honorary Members

32. Rule 13 deals with Honorary membership in a way that is consistent with the Registered Clubs Act.

Temporary Members

33. Rule 14 deals with Temporary membership in a way that is consistent with the requirements of the Registered Clubs Act.

ELECTION OF MEMBERS

34. Rule 15 sets out the system for making application for membership of the Club. This reflects the existing practice and Articles of the Club **except that the current provision of 3 adverse votes against the application as being enough to reject an application has not been included and therefore the simple majority rule applies when the directors vote on new membership applications. This means if all the 9 directors are at the meeting, then at least 5 in favour are needed to approve an application.**

JOINING FEES, SUBSCRIPTIONS AND LEVIES

35. 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.

NON-FINANCIAL MEMBERS

36. Rule 17 clarifies that non-financial members cease to be entitled to all of the rights and privileges of membership whilst they are a non-financial member of the Club.

REGISTERS OF MEMBERS AND GUESTS

37. 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

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

DISCIPLINARY PROCEEDINGS

39. Rule 20 deals with powers of the Board to discipline members. The provisions are slightly more comprehensive than the existing Articles, but they generally reflect the existing Articles and the existing practice of the Club.
40. **The current requirement that the hearing of a disciplinary charge be heard within one month of the date a member is notified of a suspension to their membership once a Notice has been sent to the member concerned has been removed as it is an unnecessary restriction upon the power of the Board to conduct disciplinary proceedings. The one-month requirement could have the unintended consequence of the Board not being able to consider disciplinary action if for example a member sought an adjournment and by error it was granted, and this meant that the hearing would take place beyond the one-month period.**
41. **Rule 21 inserts a new provision which provides the Board with the power to delegate its disciplinary powers to a disciplinary committee comprising three (3) directors.** The Board retains the power to review a decision of a disciplinary committee provided the Board follows the procedure set out in Rule 21.3.
42. Rule 22 clarifies that any member who is suspended from the Club is not entitled to the rights and privileges of membership during their period of suspension.
43. Rule 23 deals with the power given to 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 given to the Club are no wider than those given under the Liquor Act.
44. Rule 24 deals with the procedure for a member to resign from the Club.

GUESTS

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

PATRONS

46. Rule 26 states that the Club may appoint patrons from time to time and sets out the membership status of a patron who is not a member.

BOARD OF DIRECTORS

47. Rule 27.1 provides that the Board will continue to consist of 9 Directors consisting of the President, a Vice President, a Captain, a Vice captain, a Treasurer and 4 ordinary Directors.
48. Rule 27.1 provides that the Board will continue to be elected biennially, that is every 2 years as is the case under the current Articles of Association.
49. **Rule 27.2 provides that only Club members, Life members and Permanent Club members who have been financial members of the Club for at least 3 years as at the date of nomination or appointment to the Board. can stand for and be elected or appointed to the Board. This is a new requirement however the Board is of the view that it will be of benefit to the club in that it will allow members to show their commitment to the Club by their length of membership before being able to become a Director of the Club.**
50. **Under the existing Articles (article 28 (b)) not less than 2/3 of the total membership of the Board shall consist of persons who have actively participated in the sport of rowing for not less than 2 years. This will no longer apply.**
51. **Rules 27.6 and 27.7 are new rules which will apply dealing with the eligibility for election to the positions of President, Vice President, Captain and Vice-Captain**
52. **Rule 27.6 provides that a member shall not be eligible to be elected or appointed to the positions of President, Vice President and or Treasurer unless they have been a Director of the Club for a period of at least three (3) years immediately prior to being elected or appointed to any of these positions.**
53. **Rule 27.7 provides that a member shall not be eligible to be elected or appointed to the positions of Captain or Vice-Captain unless they are an Active Rowing member or a Former Active Rowing member and, in each case, have been financial members of the Club for a period of at least three (3) years.**
54. **The Board is of the view that these 2 rules will assist the good governance of the Club by ensuring that only members with some experience in the role of Director can be elected to the office bearer roles of President, Vice President, Captain and Vice-Captain and also in case of the roles of Captain and Vice-captain that they are or have been active rowing members of the Club. An Active rowing member is someone who meets the criteria in rule 3.1 (b).**
55. Rule 27.4 provides that a member is not eligible to stand for or be elected or appointed to the Board if they are an employee of the Club, currently suspended from the Club, not a financial member of the Club or for the other

reasons set out in the 2 sub clauses some of which are new requirements/restrictions that the Board are of the view will be of benefit to the Club.

56. Rule 27.8 provides that any person who is elected or appointed to the Board, must, unless exempted, complete such mandatory training requirements for directors as required by the Regulations made under the Registered Clubs Act within 12 months of the date, they are elected to the Board of Directors of the Club.

ELECTION OF BOARD

57. **Rule 28 deals with the election of the Board. Under the existing Articles if a ballot is required for the election of the Board, then it is to take place over a period of not less than eight days immediately prior to the date of the Annual General Meeting. Under the proposed new Constitution, the Board shall be able to determine on what days and at what times the ballot will be held.**
58. **Rule 28 also updates the actual process for the election of the Board to align with best practice, but the process generally reflects the existing Articles and the existing practice of the Club.**
59. The members will continue to directly elect the President and the Vice President for 2-year terms.

POWERS OF THE BOARD

60. Rule 29 deals with the Board's powers. The provisions are more comprehensive than the existing Articles and generally reflect the existing Articles and the established practice of the Club.

PROCEEDINGS OF THE BOARD

61. Rule 30 deals with proceedings of the Board. The provisions reflect the existing Articles and the requirements of the Corporations Act.
62. Rule 30.4 provides that the quorum for a board meeting shall be the majority of directors on the Board as at the date of the meeting. This is similar to the existing Articles which provides that 5 directors are a quorum. As there will be 9 Directors on the Board, then 5 is a majority.
63. Rule 30.6 provides that all decisions of the Board are determined by a majority vote. In the case of an equality of votes the chairperson of the meeting has a second or casting vote.
64. **Rules 30.8 and 30.9 allow the Board to pass board resolutions without board meetings (for example, by email). This is consistent with the Corporations Act.**
65. **Rule 30.10 introduces a new provision which allows a meeting of the Board to be called or held using technology consented to by all directors. This is consistent with the Corporations Act.**

MATERIAL PERSONAL INTERESTS OF DIRECTORS AND REGISTERED CLUBS ACCOUNTABILITY CODE

66. **Rules 31, 32 and 33 insert new provisions dealing with accountability and corporate governance which are consistent with the Corporations Act and the Registered Clubs Act.**

REMOVAL FROM OFFICE OF DIRECTORS

67. Rule 34 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 Articles.

VACANCIES ON THE BOARD

68. Rule 35.1 clarifies how a casual vacancy on the Board arises.
69. Rule 35.3 states that the Board has the power to fill a casual vacancy. Any person appointed to fill a casual vacancy will hold office only until the next Biennial General Meeting.

GENERAL MEETINGS

70. Rules 36.1 to 36.18 inclusive relate to the calling and holding of general meetings (and Annual General Meetings) of the Club. However, they are more comprehensive than the existing Articles and have been updated to reflect the current law.

ATTENDANCE AND VOTING AT GENERAL MEETINGS

71. Rules 36.19 to 36.31 inclusive relate to attendance and voting at general meetings.
72. Proxy voting is not permitted. This is a requirement of the Registered Clubs Act.
73. Every member eligible to vote, either by show of hands or a poll, is entitled to one vote.
74. A member, who is also an employee of the Club, is not permitted to vote. This is a requirement of the Registered Clubs Act.
75. All questions and resolutions (other than Special Resolutions) shall be decided by a simple majority of votes.
76. Voting shall be on a show of hands unless a poll is demanded.

QUORUM AT GENERAL MEETINGS

77. Rules 36.32 to 36.36 inclusive detail the quorum required for general meetings.
78. Rule 36.32 provides that no business may be transacted at a general meeting unless a quorum of members is present.

79. Rule 36.33 provides that, at any general meeting (including an Annual General Meeting) of the Club, twenty (20) members who are eligible to attend and vote at the meeting constitutes a quorum. However, pursuant to rule 36.34, if an item of business at the general meeting is to consider a special resolution to amend the Club's constitution, then the quorum shall be 35 persons which is the same as provided for in the existing articles.
80. Rules 36.35 and 36.36 set out the procedure to be followed if a quorum is not present and the procedure if an adjournment of a general meeting occurs.

CANCELLATION AND POSTPONEMENT OF MEETINGS

81. Rule 36.41 provides that the Board may cancel or postpone any general meetings prior to the date on which it is to be held, except where such cancellation or postponement would be contrary to the Corporation Act.

WITHDRAWAL OF RESOLUTIONS

82. Rule 36.42 provides that the Board may withdraw any resolution which has been proposed by the Board and which is to be considered at a general meeting, except where the withdrawal of such a resolution would be contrary to the Corporations Act.

MEMBERS' RESOLUTIONS AND STATEMENTS

83. Rule 37 provides that individual members may submit items of business and notices of motion provided they are received by the Club at least forty-two (42) days prior to the date fixed for an Annual General Meeting.
84. Rule 37 also provides that one hundred (100) members or five percent (5%) of the voting membership may make a written request requiring the Board to include an item of business or notice of motion in the business of an Annual General Meeting. This reflects the Corporations Act.

MINUTES

85. Rule 38 provides that minutes of all resolutions and proceedings at general meetings must be entered in a minute book within one month of the meeting and signed by the chairperson of that meeting or the chairperson of the next succeeding meeting.

ACCOUNTS

86. Rule 39 deals with the accounts and reporting to members and it is consistent with the Corporations Act and Registered Clubs Act.

FINANCIAL YEAR

87. Rule 40 provides that the financial year of the Club shall continue to commence on the first day of May in each year and will end on the last day of April in the following year.

AUDITOR

88. Rule 41 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.

EXECUTION OF DOCUMENTS

89. Rule 43 deals with execution of documents and the common seal of the Club.

NOTICES

90. Rule 44 deals with the requirements of giving notice to members and it reflects the requirements of the Corporations Act and the Registered Clubs Act.

CAPTAIN AND THE VICE CAPTAIN

91. Rule 45 deals with the Captain and Vice-captain and provides that the Captain shall be in charge of the boatshed, the boats, the fittings and such other equipment and property as may be required for the use of members and members shall follow the directions given by the Captain and or the Vice-captain if the Captain is absent or the board otherwise empowers the Vice-captain to do so.

INDEMNIFICATION OF OFFICERS

92. Rule 46 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the Corporations Act.

INTERPRETATION

93. Rule 47 provides that 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

94. Rule 48 provides for amendments to the Constitution. The Constitution can only be amended by way of Special Resolution passed at a general meeting of members.
95. Life members, financial Club members and Permanent Club members are the only members that can vote on any Special Resolution to amend the Constitution.

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 of the Club.

The Board of the Club considers the proposed new Constitution as being a significant improvement on the existing 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.

Dated: 29 November 2021



Ben Renneberg
Chief Executive Officer