

EAST CESSNOCK BOWLING CLUB LIMITED

ACN 000 835 923

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 to replace the existing Constitution (**current Constitution**).

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 current Constitution 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 current Constitution 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 East Cessnock Bowling 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 every member is bound by and must comply with the Constitution and By-laws of the Club.
6. Rule 2.6 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

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

OBJECTS

8. 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

9. Rule 5 states that the liability of the members is limited. That limit is eight dollars (\$8.00) as set out in Rule 6. It is currently \$8.40.
10. Rule 6 provides that each member of the Club undertakes to contribute an amount not exceeding eight dollars (\$8.00) 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.
11. 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 having 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.

PROPERTY AND INCOME

12. 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.
13. Rules 8.2 and 8.3 set out specific requirements of the Registered Clubs Act in relation to benefits available to members.
14. 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.
15. 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.
16. 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

17. 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.
18. Rule 9.3 states that a person using the gaming facilities of the Club must be of or over the age of 18 years.

19. 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

20. Rule 10.1 states that no person under the age of eighteen (18) years is to be admitted as a member of the Club except as a Junior member.
21. Rule 10.2 provides that the existing categories of membership at the Club being Life membership, Bowling membership, Social membership and Junior membership will continue.
22. 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.
23. 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

24. Rules 10.5 and 10.6 set out the eligibility requirements and membership rights of Bowling members. The eligibility requirements and membership rights of Bowling members are unchanged.
25. Bowling 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) subject to rule 27, 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.
26. Rules 10.7 to 10.9 inclusive set out the eligibility requirements and the entitlements of Social membership.
27. Social members will continue to have "limited membership rights" and they will only be entitled to:
- (a) such playing and social privileges and advantages of the Club as may be determined by the Board;
 - (b) vote in the election of the Board; and
 - (c) introduce guests to the Club.
28. Rule 10.10 sets out the eligibility requirements and entitlements of Junior members.
29. Junior members will also have "limited membership rights" and they will only be entitled to such playing and social privileges and advantages of the Club as may be determined by the Board from time to time.
30. Rules 10.11 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 Bowling members (i.e., "full membership rights"). This reflects the existing practice of the Club and the current Constitution. Also, there will be no more than 8 Life members at any one time. This reflects the restriction in the current Constitution

Transfer between classes of membership

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

Provisional Members

32. 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

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

Temporary Members

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

ELECTION OF MEMBERS

35. Rule 15 sets out the system for making application for membership of the Club. This reflects the existing practice and current Constitution of the Club **except an application will no longer have to proposed and seconded by a current member of the Club which is not legally required**

JOINING FEES, SUBSCRIPTIONS AND LEVIES

36. 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

37. 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

38. 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

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

DISCIPLINARY PROCEEDINGS

40. Rule 20 deals with powers of the Board to discipline members. The provisions are more comprehensive than the current Constitution, but they generally reflect the current Constitution and the existing practice of the Club.
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 5 Directors comprising of a Chairperson, a Deputy Chairperson and 3 ordinary directors.
48. Rule 27.1 also inserts new provisions which clarify that Board has the power to appoint up to two (2) directors to the Board (Board Appointed Directors) in accordance with the Registered Clubs Act and Registered Clubs Regulations.
49. The Registered Clubs Act and Registered Clubs Regulations enable boards of registered clubs which have seven (7) elected directors or less (like the Club) to appoint up to two (2) Board Appointed Directors.
50. The power to appoint Board Appointed Directors is intended to allow boards to identify persons with particular skills, expertise and experience which may be beneficial to the registered club and allow the Board to appoint those persons to the Board.
51. The provisions of the Registered Clubs Act and Registered Clubs Regulations (being the power referred to appoint Board Appointed Directors) will apply irrespective of whether or not the Constitution contains provisions expressly stating the Board can appoint Board Appointed Directors.
52. Although it is not legally required to do so, the Board believes that it is prudent for the power to appoint Board Appointed Directors to be incorporated into the Constitution, so members are aware of the provisions and their operation.
53. The provisions to be inserted into the Constitution reflect the Registered Clubs Act and Registered Clubs Regulations and do not provide the Board with any powers over and above those contained in the Registered Clubs Act and Registered Clubs Regulations.
54. For the avoidance of doubt:
- (a) The Board Appointed Directors are in addition to the five (5) directors elected by members or appointed by the Board to fill casual vacancies; and
 - (b) The Board is not required to appoint any Board Appointed Directors, but it may do so if it wishes;
 - (c) Any person appointed by the Board as a Board Appointed Directors only has to satisfy the requirements of the Registered Clubs Act and Registered Clubs Regulations to be appointed and does not have to satisfy any requirement in the Constitution.
 - (d) If a person is appointed to the Board, the Club must, within twenty-one (21) days of the appointment, display a notice on the Club's noticeboard and website stating the reasons for the person's appointment, the person's relevant skills and qualifications and any payments to be made to the person in connection with his or her appointment.

55. Rule 27.2 provides that the Board will, as and from the AGM in 2022, be elected in accordance with the Triennial Rule which is set out in Schedule 4 of the Registered Clubs Act and in rule 27.2 of the proposed new Constitution. Currently the whole of the Board is elected every 2 years with the last biennial election of the Board taking place in 2020
56. The Triennial Rule provides for three (3) year terms of office for directors, with one third of the Board to be elected each year.
57. For this purpose, the directors are divided into three (3) groups. Each group has to be as nearly as practicable equal in number. As the Board consists of five (5) directors when the triennial rule is adopted, there will be two (2) groups of two directors and one group of one.
58. In each year, a different group retires. Group 1 retires in the first year, Group 2 retires in the second year, Group 3 retires in the third year, and Group 1 retires in the fourth year, Group 2 in the fifth year and so on.
59. In the first year of the triennial rule's operation, lots are drawn to determine which group a director falls into. Those directors allotted to Group 1 will only hold office for one year. Directors allotted to Group 2 will only hold office for two years. Directors allotted to Group 3 will be the only directors who, in the first year, are elected to office for three years.
60. Directors whose term of office has come to an end are, subject to the Constitution, eligible for re-election for a further three-year term.
61. The members will continue to elect the positions of Chairperson and Deputy Chairperson and once the Triennial rule is in place members will elect persons to these positions for 3 year terms.
62. Why does the Board recommend the introduction of the Triennial Rule?
- *The Registered Clubs Act has been amended to allow the Government to make a regulation at any time to direct that all clubs follow the Triennial rule. At this stage the government has not made such a regulation however it is clearly the preferred model for Club Board elections as far as the Government is concerned particularly as against the annual election system.*
 - *The laws relating to registered clubs are becoming far more complex. The Club operates under the provisions of the Corporations Act, Registered Clubs Act, Liquor Act, Gaming Machines Act, and their associated regulations as well as many other laws. It is becoming increasingly difficult for a director to acquire the requisite knowledge without guidance from more experienced directors and from educational programs.*
 - *The Triennial Rule provides for continuity and greater stability on the Board while still allowing for a third of the Board to change each year.*
63. The Triennial Rule also provides the opportunity to pass valuable knowledge between directors.
64. Rule 27.3 provides that only Bowling members and Life members can stand for and be elected or appointed to the Board. For the avoidance of doubt, Social members and Junior members cannot be directors of the Club.
65. Rule 27.4 provides that a member must have been a financial member of the Club for a period of at least three (3) years prior to nomination for the Board in order to be eligible to be elected or appointed to the Board. This remains the same. This will however not apply to Board appointed Directors appointed under rule 27.1.
66. Rule 27.5 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 or not a financial member of the Club.
67. Rule 27.6 inserts a new provision which sets out further eligibility restrictions on becoming a director of the Club including if a member has been the subject of disciplinary proceedings within the last 2 years and received a suspension of over in excess 3 months or a member who was an employee of the Club within the 3 years prior to election to the Board.
68. Rule 27.7 inserts a new provision which 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).
69. Rules 27.8 to 27.9 inclusive refer to the Executive of the Board which will continue to consist of the Chairperson and the Deputy Chairperson and otherwise repeats rules 48 (c) and (d) in the current Constitution.
70. Rule 27.10 reflects the existing rule 48 (d) in the current constitution and provides that no director who has been a Board member at any time in the year immediately preceding their election shall be eligible for re-election unless they have completed their full term.

ELECTION OF BOARD

71. Rule 28 deals with the election of the Board. The provisions are more comprehensive than the current Constitution and reflect the established practice of the Club except nominations will now close at least 14 days before the AGM instead of at least 28 days before the AGM. Under rule 28.1 **the Board shall be able to decide to conduct any ballot in the future to allow for voting by electronic means. Members will be advised before any move to electronic voting**

POWERS OF THE BOARD

72. Rule 29 deals with the Board's powers. The provisions are more comprehensive than the current Constitution but generally reflect the current Constitution and the established practice of the Club.

PROCEEDINGS OF THE BOARD

73. Rule 30 deals with proceedings of the Board. The provisions reflect the current Constitution and the requirements of the Corporations Act.
74. **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 a change from the current Constitution which provides at rule 56 (c) that 4 directors shall constitute a quorum.**
75. 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.
76. **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.**
77. **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

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

REMOVAL FROM OFFICE OF DIRECTORS

79. 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 current Constitution.

VACANCIES ON THE BOARD

80. Rule 35.1 clarifies how a casual vacancy on the Board arises.
81. 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 Annual General Meeting in accordance with the Triennial Rule.

GENERAL MEETINGS

82. 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 current Constitution and have been updated to reflect the current law.
83. Rule 70 (b) of the current Constitution provides that the Board is required to call a General Meeting of the Club at the request of 5% of the voting membership or at least 25 members who are entitled to attend and vote at the general meeting, whichever is the lesser. However, the Corporations Act has been amended to provide that 5% of the membership is required to sign a request for a Board to call a General meeting and this has been reflected in new rule 36.4 (a)

ATTENDANCE AND VOTING AT GENERAL MEETINGS

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

QUORUM AT GENERAL MEETINGS

90. Rules 36.32 to 36.35 inclusive detail the quorum required for general meetings.
91. Rules 36.32 and 36.33 provides that no business may be transacted at a general meeting unless a quorum of members is present and that ten members who are eligible to attend and vote at the meeting constitutes a quorum. This remains the same
92. **Rule 36.34 provides the procedure to follow of a quorum is not present for a general meeting**

CANCELLATION AND POSTPONEMENT OF MEETINGS

93. Rule 36.40 provides that the Board may cancel or postpone any general meeting 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

94. Rule 36.41 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

95. 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.
96. 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

97. 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

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

FINANCIAL YEAR

99. Rule 40 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. There is no change to the financial year of the Club.

AUDITOR

100. 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

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

NOTICES

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

INDEMNIFICATION OF OFFICERS

103. Rule 45 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the Corporations Act.

INTERPRETATION

104. Rule 46 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

105. Rule 47 provides for amendments to the Constitution. The Constitution can only be amended by way of Special Resolution passed at a general meeting of members.
106. Only Life members and financial Bowling members are eligible to vote on any Special Resolution to amend the proposed Constitution. This remains the same.

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 President of the Club.

The Board of the Club considers the proposed new Constitution as being a significant improvement on the current Constitution 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: November 2021

Russell Banks
Chief Executive Officer