

**LITHGOW CITY BOWLING CLUB LIMITED**  
**ACN 001 040 348**

**EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION**

Earlier this year the Board of the Club engaged lawyers specialising in the club industry to review the Club's existing Constitution and prepare changes to that Constitution.

The advice of those lawyers was to the effect that rather than make a large number of piecemeal changes to the existing Constitution, the better course would be to adopt a new Constitution that is up to date with all legislative requirements and best practice in clubs.

A draft of the proposed new Constitution has been prepared and is published on the Club's website together with this Explanatory Memorandum. Both documents will be sent to members in hard copy if requested by those members.

Members are encouraged to read and consider carefully the draft new Constitution and this Explanatory Memorandum.

This Explanatory Memorandum is intended to help members in their understanding of the principal features of the draft new Constitution with commentary on each of the Rules in the draft as appears below.

**NAME**

1. Rule 1 deals with the name of the Club.

**PRELIMINARY**

2. Rule 2 sets out some formal issues arising principally from the operation of the Corporations Act.

**DEFINITIONS**

3. Rule 3 provides a more extensive list of definitions than the existing Constitution reflecting among other things, current legislation.

**OBJECTS**

4. Rule 4 sets out the objects of the Club. These are consistent with the existing objects but updated to reflect current legislation. The Club's existing Constitution does not set out the objects which are found in the original Memorandum of Association when the Club was incorporated in 1972.

**WINDING UP AND MEMBER'S LIABILITY**

5. Rule 5 states that the liability of the members is limited. That limit is the guarantee in Rule 6. Rule 6 is the members' guarantee. Each member undertakes to contribute an amount not exceeding \$2.00 if the Club is wound up and the assets of the Club are insufficient to meet all debts and liabilities. This reflects the value of the guarantee under the Club's current Memorandum of Association but it was not included in the Club's current Constitution.

6. Rule 7 provides what happens to the assets of the Club on the winding up and is similar to but in clearer terms than the equivalent provision of the existing Constitution.

### **PROPERTY AND INCOME**

7. Rule 8 inserts standard “boilerplate” provisions relating to the property and income of the Club and the prohibition on any member, including directors, receiving any other than an honorarium (approved by members) or repayment of out of pocket expenses.

### **LIQUOR & GAMING**

8. Rule 9 also has standard “boilerplate” provisions relating to liquor and gaming and reflect the requirements of the Registered Clubs Act, the Liquor Act and the Gaming Machines Act.

### **MEMBERSHIP STRUCTURE**

9. Rule 10 sets out the membership structure. The membership structure is the same as in the existing Constitution which divides the membership into Bowling members, Non-Bowling members and Life members. However, the rights of each of these classes of membership have been much more clearly specified in the new Constitution. Also, a new class of Junior membership has been introduced for people under the age of 18 years who wish to participate in the sporting activities of the Club.

#### **Transfer between classes of membership**

10. Rule 11 provides that the Board has the power to transfer a member from one class of membership to another (other than Life membership). In particular, once a Junior members attains the age of 18 years, the Board has the power to transfer that member to the appropriate category of membership for which that Junior member has the necessary qualifications.

#### **Provisional Members**

11. Rule 12 deals with Provisional members. These are persons who have applied for membership of the Club and who have paid the joining fee if any and the first subscription appropriate to the class of membership and are waiting on the decision of the Board in relation to their application for membership. Provisional members have such playing and social privileges as the Board may determine from time to time and may introduce guests into the Club. However, Provisional members have no voting rights and cannot participate in any way in the affairs of the Club. The Secretary or a senior employee then on duty may terminate the membership of any Provisional member without notice in which case the joining fee and any annual subscription that has been paid will be returned to that person.

#### **Honorary Members**

12. Rule 13 provides for Honorary membership which under the Registered Clubs Act is available only to the Patron or Patrons for the time being of the Club or any prominent citizen or local dignitary visiting the Club.

### **Temporary Members**

13. Rule 14 provides for Temporary membership consistent with the requirements of the Registered Clubs Act. Temporary membership is available to:
- (a) any person whose ordinary place of residence is outside a radius of 5 km from the Club (or such greater distance as the Board may determine from time to time);
  - (b) a full member of another bowling club; or
  - (c) a full member of any registered club who is attending the Club for the purpose of participating in an organised sport or competition to be conducted by the Club on that day; or
  - (d) any interstate or overseas visitor.
14. Temporary members have no voting rights or the right to participate in any of the business and affairs of the Club but may have such playing and social rights as the Board may determine from time to time and may introduce guests into the Club.

### **ELECTION OF MEMBERS**

15. Rule 15 provides for the election of members consistent with the Registered Clubs Act. The system of admitting members to the Club has been made clearer and simplified.

### **JOINING FEES, SUBSCRIPTIONS AND LEVIES**

16. Rule 16 deals with joining fees, subscriptions and levies. The amounts of these are as the Board shall determine from time to time. The Board may also determine that subscriptions are payable by monthly, quarterly or half yearly instalments in advance or for more than 1 year in advance. The due date for joining fees, subscriptions and levies will be as determined by the Board from time to time and notified to members.

### **NON-FINANCIAL MEMBERS**

17. Rule 17 deals non-financial members. The Rules makes clear that a non-financial member is not entitled to attend the Club or participate in any of the activities of the Club or in any of the business of the Club. Rule 17 also provides that after being given 14 days notice to pay outstanding money, if a non-financial member fails to pay, the Board may remove that person from membership of the Club without any further notice.

### **REGISTERS OF MEMBERS AND GUESTS**

18. Rule 18 deals with the registers of members that must be kept and maintained by the Club.

### **CHANGES IN MEMBER'S DETAILS**

19. Rule 19 requires members to notify the Club within 7 days of any changes to their contact details and address.

## **DISCIPLINARY PROCEEDINGS**

20. Rule 20 deals with the procedure to discipline members and reflects the rules of natural justice.
21. If the Board finds a member guilty of a disciplinary charge the Board has the power to reprimand, suspend, expel or accept the resignation of that member.
22. Rule 20 provides much more detail than the current Constitution as to how a disciplinary charge is to be dealt with.
23. Pursuant to Rule 20.4, once a disciplinary charge is issued to a member, the Board or separately the Secretary, has the power to suspend that member until the charge is heard and determined.

### **Disciplinary Committee**

24. Rule 21 provides that the Board may delegate all of its powers and functions to discipline members to a disciplinary committee comprising not less than three (3) directors of the Club selected by the Board. The Board may revoke the delegation so that the hearing determination of any particular charge against a member will be by the full Board.

### **Member under Suspension**

25. Pursuant to Rules 22 a member under suspension is not eligible to participate in any of the activities of the Club or attend the Club or participate in the business of the Club during the period of suspension.

### **Removal of a person from the premises of the Club**

26. Rule 23 reflects the power given to the Secretary or any employee of the Club under section 77 of the Liquor Act to remove and turn out of the Club, any person who (among other things), is then intoxicated, violent, quarrelsome or disorderly. These powers are given both by the Club's Constitution and by the Liquor Act to the Secretary and employees of the Club in order to preserve the comfort and wellbeing of members and their guests and to prevent (or at least mitigate the risk of) breaches of the law by the Club caused by the misconduct of patrons.

## **GUESTS**

27. Rule 25 deals with guests. All members other than Junior members may introduce guests into the Club subject to any limits imposed by the Board by By-Law. A member cannot introduce a person as a guest if the person has been expelled from the Club or who is currently under suspension or has been turned out of the Club. As required by Registered Clubs Act a guest cannot be supplied with liquor on the premises of the Club unless on the invitation and in the company of a member and a guest must remain in the reasonable company of the member who signed them into the Club and must leave the premises of the Club if that member also leaves the premises.

## **PATRONS**

28. Rule 26 deals with the appointment of patrons. Patrons will be appointed by the members in general meeting following a recommendation by the Board.

## COMPOSITION OF THE BOARD

29. Rule 27 deals with the composition of the Board and provides that there will be seven (7) directors comprising a President, Deputy President, Treasurer and 4 ordinary directors.
30. The Board is elected biennially (that is, every 2 years) as is presently the case.
31. Life members, Bowling members and Non-Bowling members are eligible to be elected or appointed to the Board but this will not apply to a member who has not been a member of the Club for at least 1 year.
32. Rule 27.2 reflects a provision of the Registered Clubs Act which allows the Board to appoint up to two (2) "board appointed directors" in accordance with the provisions of the Registered Clubs Act and Regulations.
33. Any person who is elected or appointed to the Board must, unless exempted, complete the mandatory training requirements for directors as required by the Regulations under the Registered Clubs Act.
34. Rule 27.7 provides that there shall be no more than three (3) Non-Bowling members on the Board at any time but not including directors appointed under Rule 27.2 (see paragraph 32 above).

## ELECTION OF BOARD

35. Rule 28 deals with the procedures for the election of the Board. Notice of the date, time and the last day for receiving nominations must be prominently posted on the Club noticeboard at least twenty-eight (28) days prior to the date fixed for each biennial general meeting and nominations will close at least fourteen (14) days prior to the date of that meeting.
36. A nomination for election to the Board must be in writing and in such form as determined by the Board from time to time and must be signed by the nominee and by two (2) members eligible to vote in the election as proposers. Candidates can nominate for more than one office but if elected to a senior office, shall be eliminated from the election for the junior office. The order of seniority will be firstly President, secondly Deputy President, thirdly Treasurer and fourthly Ordinary Director.
37. If a ballot for the election of any directors is required, the ballot shall be conducted on such days and during such times as may be determined by the Board from time to time but at least five (5) days notice of the commencement of voting must be displayed on the Club's website and on the Club's noticeboard.
38. The Returning Officer responsible for the conduct of the ballot, shall report the results of the ballot to the Secretary or a person nominated by the Secretary who shall report the results to the biennial general meeting.
39. If at the close of the biennial general meeting there are still vacancies on the Board, those vacancies shall be casual vacancies which may be filled by the Board itself.
40. Rule 28 also provides that the election of the Board can be conducted electronically by members using their own personal computer or by using a designated computer at the Club's premises. The use of technology in relation to general meetings has been

made easier by recent amendments to the Corporations Act. It is hoped those amendments will be permanent.

41. The Board has the power to make By-Laws regulating all matters in connection with the election of the Board that are not inconsistent with the Constitution.

### **POWERS OF THE BOARD**

42. Rule 29 deals with the powers of the Board. The Board is responsible for the management of the business and affairs of the Club including the power to borrow, grant mortgages and sell and lease or otherwise dispose of furniture, fittings, equipment, etc. The Board also has the power to lease, exchange or otherwise dispose of any land belonging to the Club but this is subject to the requirements of the Liquor Act and Registered Clubs Act and in particular section 41E of the Registered Clubs Act which reserves to the members in general meeting, a power to authorise a disposal of Club land unless the disposal falls within one of the exceptions set out in that section or in the Regulations.
43. The Board also has power to create committees and to regulate the conduct of those committees. Any committee created by the Board must keep minutes of its meetings and submit those minutes to the Board.

### **Sub Clubs**

44. Rule 29 also deals with the establishment and operation of sub clubs such as bowling sub clubs and sub clubs for other sporting or leisure activities.
45. Rule 29 also gives the Board power to make By-Laws and deals with the matters that can be regulated by By-Law.

### **PROCEEDINGS OF THE BOARD**

46. Rule 30 deals with proceedings of the Board.
47. The President will take the chair at every meeting but if the President is not present or is not willing or unable to act then the Deputy President shall take the chair and if the Deputy President is not present or unwilling to act, then the directors shall elect one of their number to take the chair for that meeting.
48. The quorum for a meeting of the Board is four (4) elected directors (ie) the Board appointed directors referred to in paragraph 32 above are not counted for the purpose of a quorum.

### **MATERIAL PERSONAL INTERESTS**

49. Rule 31 deals with the material personal interests of directors. Under the Corporations Act a director who has a material personal interest is required to declare it at a Board meeting and must not vote on the matter and must not be present when the matter is being considered by the Board.

### **REGISTERED CLUBS ACCOUNTABILITY CODE**

50. Rule 32 introduces a large number of provisions effecting directors, officers and in some instances employees of the Club. These provisions are based on the Registered Clubs Accountability Code. The Registered Clubs Accountability Code is

set out in Schedule 2 to the Registered Clubs Regulations and rather than members having to research the Code, the relevant provisions are now reflected comprehensively in Rule 32.

### **REMOVAL FROM OFFICE OF DIRECTORS**

51. Rule 33 gives the members in general meeting the right to remove from office any director, or the whole Board, before the expiration of his, her or their term of office and to appoint another person or persons in his, her or their place. The procedures in relation to this must follow the requirements of section 203D of the Corporations Act.

### **VACANCIES ON THE BOARD**

52. Rule 34 sets out the circumstances where a member of the Board automatically vacates his or her office.
53. Rule 34 also gives powers to the Board to fill casual vacancies and the person appointed will hold office only until the conclusion of the following biennial general meeting.

### **CALLING OF GENERAL MEETINGS**

54. Rules 35 deals with the circumstances for calling general meetings (including Annual General Meetings) of the Club.
55. In accordance with the Corporations Act the Board must call and arrange to hold a general meeting on the request of members with at least 5% of the votes that may be cast at meeting.
56. The Board may whenever it considers fit call a general meeting.
57. Twenty-one (21) days notice in writing of a general meeting must be given to all members of the Club who are entitled to attend and vote at the meeting and to the auditor.
58. There must be an Annual General Meeting each year which under the Corporations Act must be held within five (5) months of the end of the Club's financial year.

### **CONDUCT OF GENERAL MEETINGS**

59. The President shall be entitled to take the chair at every general meeting but if he is not present or is unwilling to act then the Deputy President shall take the chair and if the Deputy President is not present or is unwilling to act, then the members of the Club present shall elect a member to preside as chairperson of the meeting.
60. As required by the Registered Clubs Act, employees cannot vote at general meetings and proxy voting is prohibited
61. Every eligible member is entitled to one (1) vote on a show of hands and on a poll.
62. In the case of an equality of votes whether on a show of hands or a poll, the chairperson of the meeting will have a second or casting vote.
63. Voting will be on a show of hands unless a poll is demanded. Five (5) members or the chairperson can demand a poll.

64. The quorum for a general meeting, including an Annual General Meeting, is fifteen (15) members present in person and eligible to vote.
65. Rule 36 also provides for members with at least five percent (5%) of the votes or one hundred (100) members (whichever is the lesser) can require the Club to circulate a notice to members in relation to a resolution that they propose to move at a general meeting. The provisions of this Rule reflect the provisions of the Corporations Act in relation to the same subject matter.

## **MINUTES**

66. Rule 37 requires the Club to keep minutes of all meetings of the Board and of general meetings of members.

## **ACCOUNTS, REPORTING TO MEMBERS, FINANCIAL YEAR AND APPOINTMENT OF AUDITORS**

67. Rule 38 deals with the accounts and records that are to be kept by the Club and the reporting of the financial position of the Club to members.
68. The Board is required under the Registered Clubs Act to prepare quarterly reports and to make them available to members. The Board is also required to report to members within twenty-one (21) days before each Annual General Meeting in accordance with the Corporations Act and at each Annual General Meeting to lay before the meeting:
  - (a) the financial report for the last financial year;
  - (b) the Directors Report;
  - (c) the Auditor's Report for the last financial year.

## **Financial Year**

69. 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 having regard to the Corporations Act the Board may determine.

## **Auditor**

70. Rule 40 deals with the appointment of the 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**

71. Rule 41 provides that the Club will have one Secretary who under the Registered Clubs Act will have to be approved by Liquor & Gaming NSW and who is the Chief Executive Officer of the Club.

## **EXECUTION OF DOCUMENTS BY THE CLUB**

72. Rule 42 deals with the execution of documents either by using the company seal or by the signatures of two (2) members of the Board or by one (1) member of the Board and the Secretary.

**NOTICES TO MEMBERS**

- 73. Rule 43 deals with the giving of notices by the Club to members which includes sending notices to the electronic addresses nominated by the members.

**INDEMNITY OF OFFICERS**

- 74. Rule 44 deals with the indemnity of officers to the extent permitted by the Corporations Act.

**INTERPRETATION**

- 75. Rule 45 deals with the interpretation of the Constitution or of any Rule or By-Law to be determined by the Board. The Board would have to exercise this power in good faith and for a proper purpose as required by the Corporations Act.

**AMENDMENTS TO CONSTITUTION**

- 76. Rule 46 deals with amendments to the Constitution. Amendments can only be made by way of a Special Resolution passed at a general meeting of members. Life members and Bowling members and Non-Bowling members are the only members eligible to vote on any Special Resolution to amend the Constitution.

It is hoped that members will have a better understanding of the proposed new Constitution based on this Explanatory Memorandum but if a member has any questions, please direct them to the Chief Executive Officer well before the meeting at which the Special Resolution to adopt the new Constitution will be considered.

Dated: 2021

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Karren Jamieson  
Chief Executive Officer