

MIDDLE HARBOUR YACHT CLUB

ACN 000 248 877

EXPLANATORY MEMORANDUM FOR PROPOSED NEW CONSTITUTION

At the General Meeting, members will be asked to consider a Special Resolution to adopt a new Constitution to replace the existing Constitution.

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

Members who wish to review the proposed new Constitution can inspect it at the Club where it is prominently on display on the Club Notice Board together with a copy of the existing Constitution. A copy of the proposed new Constitution and the existing Constitution are also on the Club's website. Members may also obtain a copy of the proposed new Constitution and the existing Constitution upon request at the Club's office.

A summary of the proposed new Constitution and its principal features is set out below. **Significant variations from the existing 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 Middle Harbour Yacht Club.

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.

WINDING UP AND MEMBER'S LIABILITY

8. Rule 5 states that the liability of the members is limited. That limit is one hundred dollars (\$100.00) as set out in Rule 6.
9. Rule 6 provides that each member of the Club undertakes to contribute an amount not exceeding one hundred dollars (\$100.00) 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 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

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

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 prohibits a person associated with the Club from receiving direct or indirect benefits including but not limited to monetary payments or commissions from liquor sales at the Club.

MEMBERSHIP

18. 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 Youth member.
19. Rule 10.2 sets out the categories of membership of the Club. Unless otherwise determined by the Board, the categories of membership of the Club are Full Club membership, Senior membership, Sailing membership, Sailing Under 30 membership, Associate membership, Youth membership, Corporate membership, Social membership and Life membership.
20. Rule 10.3 provides that persons may be admitted to the Club as Provisional members, Honorary members or Temporary members.
21. Rule 10.4 provides that the number of 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 Entitlements of Full Membership

22. Rules 10.5 to 10.3 inclusive set out the eligibility requirements and entitlements of the various categories of Full membership. The eligibility requirements and entitlements of the various categories of Full membership remain unchanged.

Transfer Between Classes of Membership

23. Rules 11.1 to 11.5 deal with the transfer of members between classes of membership.

Provisional Members

24. 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

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

Temporary Members

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

ELECTION OF MEMBERS

27. Rule 15 deals with the system of electing members to the Club. This remains unchanged.

JOINING FEES, SUBSCRIPTIONS AND LEVIES

28. Rule 16 deals with joining fees, subscriptions and levies.
29. Subscriptions shall be due and payable on a date or dates determined by the Board from time to time. Renewal notices must be sent to all members.
30. Any person who has not paid his or her subscription by the due date shall cease to be entitled to the privileges of membership of the Club and may by resolution of the Board be removed from membership of the Club.
31. Rule 16.7 provides that members of five (5) or more years standing who are in receipt of a pension shall be entitled to a reduced annual subscription.
32. Rule 16.8 provides that families (as defined in clause 3.1 of the new Constitution) can apply for the Family Membership Package. In general terms, members will remain in their existing category of membership under a Family Membership Package but those members will be entitled to a "discounted annual subscription". This reflects the existing Constitution and the existing practice of the Club.

NON-FINANCIAL MEMBERS

33. Rule 17 clarifies that non-financial members cease to be entitled to all of the rights and privileges of membership, which include the right to attend at the premises of the Club, the right to participate in the social and sporting activities of the Club, the right to vote, the right to attend meetings of the Club and the right to be elected to the Board.

REGISTERS OF MEMBERS AND GUESTS

34. Rule 18 sets out the registers the Club is required to maintain in respect of members and guests. This is consistent with the Registered Clubs Act.

ADDRESSES OF MEMBERS

35. Rule 19 requires members to advise the Club of any change in their address within 7 days to ensure compliance with the Registered Clubs Act and to keep records up to date.

DISCIPLINARY PROCEEDINGS

36. Rule 20 deals with powers of the Board to discipline members. The provisions are more comprehensive than the existing Constitution but reflect the existing Constitution and existing practice of the Club.
37. Rule 21 clarifies that the Board may 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.
38. Rule 22 clarifies that any member suspended pursuant to Rules 20 or 21 shall, during the period of suspension, cease to be entitled to all of the rights and privileges of membership.
39. Rule 23 deals with the power given to the Chief Executive Officer and employees of the Club under the Liquor Act to remove persons from the Club's premises and to prevent that person from returning to the Club. These powers given to the Chief Executive Officer and employees are no wider than those given under the Liquor Act.
40. Rule 24 deals with the procedure for a member to resign from the Club.

GUESTS

41. Rule 25 deals with guests and reflects the provisions of the Registered Clubs Act.
42. Every guest must be introduced by a member and that member must complete and sign the Guests Register in order for that guest to enter the Club. The only exception to this is in relation to a guest who is a minor. A minor may be admitted as a guest of a member without the member having to complete the Guests Register. However, the minor (like any other guest) must remain in the reasonable company of that member at all times while on the premises of the Club.

PATRONS

43. 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

44. Rule 27 deals with the composition and election of the Board. **Rule 27 reflects the Club's existing Constitution and the existing practice of the Club in most respects, except for the changes in Rule 27.1, 27.3 and 27.8 (explained in detail below).**
45. **Rule 27.1 amends the composition of the Board.** In this regard:
- (a) The current practice of the Club is that seven (7) directors are elected to the Board and the Commodore and one other Flag Officer are "invited" to be directors on the Board.
 - (b) The above practice is inconsistent with the Registered Clubs Act.
 - (c) In order for any Flag Officer to be a director, he or she must be elected to the Board.
 - (d) The Board believes the position of Commodore is an important and prestigious role at the Club and as a result, the Commodore should be an elected director on the Board with "voting rights" at board meetings.
 - (e) Accordingly, Rule 27.1 now provides that the Board shall consist of up to nine (9) directors who shall comprise a Commodore and up to eight (8) directors.

46. Rule 27.2 provides that the Board shall be elected in accordance with Schedule 4 of the Registered Clubs Act (commonly referred to as the Triennial Rule). In general terms, the Triennial Rule provides that one third of the Board (ie three (3) directors) is elected each year for a three (3) year term of office.
47. **Rule 27.3 amends the categories of membership which can stand for and be elected or appointed to the Board.** In this regard:
- (a) At present, only Life members, Full Club members and Senior members can stand for and be elected or appointed to the Board; and
 - (b) The Board wishes to expand the pool of possible directors by allowing Sailing members and Sailing Under 30 members to hold office on the Board;
 - (c) Accordingly, Rule 27.3 provides that Life members, Full Club members, Senior members, Sailing members and Sailing Under 30 members can hold office on the Board. However, Rule 27.6 limits the number of Sailing members and Sailing Under 30 members on the Board to a maximum of two (2).
48. 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 or not a financial member of the Club.
49. Rule 27.5 clarifies 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).
50. Rule 27.7 provides that if a member has been a director of the Club for nine (9) consecutive years, he or she will be unable to be elected or appointed to the Board until at least twelve (12) consecutive months have passed since he or she was last a director of the Club.
51. Rule 27.8 provides that directors (excluding the Commodore) cannot hold Flag Officer positions.
52. Rule 27.9 provides that the Commodore must be a Full Club member, Senior member or Life member of the Club.
53. Rule 27.10 provides that a member must be financial member of the Club (in accordance with Rule 27.3) for at least two (2) years before he or she may be elected or appointed to the Board.

ELECTION OF BOARD

54. **Rule 28 amends the procedure for the election of the Board to provide the Club with greater flexibility in relation to conducting the election of the Board. The significant changes are that:**
- (a) **the election of the Board can be conducted by way of members voting in person at the Club's premises or by voting electronically (as opposed to the Club conducting a postal ballot); and**
 - (b) **The Commodore will be elected as a director every three (3) years for a three (3) year term of office.**
55. Rule 28.1(n) provides that, as soon as reasonably practicable after each Annual General Meeting, the elected directors will elect a Chairperson from amongst their number. The Commodore may be elected as Chairperson.

FLAG OFFICERS

56. Rule 29 deals with the composition and election of Flag Officers. **Rule 29 reflects the Club's existing Constitution and existing practice in most respects, except for the Commodore becoming an elected position on the Board which means that some of existing restrictions on Flag Officers will no longer apply to the Commodore (as explained below).**
57. Rule 29.1 provides that the Flag Officers shall consist of the Commodore, Vice Commodore Racing, Vice Commodore Cruising, the Vice Commodore Youth Sailing (formerly known as the Rear Commodore) and the Club Captain. This reflects the Club's existing practice.
58. Rule 29.2 provides that the Flag Officers (**excluding the Commodore**) will continue to be elected annually. **The Commodore will not be elected annually as the Commodore will be elected every three (3) years under the Triennial Rule for a three (3) year term of office.**
59. **Rule 29.3 amends the categories of membership which can stand for and be elected or appointed as Flag Officers.** In this regard:
- (a) At present, only Life members, Full Club members and Senior members can stand for and be elected or appointed as Flag Officers; and
 - (b) The Board wishes to expand the pool of possible Flag Officers by allowing Sailing members and Sailing Under 30 members to hold office as Flag Officers;

(c) Accordingly, Rule 29.3 provides that Life members, Full Club members, Senior members, Sailing members and Sailing Under 30 members can hold office as Flag Officers.

60. Rule 29.4 provides that a member is not eligible to stand for or be elected or appointed as a Flag Officer if they are an employee of the Club, currently suspended from the Club or not a financial member of the Club.
61. Rule 29.5 provides that if a member has held a Flag Officer position (**excluding the position of Commodore**) for five (5) consecutive years, he or she will be unable to be elected or appointed to that position until at least one (1) year has passed since he or she last held that position.
62. Rule 29.6 provides that a Flag Officer (**excluding the Commodore**) cannot be a director of the Club.
63. Rule 29.7 provides that the Board shall form a committee of the Flag Officers who shall assist and advise the Board in relation to the conduct and administration of sailing and other water sports at the Club but the decisions in relation to the administration of sailing and other water sports at the Club are the responsibility of the Board. This reflects the Club's existing practice and is consistent with the requirements of the Corporations Act.
64. Rule 29.8 provides that a member must be financial member of the Club for at least two (2) years before he or she may be elected or appointed as a Flag Officer.

ELECTION OF FLAG OFFICERS

65. **Rule 30 amends the procedure for the election of the Flag Officers.** The election of Flag Officers will be conducted in the same manner as the election of the Board, except for the fact that the Flag Officers (excluding the Commodore) will be elected annually (and not in accordance with the Triennial Rule).

POWERS OF THE BOARD

66. Rule 31 deals with the Board's powers. The provisions are more comprehensive than the existing Constitution but reflect the existing Constitution and the established practice of the Club.

PROCEEDINGS OF THE BOARD

67. Rule 32 deals with proceedings of the Board. The provisions generally reflect the existing Constitution.
68. **Rule 32.4 increases the quorum required for a meeting of the Board from three (3) directors to a minimum of five (5) directors.**
69. 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.
70. **Rule 32.9 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.**
71. **Rule 32.10 provides that Flag Officers (other than the Commodore) shall, on the invitation of the Board, be entitled to attend and participate in board meetings but shall not be elected to vote at board meetings.** For the avoidance of doubt, the Commodore will be a director and is entitled to attend and vote at all board meetings. This reflects the Club's existing practice.

DECLARATIONS OF INTERESTS BY DIRECTORS

72. Rule 33 relates to directors interested in matters that come before the Board. The provisions reflect the requirements of the Registered Clubs Act and the Corporations Act.
73. Directors are required to declare any material personal interest that they may have in a matter that relates to the affairs of the Club.
74. A director with a material personal interest must abstain from taking any part in any discussion or voting on any matter in which that director has such interest.

CONTRACTS BETWEEN THE CLUB, DIRECTORS AND CHIEF EXECUTIVE OFFICER

75. Rule 34 provides the circumstances where the Club can enter into a contract with a director.
76. Rule 35 prohibits the Club from entering into a commercial arrangement or contract with the Chief Executive Officer, a close relative of the Chief Executive Officer, or any company or other body in which the Chief Executive Officer or a close relative of the Chief Executive Officer has a controlling interest. However, this does not apply to a contract of employment, or any other contract permitted by the Registered Clubs Act.

REMOVAL FROM OFFICE OF DIRECTORS

77. Rule 36 provides that the members in general meeting may by ordinary resolution remove any director, or the whole Board, before the expiration of his, her or their period of office and appoint another person or persons in his, her or their place. This is consistent with the Corporations Act and the existing Constitution.

VACANCIES ON THE BOARD

78. Rule 37 sets out how a casual vacancies arise in relation to board positions and Flag Officer positions and provides that Board with the power to fill those casual vacancies.

GENERAL MEETINGS

79. Rules 38.1 to 38.18 inclusive relate to the calling and holding of general meetings (and Annual General Meetings) of the Club. These provisions are more comprehensive than the existing Constitution but reflect the existing Constitution and existing practice of the Club.

ATTENDANCE AND VOTING AT GENERAL MEETINGS

80. Rules 38.19 to 38.31 inclusive relate to attendance and voting at general meetings.
81. Life members, Full Club members, Senior members, Sailing members and Sailing Under 30 members are entitled to attend and vote at a general meeting (and an Annual General Meeting) of the Club.
82. Proxy voting is not permitted. This is a requirement of the Registered Clubs Act.
83. Every member eligible to vote, either by show of hands or a poll, is entitled to one vote.
84. A member, who is also an employee of the Club, is not permitted to vote. This is a requirement of the Registered Clubs Act.
85. All questions and resolutions (other than Special Resolutions) shall be decided by a simple majority of votes.
86. Voting shall be on a show of hands unless a poll is demanded.

QUORUM AT GENERAL MEETINGS

87. Rules 38.32 to 36.36 inclusive detail the quorum required for general meetings.
88. Rule 38.32 provides that no business may be transacted at a general meeting unless a quorum of members is present.
89. Rule 38.33 provides that, at any general meeting (including an Annual General Meeting) convened by the Board, fifteen (15) members present in person and eligible to vote constitutes a quorum. This is consistent with the existing Constitution.
90. Rule 38.34 provides that at any general meeting of the Club convened on the requisition of members, thirty (30) members present in person shall be a quorum. This is consistent with the existing Constitution.
91. Rules 38.37 to 38.40 inclusive set out the procedure to be followed if a quorum is not present and the procedure if an adjournment of a general meeting occurs.

MEMBERS' RESOLUTIONS AND STATEMENTS

92. Rule 39 introduces new provisions relating to individual members submitting items of business and notices of motion for Annual General Meetings of the Club. In this regard:
- (a) The existing Constitution does not contain provisions relating to individual members submitting items of business or notices of motion for Annual General Meetings of the Club.
 - (b) The proposed new Constitution provides that individual members may submit items of business and notices of motion provided they are received by the Secretary of the Club at least forty-two (42) days prior to the date fixed for an Annual General Meeting.
 - (c) The Board retains the discretion as to whether to include items of business or notices of motion in the business of the Annual General Meeting. However, a group of members may compel the Board to do so in the manner referred to in the following paragraph.
93. Rule 39 also introduces new provisions relating to power of a group of members to compel the Board to include items of business or notices of motion in the business of the Annual General Meeting or general meeting of the Club. Those provisions reflect the Corporations Act.

MINUTES

94. Rule 40 provides that minutes of all resolutions and proceedings at general meetings must be entered in the 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

95. Rule 41 deals with the accounts and reporting to members and is consistent with the Corporations Act and Registered Clubs Act.

FINANCIAL YEAR

96. Rule 42 provides that the financial year of the Club shall commence on the first day of May in each year and will end on the last day of April in the same year. There is no change to the financial year of the Club.

AUDITOR

97. Rule 43 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 reflects the Corporations Act.

SECRETARY

98. Rule 44 requires the Board to appoint one Secretary who will be the Chief Executive Officer of the Club for the purposes of the Registered Clubs Act.

EXECUTION OF DOCUMENTS

99. Rule 45 deals with execution of documents and the common seal of the Club.

NOTICES

100. Rule 46 deals with the requirements of giving notice to members. Where a notice of a meeting is sent by post it shall be deemed to have been effectively served on the member on the day following the posting.

INDEMNIFICATION OF OFFICERS

101. Rule 47 deals with the insurance and indemnification of the officers and auditors of the Club in accordance with the Corporations Act.

INTERPRETATION

102. Rule 48 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 or on any matter arising therefrom, shall be conclusive and binding on all members of the Club

YACHT REGISTER

103. Rule 49 requires the Club to keep and maintain a Yacht Register.

AMENDMENTS TO CONSTITUTION

104. Rule 50 provides for amendments to the Constitution. The Constitution can only be amended by way of Special Resolution passed at a general meeting of members. Life members, Full Club members, Senior members, Sailing members and Sailing Under 30 members can vote on any Special Resolution to amend the proposed new Constitution. This is consistent with the existing 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 those circumstances, they are invited to raise their questions either with the Chief Executive Officer of the Club who if necessary will obtain advice from the Club's lawyers to pass back to the member.

The Board of the Club considers that the proposed new Constitution as being a significant improvement on the existing 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: 24 April 2018



Karen Baldwin
Chief Executive Officer