# CONSTITUTION OF SWIMMING COUNTIES MANUKAU INCORPORATED

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# CONSTITUTION OF SWIMMING COUNTIES MANUKAU INCORPORATED

## Section One: Core Provisions

## 1. Name

1.1 The name of the organisation is Swimming Counties Manukau Incorporated (Swimming Counties Manukau).

## 2. Definitions and Interpretation

2.1 In this constitution:

**AGM** means annual general meeting;

**Amount** means any fee, subscription, levy, fine or similar monetary imposition;

**Board** means the board of Swimming Counties Manukau

**Chair** means chairperson of the Board;

***Competition Zone** means a zone comprising Regional Associations participating in the formation* and support of a team to compete in inter-Zonal swimming competitions;

**Database** means Swimming NZ's database of Members;

***Elite HP Swimmer** means a swimmer participating in an elite HP training programme endorsed by* Swimming NZ;

**Facilities Plan** means the plan, or part of the **Whole of Sport Plan,** dealing with the provision of the facilities necessary and desirable to support training and competition for competitive swimming in New Zealand;

**FINA** means the Federation Internationale de Natation, the world governing body of swimming;

**Financial Year** means the financial year of Swimming Counties Manukau

**GM** means a general meeting;

**Governance Role** means membership of a Board or Management Committee responsible for the governance of Swimming NZ or a Member Club.-

**HP** means high performance;

**Interested Persons** are persons who do not come within any of Clauses 6.1c i, ii, iii, iv or v, including, but not limited to: non-competitive swimmers; learn to swim swimmers; and social members;

**KPIs** mean key performance indicators;

**Learn to Swim Swimmers** are persons undergoing instruction about how to swim who do not compete in sanctioned events;

**Swimming NZ Life Member** means a person awarded life membership of Swimming NZ;

ASSISTANT REGISTRAR OF INCORPORATED SOCIETIES
AUCKLAND

**Member Club** is a swimming club which is a member of Swimming Counties Manukau ***and*** Swimming NZ;

**Member Club Voting Representative** means the individual notified to Swimming Counties Manukau in writing by a Member Club as the person authorised to exercise the votes of that Member Club at a Swimming Counties Manukau AGM;

***Objects** mean the objects of Swimming Counties Manukau;*

**Ordinary Resolution** means a resolution requiring a majority of the votes cast;

**President** means the president of Swimming NZ;

**Region** means a geographic area within New Zealand determined to be a Swimming NZ region by Regional Associations;

**Regional Association** is a regional swimming association which is a member of Swimming NZ;

***SGM** means a special general meeting;*

**Special Resolution** means a resolution requiring a two thirds majority of the votes cast;

**Sport** means the sport of competitive swimming;

**Sports Tribunal** means the Sports Tribunal of New Zealand;

**Swimming NZ** means Swimming New Zealand Incorporated (215320);

**Swimming NZ Regulations** include any rules, regulations, by-laws or policies adopted by **Swimming NZ** for controlling the conduct of competitive swimming in New Zealand and the behaviour of competitive swimmers;

**Whole of Sport Plan** means Swimming NZ's Whole of Sport Plan;

**Swimming Counties Manukau Associate** is defined in Clause 6.3; and

**Swimming Counties Manukau Life Member** means a person awarded life membership of Swimming Counties Manukau.

2.2 In this constitution:

a. the singular includes the plural and vice versa;

b. any reference to any Act, regulation, by-law, policy, deed, charter, procedure or document includes any amendment to it and any replacement passed in substitution for it;

c. references to a person includes incorporated bodies and unincorporated groups;

d. *headings are for reference only and do not assist interpretation;*

e. derivatives of any term defined in this constitution have a corresponding meaning; and

f. any approval, decision, requirement or action by Swimming Counties Manukau or the Board may be undertaken by the Board or by such person to whom the Board has given authority.

## 3. Status

3.1 Swimming Counties Manukau is:

a. an incorporated society established under the Incorporated Societies Act 1908;

b. the Regional Association for competitive swimming and swimming related activities in its Region;

c. bound by, and must observe the rules and decisions of FINA; and

d. bound by, and must observe the rules and decisions of Swimming NZ.

## 4. Objects

4.1 The primary Object of Swimming Counties Manukau is to support the growth and performance of the sport of competitive swimming in its Region, from entry level club competitive swimmers to Elite HP swimmers.

4.2 To support its primary Object, Swimming Counties Manukau has the further Objects to work with Swimming NZ, other Regional Associations, Member Clubs and others to:

a. be a member of Swimming NZ;

b. assist and support the development and operation of Member Clubs in its Region;

c. assist and support the operation of Swimming NZ in its Region;

d. coordinate and run Regional competitive swimming in accordance with Swimming NZ's Regulations;

e. *support the development and running of inter-Zonal swimming competitions in accordance* with Swimming NZ's standards;

f. support and deliver the Whole of Sport Plan in its Region including:

i. *working with Member Clubs to develop and implement Swimming NZ's facilities* plan;

ii. facilitating the delivery of programmes to support Member Clubs to attract members and deliver competitive swimming;

iii. minimising as much as practical the administrative complexity of competitive swimming;

iv. enabling the Sport to build swimmer capability;

v. *complying with the policies and standards set by Swimming NZ; and*

vi. striving to achieve the KPIs for its Region set by Swimming NZ in agreement with the Regions.

g. to raise awareness of and interest in competitive swimming within the wider community;

h. have sound governance structures, processes and policies;

i. adopt prudent risk and asset management policies;

j. be financially viable and financially independent of Swimming NZ;

k. fulfil its obligations to Drug Free Sport New Zealand in relation to doping controls and banned substances; and

l. maintain a strong interest in Learn to Swim and swim safe educational activities.

## 5. Powers and Obligations

5.1 Swimming Counties Manukau has full powers, jurisdiction and authority and (except as restricted by this constitution), may do all and any things to carry out its Objects, including:

a. acquire or receive the benefit of any property and deal with property in any way (including borrow, invest, lend and give or obtain security);

b. determine, raise, levy and receive money by any method and from any source;

c. establish, acquire or have interests in incorporated entities, trusts or other entities and utilise the assets of Swimming Counties Manukau in, through or with them;

d. produce, create, licence, use and protect intellectual property;

e. determine who are its Member Clubs and Swimming Counties Manukau Associates and their entitlements, and withdraw, suspend, terminate or restrict membership and other benefits;

f. designate a Voting Representative to represent it at a Swimming NZ GM and to exercise Swimming Counties Manukau voting rights as provided in the Swimming NZ constitution;

g. elect Swimming Counties Manukau Life Members and award Regional service and honours awards

h. make, alter, rescind and enforce rules, policies, plans, charters and procedures to effect the Objects, or for the governance and operation of Swimming Counties Manukau;

i. determine, implement and enforce disciplinary, disputes and appeal procedures including making decisions, conducting hearings and imposing sanctions and penalties;

j. engage and dismiss employees and contractors;

k. delegate powers of Swimming Counties Manukau to any person, committee or sub-committees (the composition of which is not limited to members of Member Clubs) and for that purpose to establish, fund and set the terms of reference and structure;

l. contract, engage or make any arrangements with any person to fulfil the Objects;

m. be a member of or affiliate to and/or be associated in any way with any person which has objects which are similar in whole or in part to the Objects in New Zealand and/or internationally;

n. produce, publish and distribute any communications, newsletters or publications;

o. work within its Region unless Swimming NZ approves otherwise;

p. do any other acts or things which it determines are incidental to or conducive to the attainment of the Objects; and

q. merge with, consolidate and/or transfer assets and liabilities to another Regional Association.

5.2 Swimming Counties Manukau shall:

a. support and work with the Board and executive of Swimming NZ to build a culture of trust, collaboration and discipline for the Sport;

b. act consistently with the Whole of Sport Plan, policies, standards and KPIs set by Swimming NZ;

c. produce regularly and provide to Swimming NZ, a strategic plan identifying its role in growing the Sport and supporting the Whole of Sport Plan;

d. work with Swimming NZ and other Regional Associations for the benefit of the Sport;

e. *work with other* Regional Associations *on any proposal to change the geographic* boundaries of the Regions. Notify and receive the approval of Swimming NZ to any changes in boundaries. Review the boundaries once a year to ensure optimal configuration of them;

f. play an active role in securing funding for the Sport;

g. work collectively with the other Regional Associations and Swimming NZ to agree annual KPIs for Regional Associations;

h. provide reports as required by Swimming NZ regarding the achievement of KPIs;

i. organise and run competitive swimming in and for its Region, including Regional championships and maintaining a register of Regional records;

j. cooperate with Swimming NZ and the other Regional Associations in respect of inter-Zonal competitions and the development of competition pathways to inter-Zonal competitions;

k. work collectively with other Regional Associations in its Competition Zone, to support the development and running of inter-Zonal competitions;

l. pay any Amount owed by it to Swimming NZ;

m. abide by all rules, regulations, lawful requests or directions made by Swimming NZ including any Swimming NZ Member Protection Policy or Code of Conduct; and

n. provide accurate data on a timely basis for it, its Member Clubs and its Swimming Counties Manukau Associates as required by Swimming NZ for the Database or otherwise.

## Section Two: Member Clubs, Swimming Counties Manukau Associates and Database

## 6. Member Clubs, Swimming Counties Manukau Associates and Database

6.1 A Member Club is a swimming club in the Region for Swimming Counties Manukau, which:

a. is a member of Swimming NZ;

b. is approved by Swimming Counties Manukau as a member of Swimming Counties Manukau

c. has club members who are:

i. swimmers who compete in a Swimming NZ Member Club or Region (or higher) event sanctioned by Swimming NZ or a Regional Association and which is on the annual national, inter-Zonal or Regional competitive calendar (this category includes Elite HP Swimmers and excludes "Learn to Swim" swimmers); and/or

ii. coaches of Member Clubs or coaches of Elite HP Swimmers; and/or

*iii.* *Regionally or higher qualified inspectors of turns officials and nationally or higher* qualified time keepers; and/or

iv. Swimming NZ Life Members; and/or

v. Swimming Counties Manukau Life Members; and/or

vi. Interested persons who do not come within any of Clauses 6.1c i, ii, iii, iv or v, including, but not limited to: non-competitive swimmers; learn to swim swimmers; and social members.

6.2 Member Clubs must pay all Amounts due to Swimming Counties Manukau and Swimming NZ before swimmers from that Member Club can participate in the events described in Clause 6.1c.i.

6.3 Swimming Counties Manukau Associates are any person described in Clause 6.1c.ii, iii, iv, v or vi or any Elite HP Swimmer who:

a. is not a member of a Member Club; and

b. has designated Swimming Counties Manukau as the Regional Association to which they are aligned; and

c. is a member of Swimming NZ.

6.4 If a Swimming Counties Manukau Associate becomes a member of a Member Club or of a swimming club which is a member of a Regional Association other than Swimming Counties Manukau, they are no longer a Swimming Counties Manukau Associate.

6.5 Swimming Counties Manukau Associates must pay Amounts levied by Swimming NZ or by Swimming Counties Manukau.

6.6 A swimming club seeking membership of Swimming Counties Manukau must:

a. complete and submit an application as required by Swimming Counties Manukau;

b. have objects which include attracting, developing and retaining members in the Sport;

c. satisfy all criteria in the Swimming NZ constitution and in these clauses to be a Member Club; and

*d. will be subject to approval as a member by Swimming Counties Manukau.*

6.7 Swimming Counties Manukau must determine actual membership at least annually including whether a swimming club or Swimming Counties Manukau Associate continues to satisfy the *requirements to be a Member Club or a Swimming Counties Manukau Associate.*

6.8 Swimming Counties Manukau must collect and provide to Swimming NZ up to date details of its Member Clubs and Swimming Counties Manukau Associates as required by the Swimming NZ constitution for the Database.

## 7. Rights and Obligations of Member Clubs

7.1 A Member Club is bound by this constitution and:

a. *by all rules, policies, charters, procedures and decisions of Swimming Counties Manukau* and where applicable those of Swimming NZ and FINA;

b. must pay all Amounts imposed on it by Swimming Counties Manukau and Swimming NZ;

*c. must collect up to date details of its members for its own records, and provide them to* Swimming Counties Manukau and Swimming NZ as required for the Database.

7.2 A Member Club ceases to be a Member Club:

a. by written agreement with, or written resignation delivered to, Swimming Counties Manukau;

b. by liquidation or dissolution;

c. upon expulsion from membership;

d. if no longer eligible to be a Member Club under Clause 6.

7.3 A Member Club disobeying any rule or failing to give effect to any decision of Swimming Counties Manukau , Swimming NZ, FINA, or the Sports Tribunal, or having done anything else (for example, being convicted of a criminal offence which the Board considers is relevant to Swimming Counties Manukau) which the Board considers brings or may bring the Sport or Swimming Counties Manukau into disrepute and/or creates exposure to risk for Swimming Counties Manukau or if a Member Club fails to enforce any sanction or give effect to any decision imposed by Swimming NZ or Swimming Counties Manukau, or the Sports Tribunal is liable to:

a. suspension for a period; and/or

b. expulsion;

or such other sanction as the Board may in its sole discretion impose.

7.4 A Member Club must provide to Swimming Counties Manukau at least two weeks prior to the AGM:

a. a copy of its annual report;

b. *a copy of its annual financial statements as approved by its members at a AGM of that* Member Club;

c. the names and addresses of its Member Club Voting Representative and its board members (if any);

d. the names and addresses of its officers.

7.5 A Member Club may only be a member of one Regional Association at a time.

7.6 Any transfer of membership of a Member Club between Regional Associations shall be effective once approved in writing by the two Regional Associations involved.

7.7 Any Member Club under suspension, or awaiting a hearing for an offence capable of having a period of suspension imposed, is ineligible for transfer.

## Section Three: Governance

## 8. Board Composition

8.1 The Board comprises six persons, (except following a merger of regional associations when for the first three years after the merger, the Board shall comprise no less than six persons and no more than eight persons) who are not required to be members of a Member Club. At least two of whom must have previous governance experience and at least two of whom must not have a contemporaneous Governance Role in a Member Club.

8.2 The following persons are not eligible to be a Board member:

a. an employee of a Member Club, Swimming Counties Manukau or Swimming NZ; and

b. a person who is a member of the board of Swimming NZ.

8.3 Either

a. all Board members are elected by Member Clubs at an AGM; or

b. four Board members are elected by members at an AGM and the balance of the Board members are appointed by an appointment panel that includes the regional Board Chair and two other persons, not currently members of the Board, elected by Member Clubs for this purpose.

8.4 Notwithstanding anything else in this Constitution, each Member Club is entitled to one vote for the election of each elected Board member and the election of elected members of the any appointment panel under Clause 8.3.

8.5 At least 21 days prior to the AGM, the Board shall give written notice to Member Clubs calling for nominations from Member Clubs for Board members.

8.6 Each Member Club:

a. may nominate in writing one candidate for election to the Board for each vacant position on the Board.; and

b. must provide to the Board the written consent of any candidate to their nomination; and

c. may provide to the Board such further information as it thinks fit in support of its candidate(s); and

d. if choosing to nominate a candidate for election to the Board must comply with requirements in Clause 8.6 a-c above at least seven days prior to the AGM.

8.7 In relation to the term of office of a Board member:

a. A term of office is for a maximum of three years;

b. a Board member may not serve more than three consecutive terms of office on the Board;

c. all terms of office served prior to the 2014 AGM count as one term of office;

d. the two Board members with the longest service since they were last elected must retire at the end of each AGM. If there are two or more Board members with equal long service since last elected the two to retire may be decided by agreement among the Board members with equal long service since last elected, and, failing agreement, will be determined by lot among such members.

e. a Board member may stand again for the Board but is subject to this Clause 8.7;

f. except where a term of office otherwise ends it expires at the conclusion of the next AGM.

8.8 At the first Board meeting after the AGM, the Board shall elect a Chair and a deputy Chair of the Board. The Chair shall chair all Board meetings at which he or she is present and in the Chair's absence the deputy Chair shall take that role. The Chair shall upon election resign any Governance Role he or she may have with a Member Club and must not during his or her tenure as Chair hold a Governance Role with a Member Club.

8.9 A Board member is deemed to have vacated the Board upon any one or more of the following occurring:

a. being adjudicated bankrupt;

b. being declared of unsound mind or being the subject of a property order under the Protection of Personal and Property Rights Act 1988;

c. resigning or retiring or their term of appointment expiring;

d. being convicted of a criminal offence or being sentenced to imprisonment;

e. dying; and

f. being absent for three consecutive meetings of the Board without being granted leave of absence by the Board;

*8.10 Casual vacancies are dealt with as follows:*

a. the Board may fill casual vacancies on the Board;

b. the term of any appointments due to casual vacancies is until the conclusion of the next AGM;

c. appointments due to casual vacancies will not count as a term served as a Board member for the purpose of 8.7 b;

d. any person appointed to fill a casual vacancy may later stand for election to the Board.

## 9. Board Procedure

9.1 The governance of Swimming Counties Manukau and the exercise of all powers of Swimming Counties Manukau (except where restricted by this constitution) are delegated without further restriction, to be undertaken by the Board. Such powers may also be delegated by the Board to persons as it determines.

9.2 The role and responsibility of the Board is to act in the best interests of Swimming Counties Manukau and to provide good governance to Swimming Counties Manukau including through the following:

a. procuring the implementation of the Whole of Sport Plan in the Swimming Counties Manukau Region.

b. monitoring and reviewing performance against the Whole of Sport Plan;

*c. monitoring and reviewing performance against the annual business plan and budget;*

d. addressing the ongoing viability and sustainability of Swimming Counties Manukau;

e. monitoring regulatory compliance for Swimming Counties Manukau;

f. establishing, reviewing, and monitoring policies to guide and govern Swimming Counties Manukau;

g. fostering interaction and communication across and within Swimming Counties Manukau, Regional Associations and Member Clubs and with Swimming Counties Manukau Associates;

h. adopting and communicating a continual best practice performance culture;

i. receiving annual KPIs and being accountable to Swimming NZ for achievement of them; and

j. preparing an annual report and procuring an annual statement of accounts.

*9.3 The quorum for a Board meeting is four Board members.*

9.4 The Board determines its own rules for any matters not specified in this constitution, including for conduct, operation and meetings of the Board. Such rules should be recorded in a Board charter and code of conduct which shall include:

a. *there must be at least five Board meetings each year;*

b. Board meetings may be held in person or by teleconference or by other means by which those participating may hear each other simultaneously;

c. a resolution signed by all Board members is as effective as if passed at a meeting;

d. a Board meeting may be called by the Chair or by written request of three Board members;

e. decisions are by Ordinary Resolution (unless otherwise required by this constitution) by voice, or if requested by the Chair by show of hands, and, if requested by any Board member, by secret ballot;

f. each Board member has one vote and in a tie the Chair has an additional casting vote;

g. the Board must ensure minutes are kept of all Board meetings;

h. any additional roles and expectations that Swimming Counties Manukau has of a Board member;

i. the Board must at periods of not more than three years review all Swimming Counties Manukau policies;

j. an annual performance review of the Board; and

k. *a requirement that all new Board members sign the Board charter and code of conduct in* front of their Board colleagues as a symbol of their commitment to act at all times in the best interests of Swimming Counties Manukau.

9.5 *The Board is required to establish, maintain and implement a Member Protection Policy in* accordance with best practice and which is binding on all Member Clubs.

9.6 The Board may establish an awards committee with functions, processes and protocols as determined by the Board.

## Section Four: Meetings, Elections and Voting

## 10. General Meetings

10.1 A GM of Swimming Counties Manukau is either an AGM or a SGM. Subject to Clauses 10.4 f and g all Member Clubs are eligible to be represented at a GM which shall be held at such location, date, and time, or in the case of Clauses 10.4 f and g by such process, as determined by the Board.

10.2 The AGM must be held once every year, no later than four months after the end of the Financial Year to:

a. consider the Board's annual report;

*b. consider the annual financial report;*

c. consider the statement of accounts;

d. elect Board members in accordance with Clause 8;

e. consider any other business that is notified as an item of business under Clause 10.3.

10.3 An item of business must be considered at an AGM if notified to Swimming Counties Manukau by the Board or by not less than one third of Member Clubs within seven days of notice of an AGM being given.

10.4 A SGM:

a. may be called by the Board at any time;

b. must be called by the Board within 21 days of Swimming Counties Manukau receiving a written request setting out the reasons for the SGM from Member Clubs holding not less than one third of the total number of votes held by Member Clubs as determined in Clause 12;

c. can only consider the items of business for which the SGM has been called;

d. can only pass a resolution by Special Resolution;

e. Special Resolutions bind the Board to comply with such resolution;

f. if determined to be appropriate by the Board, may be held electronically or by teleconference with post, email or electronic voting; and

g. *if the Board determines that a SGM is undesirable because of content, time and/or* expense, the Board may conduct the business of the SGM entirely by post, email or electronic voting but this Clause does not apply to a SGM requisitioned by not less than half of the number of Member Clubs.

10.5 A quorum for a GM is formed if the Member Clubs Voting Representatives present hold in total not less than 50% of the total votes as determined in Clause 12.1 or, if post, email or electronic voting applies, at least 50% of the total votes are cast. If a quorum is not achieved within half an hour, or where post, email or electronic voting applies, less than 50% of the total votes are cast, the GM fails for lack of quorum but the GM is adjourned to another day, time and place to be notified to all persons who are to be given notice under Clause 11. The Member Club Voting Representatives present at a re-convened GM are deemed to constitute a valid quorum.

10.6 *GMs are chaired by the Chair of the Board and in his or her absence by a Board Member elected* by the Member Club Voting Representatives participating in the GM. Matters not provided for that occur at or in relation to a GM are decided by such chairperson.

10.7 All Member Club Voting Representatives at a GM must comply with any Board policy relating to speaking at a GM.

10.8 Members of Member Clubs other than Voting Representatives may attend GMs as observers only.

10.9 Minutes must be kept of each GM.

10.10 Any irregularity, error or omission in notices, agendas and papers for the GM or omission to give notices within a timeframe or omission to give notice to all persons entitled to receive notice, and any other error in the organisation of the GM does not invalidate nor prevent the GM from proceeding provided that:

a. the chairperson in his or her discretion determines that it is still appropriate for the GM to proceed despite the irregularity, error or omission; and

b. a motion to proceed is put to the GM and such motion is passed by Special Resolution.

## 11. Notices for General Meetings

11.1 Notices and other documents referred to in this Clause in relation to a GM must be given by Swimming Counties Manukau to all Member Clubs and may be given to any other persons as determined by the Board.

11.2 Notice of the date, time and place (or process in the case of Clause 10.4 g and h) of a GM must be given by Swimming Counties Manukau not less than 30 days prior to the date of the GM.

11.3 Notice of the agenda and the documents relating to items of business for the GM must be given by Swimming Counties Manukau not less than 14 days prior to the date of the GM.

11.4 Any notice to be given by Swimming Counties Manukau in relation to a GM may be given by any method (for example but not limited to post, email, or notification on a website) as determined by the Board.

## 12. Elections and Voting

12.1 The number of votes held by a Member Club is equal to the number of members in Clause 6.1c i, ii, iii, iv and v (for the avoidance of doubt excluding Swimming Counties Manukau Associates) recorded on the Database for that Member Club on the last day of the Financial Year immediately preceding the date on which the vote is to be exercised, provided that:

a. a club member is not counted in the number of votes held by their Member Club if any Amount due by them to Swimming Counties Manukau or Swimming NZ for the Financial Year referred to above is not paid fourteen or more days before the date on which the vote is to be exercised;

b. the votes of a Member Club which has not complied with Clause 6.2 are not counted; and

c. voting rights are suspended if so determined by the Board under Clause 7.3.

12.2 At GMs:

a. a Member Club's Voting Representative who is present is entitled to vote;

b. proxy votes are not permitted;

c. voting is by voices or by show of hands as determined by the chairperson of the GM, except the Board may determine that a GM may be held electronically or by teleconference with post, email or electronic voting. Any matter may be by a secret ballot if it is called for by a Member Club or by the chairperson of the GM;

d. motions are passed by Ordinary Resolution unless required by this constitution to be passed by Special Resolution.

12.3 All of the votes held by a Member Club must be voted together (i.e. the total number of votes cannot be split).

12.4 Life Members, Swimming Counties Manukau Associates and Member Club members do not have individual voting rights at GMs.

## Section Five: Other

## 13. Finance

13.1 The Board must ensure that proper financial records are kept and it has appropriate policies for management of Swimming Counties Manukau finances.

13.2 Swimming Counties Manukau funds may be invested in such manner as determined by the Board.

## 14. Common Seal

14.1 Swimming Counties Manukau must have a common seal. The Board determines when and by whom the common seal may be used and where it is to be kept.

## 15. Alteration to Clauses

15.1 Subject to Clause 15.2 and subject to the prior written consent of Swimming NZ, this constitution may be changed by Special Resolution at a GM for which such change has been notified in accordance with Clause 10.

15.2 No change to the prohibition of personal benefit or the liquidation clause can be approved if it would have the effect of causing Swimming Counties Manukau to cease to retain its preferential tax status as a society for the promotion of amateur sport or as a charity under the Charities Act (if applicable).

## 16. Disputes/Appeals

16.1 The Board must adopt a policy to require adherence by Member Clubs to processes that it considers will enable the fair, efficient and timely resolution of:

a. disputes that arise with or between Member Clubs and or involving Swimming Counties Manukau Associates, involving an important activity or responsibility of Swimming Counties Manukau and which the Board considers in its discretion is of such importance or is causing such a level of disruption to Member Clubs or to the activities of Swimming Counties Manukau that it must be addressed; and

*b.* *appeals by a club member against a decision of any Member Club involving suspension*, expulsion, penalty or other material detriment to the club member or may decide (but is not required to) that such matters be referred to Swimming NZ or another body such as the Sports Tribunal (subject to the parties' consent if required).

16.2 The Board may request the President or any other person to act as a mediator in disputes involving Member Clubs.

16.3 The Board may, in its discretion decide to allow a right to appeal disciplinary and selection decisions of the Board to Swimming NZ or another body such as the Sports Tribunal (subject to the parties' consent if required).

16.4 In relation to doping, Swimming Counties Manukau and its Member Clubs shall abide by and be subject to the doping provisions set out in the constitution of Swimming NZ.

## 17. Liquidation and Merger

17.1 Swimming Counties Manukau may be voluntarily liquidated if, at a GM a Special Resolution is passed requiring Swimming Counties Manukau to be liquidated and the resolution is confirmed by a further Special Resolution passed at a subsequent GM called for that purpose and held not earlier than 30 days and not later than 60 days after the date on which the original resolution was passed.

17.2 If, upon the liquidation of Swimming Counties Manukau, there remains after the satisfaction of all Swimming Counties Manukau debts and liabilities any property whatsoever, the property shall be given to an organisation or organisations (selected by the Member Club Voting Representatives exercising the voting entitlement set out in Clause 12.1) having objects similar to the Objects.

17.3 Subject to the written approval of Swimming NZ and satisfaction of all Swimming Counties Manukau debts and liabilities, Swimming Counties Manukau may in accordance with a Special Resolution at a GM called for that purpose merge with another Regional Association or Regional Associations having objects similar to the Objects.

## 18. Prohibition of Personal Benefit

18.1 All income, benefit or advantage must be applied to the Objects.

18.2 No Member Club or Board member or any person associated with a Member Club or Board member shall participate in or materially influence any decision made by Swimming Counties Manukau in respect of the payment to or on behalf of that Member Club or Board member or associated person of any income, benefit or advantage whatsoever.

18.3 Any payments made must be for goods or services that advance the Objects and must be reasonable and relative to payments that would be made between unrelated parties.

18.4 The provision and effect of this Clause must not be removed from this constitution and must be included and implied into any document replacing this constitution.

## 19. Limitation of Liability and Indemnity

19.1 No current or former member of the Board has any liability to Swimming Counties Manukau or the Member Clubs or any Swimming Counties Manukau Associate for any act or omission in their capacity as a member of the Board except in the case of their own fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law.

19.2 Each current or former member of the Board is indemnified by and out of the assets of Swimming Counties Manukau against:

a. any liability arising out of any act or omission in their capacity as a member of the Board excluding criminal liability arising out of their fraud, dishonesty, breach of fiduciary duty or the commission of any act known by them to be a breach of duties owed by them at law; and

b. costs incurred by them in any proceeding relating to such liability.

19.3 This Clause is intended to be enforceable by each current or former member of the Board.

## 20. Savings

20.1 If any matter arises in relation to Swimming Counties Manukau that is not provided for in this constitution, the matter shall be dealt with as required by the Board.

## 21. Transition

21.1 This Clause 21 enables transition of Swimming Counties Manukau from the requirements of its previous constitution to this constitution. If any part of this Clause 21 is inconsistent with any other Clause then Clause 21 applies and to the extent of the inconsistency the other Clause in this constitution does not.

21.2 All Board Members or Management Committee members, as the case may be, under the Previous Constitution shall hold office under this constitution until the end of the next AGM unless the Board or Management Committee Member retires or vacates his or her position earlier. At the next AGM after the adoption of the Constitution the number of Board or Management Committee Members to retire shall be the number necessary to reduce the size of the Board or Management Committee to four persons. The Board or Management Committee Members retiring may be determined by agreement among all the Board members and, failing agreement, shall be determined by lot.

21.3 *Swimming Counties Manukau Life Members on the date of adoption of this constitution shall* continue as Swimming Counties Manukau Life Members under this constitution.