

CAPITAL SWIM CLUB INCORPORATED



Rules (with corrected numbering cross references): Version: 3 August 2024

THE CLUB

1.0 Name

The name of the Club is Capital Swim Club Incorporated (the "Club").

2.0 Registered Office and Club Colours

2.1 The registered office of the Club will be at an address from time to time determined by the Board and notified to members ("Members").

2.2 The colours of the Club will be blue, yellow, and black.

3.0 Objects of the Club

The objects (the "Objects") of the Club are to:

- (a) provide, encourage and promote the instruction and coaching of and participation and competition in swimming and aquatic sports;
- (b) provide facilities to achieve the Club's Objects;
- (c) assist all swimmers achieve their maximum potential in all aquatic disciplines at all levels;
- (d) actively promote the ideals of true sportsmanship, Club spirit and friendship;
- (e) raise funds to promote all or any of the other Objects of the Club;
- (f) to do all other such acts as in the opinion of the Club will further the other Objects of the Club and swimming in New Zealand;
- (g) make regulations to advance the attainment of any of the other Objects of the Club;
- (h) combine, affiliate, or associate with any organisation of New Zealand or elsewhere having purposes wholly or in part similar to the Club;
- (i) form and assist in the formation of branch societies in accordance with the Incorporated Societies Amendment Act 1920 and of any affiliate societies; and
- (j) do any act or thing incidental or conducive to the attainment of any of the above Objects.

Handwritten notes and signatures:
9 August 2024
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GOVERNANCE AND MANAGEMENT OF THE CLUB

4.0 The Board

4.1

- (a) The Club shall have a governance and management board (the "Board") of between three (3) and eight (8) directors (the "Directors"). Of the Directors:
 - i) Up to six (6) Directors may be elected Directors under clause 4.2 and up to two (2) Directors may be Directors appointed under clause 4.1(c).
- (b) Each Director elected under clause 4.2 is (subject to the other provisions in these rules about retirement or cessation as a Director) elected for a two year term but may make themselves available for reelection.
- (c) The elected Directors may appoint up to two (2) additional Directors (who may or may not be financial Members) on the basis of specific knowledge or skills for a term not exceeding two years. Upon expiry of that term, the elected Directors, if they think fit, may reappoint such a Director for a further term.
- (d) No fees are payable to Directors of the Board

Nomination and Election of Elected Board Directors:

4.2

- (a) Elected Directors will be elected at the Club annual general meeting (the "Annual General Meeting"). Only Members entitled to vote can stand for election as a Director and only Members entitled to vote can nominate and second candidates.
- (b) Written nominations signed by the nominee and seconder must be received by the Board not less than twenty-eight (28) clear days before the date of the Annual General Meeting. The Board will circulate to all Members a list of nominees and such information (not exceeding one side of an A4 sheet of paper) as may be supplied to the Board by or on behalf of each nominee in support of the nomination. In the absence of sufficient valid nominations being received (and remaining current at the date of the Annual General Meeting), nominations may be made from the floor at the Annual General Meeting.
- (c) At each Annual General Meeting of the Club, the two longest serving elected Directors must retire but will be eligible for re-election (subject to clause 4.2(d). If the longest serving elected Directors number more than two with equal length of service, the two to retire will

be decided by straw poll.

- (d) No elected Director may serve for more than 3 consecutive terms of two years.
- (e) If the position of any elected Director becomes vacant between Annual General Meetings, that vacancy may be filled by the Board co-opting an eligible person.
- (f) No person employed by the Club may be elected to serve as an elected Director of the Board.

Election of Chair and Deputy Chair of the Board:

4.3

- (a) The Directors of the Board must immediately after the Annual General Meeting, or as soon as possible in the event of an extraordinary vacancy, convene a Meeting to elect a chair ("Chair") and Deputy Chair ("Deputy Chair").
- (b) No Chair may serve for more than four consecutive years.
- (c) The Chair and Deputy Chair will hold office from the conclusion of the Meeting at which they are elected until the next Annual General Meeting

5.0 Cessation of Board Membership

5.1 Persons cease to be Board Members when:

- (a) they resign by giving written notice to the Board;
- (b) they are removed by majority vote of the Club at a Club general meeting (a "General Meeting");
- (c) their term expires, unless re-elected under clause 4.2 or reappointed under clause 4.1(c); or
- (d) they are required to retire under clause 4.2(c) or (f).

5.2 Each Board Member must within seven (7) days of submitting a resignation or ceasing to hold office deliver to the Board all books, papers and other property of the Club possessed by such former Board Member.

6.0 Role of the Board and Board Meetings

6.1 The business and affairs of the Club will be administered, managed and controlled by the Board, which will be accountable to the Members for the implementation of the Objects of the Club.

6.2 The Board may exercise all of the powers of the Club other than those required to be exercised in General Meetings. In particular, the Board will have the power:

- (a) to sanction any Member in accordance with these Rules;

- (b) to delegate any of its powers or functions to any other person or committee it sees fit to appoint. Delegates' powers and responsibilities will be set out in their terms of reference;
- (c) from time to time to make regulations for the conduct and control of Club activities;
- (d) to interpret any Club rule or regulations or any definition contained therein and such decision will be final.

6.3 The Board will meet at such times and places and in such manner as it may determine and otherwise where and as convened by the Chair.

6.4 The quorum for Board Meetings is more than half of the Directors present or participating by telephone, video or other form of continuous electronic communication.

6.5 Board decisions will be approved by majority vote of the Directors. The Chair will have a casting vote in the event of a tie.

6.6 A resolution in writing, signed, or consented to by e-mail, facsimile or other forms of visible electronic communication, by a majority of the Board will be valid as if it had been passed at a Meeting of the Board. Any such resolution may consist of several documents in the same form each signed by one or more Directors of the Board.

6.7 The Chair (and in his/her absence, the Deputy Chair) shall, in addition to all other duties described in these Rules, chair Board Meetings and General Meetings and generally officiate at Meetings and represent the Club.

6.8 Other than as prescribed by statute or these Rules, the Board may regulate its proceedings as it thinks fit.

7.0 CONFLICT OF INTEREST

7.1 Except with the prior written consent of the Board, no employee of the Club or Director will be directly or indirectly interested, employed or involved in any business or activity which may:

- (a) Compete, or have the potential to compete, in any material respect with the business of the Club; or
- (b) affect, or have the potential to affect, the performance of the duties to the Club of such employee or Director; or
- (c) otherwise constitute, or have the potential to constitute, a conflict with the interests of the Club, or create the perception of such a conflict.

7.2 In the event of any of the above conflicts, or potential conflicts, arising, the employee or Director concerned will declare such conflict to the Board. The Board will manage the conflict as it sees fit and may prohibit any such employee or Director from taking part in any

deliberations or proceedings, including voting or other decision-making, relating to the conflict.

7.3 If the Board is unable to agree as to what constitutes a conflict, it will seek independent advice which will be followed once provided.

8.0 POWERS

The Club may:

- (a) employ people for the purposes of meeting the Club's Objects;
- (b) charge Members for services provided by the Club;
- (c) exercise any power a trustee might exercise;
- (d) invest in any investment that a trustee might invest in;
- (e) borrow money and provide security for that if authorised by majority vote at any General Meeting.

9.0 CLUB MEMBERSHIP

9.1 Membership of the Club will be open to all persons who meet with and accept the Objects of the Club and have paid any fees prescribed under Rule 11.0.

Types of Members

9.2 The classes of different Membership and the method by which Members are admitted to different classes are as follows:

(a) Ordinary Member

An ordinary Member ("Ordinary Member") is a Member of the Club admitted under Rule 9.0 who has not ceased to be a Member under Rules 11.2 or 12. Only Ordinary Members are entitled to vote at Club General Meetings. Ordinary Members aged 17 years and under are entitled to have one (1) vote that will be cast on their behalf by their parent or primary caregiver.

(b) Life Member

A life Member ("Life Member") is a person honoured for meritorious services to the Club after recommendation by the Board and elected as a Life Member by resolution of a General Meeting passed by a 75 percent majority of those present and voting. A Life Member will have such privileges as are determined by the Board from time to time which are not less than those of an Ordinary Member. No annual subscription is payable.

(c) Honorary Member

An honorary Member ("Honorary Member") is a person honoured for meritorious

services to the Club after recommendation by the Board and elected as an Honorary Member by resolution of a General Meeting passed by 75 percent majority of those present and voting. An Honorary Member will have no membership rights, privileges or duties. No annual subscription is payable.

9.3 All Members of the Club (and Board Members) shall promote the interests and the Objects of the Club and must do nothing to bring the Club into disrepute.

Register of Members

9.4 The Board will keep a register of Members (the "Register") recording names, addresses, phone numbers, email addresses and the date at which they became a Member.

9.5 Members must advise the Board of any change of address, telephone numbers or email address.

9.6 Members will have reasonable access to the Register of Members.

10.0 ADMISSION OF ORDINARY MEMBERS

10.1 Applicants for Membership as Ordinary Members must complete the application form provided (and supply such information as may be required) by the Board.

10.2 Membership applications shall be considered by the Board, who may interview the Membership applicant.

10.3 The Board will have complete discretion whether or not to admit an Ordinary Membership applicant, and will advise the applicant of its decision, and that decision will be final.

10.4 In the case of any swimmer in the Club who is under the age of eighteen (18) years, while the swimmer remains a Member of the Club, the swimmer will not have any right to vote at any General Meeting.

11.0 JOINING FEES SUBSCRIPTIONS AND LEVIES

11.1 The annual subscription payable by Ordinary Members, and any additional amount payable on joining the Club, will be determined from time to time by the Board and ratified at the Annual General Meeting of the Club.

11.2 Any Member failing to pay the annual subscription, any levy, or fees by a due date determined by the Board shall be considered as non-financial and will (without being released from the obligation of payment) have no Membership rights and will not be entitled to participate in any Club activity until all the arrears are paid in full.

12.0 CESSATION OF MEMBERSHIP

12.1 Any Member may resign from that Member's class of Membership by written notice to the Board, and each such resignation will take effect upon receipt of the same by the Board.

12.2 The Board may declare that a Member is no longer a Member (from the date of that declaration or such date as may be specified) if that Member:

- (a) is convicted of any indictable offence or offence for which a convicted person may be imprisoned;
- (b) is adjudged bankrupt;
- (c) makes a composition with creditors; or
- (d) (if a body corporate) is wound up or placed in receivership or liquidation.
- (e) Fails to pay annual subscription, any levy, or fees by a due date.

12.3 After due enquiry and having given the Member the right to be heard, the Board may by letter invite any Member within a specified time to give up their Membership for having brought the Club into disrepute or for failure to comply with these Rules or any of the other duties of a Member. If the Member does not give up their Membership, the Board may recommend to a General Meeting that the Member be expelled and after the Member has been given the opportunity of being heard by or providing written comments to the General Meeting, that Meeting may expel the Member by resolution passed by a 75 percent majority of those present and voting.

12.4 A Member whose Membership is terminated will remain liable to pay all sums payable to the Club including subscriptions and levies to the end of the Club's then financial year unless the Board decides to the contrary.

12.5 Any breach of Swimming New Zealand rules or Code of Conduct relating to any matter will amount to conduct bringing the Club into disrepute.

13.0 RE-ADMISSION OF FORMER MEMBERS

Any former Member may apply for re-admission in the manner prescribed for new applicants but if the former Member's membership was terminated under either of Rules 12.2 or 12.3, the applicant will not be readmitted without the approval of a General Meeting.

14.0 MONEY AND OTHER ASSETS OF THE CLUB

14.1 The Club may only use money and other assets if:

- (a) it is for the purposes of the Club;

- (b) it is not for the sole personal or individual benefit of any Member; and
- (c) that use has been approved by either the Board or by majority vote at a General Meeting of the Club Members entitled to vote.

14.2 The Board will be responsible for the control and investment of all funds of the Club and the proper administration of all other property of the Club and will, where appropriate, take external advice on matters relating to financial management and the administration of the other assets and liabilities of the Club.

14.3 All payments must be authorised by at least two of:

- (a) the Directors; and
- (b) the administration manager or any other employee of the Club, if authorised by the Board to authorise payments and if the payment does not involve a payment to that manager.

15.0 CLUB FINANCIAL YEAR

15.1 The financial year of the Club will begin on 1 July of every year and end on 30 June of the next year, with the exception of the 2015/16 year where the year will cover 15 calendar months starting from 1 April 2015 and ending on 30 June 2016.

16.0 VERIFICATION OF THE FINANCIAL STATEMENTS

16.1 Each year, the Board will appoint a Chartered Accountant, preferably a member of the New Zealand Institute of Chartered Accountants, who must not be a Member of the Board or an employee of the Club.

16.2 The Chartered Accountant will compile the end of year financial accounts and a report of their findings on specific verification checks of processes and documents as determined by the Board. The Board must provide the Chartered Accountant with:

- (a) access to all information of which the Board is aware that is relevant to the preparation of the financial statements, such as policies, records, documentation and other matters; and
- (b) additional information that the Chartered Accountant may request from the Board for the purpose of the verification process; and
- (c) reasonable access to persons within the Club from whom the Chartered Accountant determines it necessary to obtain evidence.

16.3 Each year the Board, at its discretion, or by way of motion made in accordance with rule 20.2 of these rules, by the majority of members present at an AGM entitled to vote, may appoint an auditor to review the Clubs financial position and processes and systems.

17.0 EXECUTION AND SIGNING OF DOCUMENTS

17.1 The common seal (the "Common Seal") of the Club will be held by the Chair and shall only be affixed as determined by a resolution of the Board.

17.2 Every instrument to which the Common Seal is affixed must be witnessed by two Directors of the Board.

18.0 CLUB GENERAL MEETINGS

18.1 A Club Meeting is either an Annual General Meeting or a special General Meeting ("Special General Meeting").

18.2 Any Member wishing to give notice of any motion for consideration at any General Meeting must forward written notice of the same to the Board not less than twenty-eight (28) clear days before the date of the Meeting. The Board may consider all such notices of motion and provide recommendations to Members in respect thereof.

18.3 Written notice of the time and place of a General Meeting shall be sent to every Member by the Board not less than twenty eight (28) days before the Meeting. The notice must state:

- (a) the nature of the business to be transacted at the Meeting in sufficient detail to enable Members to form a reasoned judgment in relation to it; and
- (b) the text of any formal resolution to be submitted to the Meeting, including in particular resolutions that can only be passed by a 75 percent majority; and
- (c) in the case of Annual General Meetings, copies of the annual report, statement of accounts, list of and information about Board nominees, and notice of any resolutions; and
- (d) the Board's recommendations in respect of any resolution proposed.

18.4 The Annual General Meeting must be held between 1 April and 31 August each year at a time and place fixed by the Board.

18.5 Special General Meetings may be called by the Board or by written request to the Board signed by not less than 10 percent of Ordinary Members. Special General Meetings must be conducted in the same manner as the Annual General Meeting.

18.6 The failure for any reason of any Member to receive any notice prescribed by these Rules will not invalidate the General Meeting or its proceedings.

Voting at General Meetings

18.7 Club General Meetings may be attended by all Members of whatever class of membership, but the only persons eligible to vote are:

- (a) Ordinary Members who are financial; and
- (b) Life Members.

18.8 Members entitled to vote can vote by written proxy (to be tabled at the General Meeting) in favour of another Member entitled to vote who is present, but no other proxy voting shall be permitted.

18.9 Voting at General Club Meetings will be by voices, save where a vote is challenged, in which case voting is to be by a show of hands. Additionally, where the Chair deems it appropriate, or it is requested by majority vote of eligible voting Members present, voting by secret written ballot. On any vote, each entitled voting Member will be entitled to one vote.

Quorum

18.10 The quorum for any General Meeting of the Club is ten (10) percent of Members entitled to vote present or by proxy.

18.11 If a quorum is not present within 10 minutes of the time appointed for the General Meeting, the General Meeting will be adjourned to a day, time and place determined by the Chair (but not less than seven (7) days from the date of the adjourned Meeting). If, at the adjourned Meeting, a quorum is not present within 10 minutes after the time appointed for the Meeting the Ordinary Members entitled to vote who are present in person or by their proxies are a quorum.

18.12 Notice of the date of the adjourned Meeting must be provided to all Members five (5) days prior to the date of that Meeting.

Conduct of Meeting

18.13 The Chair, or in the Chair's absence, the Deputy Chair will preside over all Club General Meetings. In the absence of both of them, another Board Member elected for the purpose by the General Meeting will preside. Any such chair of a General Meeting will have a casting vote.

18.14 The business of the Annual General Meeting will be:

- (a) receiving the minutes of the previous General Meeting(s);
- (b) receiving the annual report of the Chair;
- (c) receiving the treasurer's report and annual financial statements;
- (d) approval of the Club's annual financial statements;
- (e) election of the Board;
- (f) resolutions of which notice has been given;
- (g) approval of any plans for balance of the current and next calendar years; and

(h) general business.

18.15 At any General Meeting, the Members present eligible to vote may by unanimous vote allow other business to be transacted.

19.0 Pecuniary Gain

No Member can receive any pecuniary gain from the Club. Members will not be deemed to be in receipt of any pecuniary gain merely by reason of any of the following circumstances, namely:

(a) that the Club itself makes a pecuniary gain, unless that gain or some part thereof is divided among or received by the Members or some of them;

(b) that any Member of the Club derives pecuniary gain from the Club by way of salary as the servant or officer of the Club;

(c) that any Member of the Club derives from the Club any pecuniary gain to which they would be equally entitled if they were not a Member of the Club;

(d) that the Members of the Club compete with each other for trophies or prizes other than money prizes.

20. Complaint Resolution Procedures

20.1. How complaint is made

20.1.1 A member, employee, or Director may make a complaint by giving to the Board (or a complaints subcommittee) a notice in writing that —

(a) states that the member, employee, or Director is starting a procedure for resolving a dispute in accordance with the Club's constitution; and

(b) sets out the allegation to which the dispute relates and whom the allegation is against; and

(c) sets out any other information reasonably required by the Club.

20.1.2 The Board may make a complaint involving an allegation against a member or a Director by giving to the member or Director a notice in writing that —

(a) states that the Club is starting a procedure for resolving a dispute in accordance with the Club's constitution; and

(b) sets out the allegation to which the dispute relates.

20.1.3 The information given under subclause 20.1.1b. Or 20.1.2b. must be enough to ensure that a person against whom an allegation is made is fairly advised of the allegation concerning them, with sufficient details given to enable them to prepare a response.

20.1.4 Non-members may make a complaint against the Club in accordance with clause 20.1.1 provided that -

- (a) The Non-Member is in a current written contract or partnership with the Club and the Complaint is in connection with that contract or partnership; or
- (b) The Non-Member was in official attendance at a Club-sanctioned event (e.g. a home or away swimming competition) and the Complaint is against a member, employee, or Director also attending or supporting that event.

20.1.5 A complaint may be made in any other reasonable manner permitted by the society's constitution.

20.2. Person who makes complaint has right to be heard

20.2.1 The person who makes a complaint has a right to be heard before the complaint is resolved or any outcome is determined.

20.2.2 If the Club makes a complaint —

- (a) the Club has a right to be heard before the complaint is resolved or any outcome is determined; and
- (b) A Director may exercise that right on behalf of the society.

20.2.3 Without limiting the manner in which the member, officer, or society may be given the right to be heard, they must be taken to have been given the right if —

- (a) they have a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and
- (b) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and
- (c) an oral hearing (if any) is held before the decision maker; and
- (d) the member's, officer's, or society's written statement or submissions (if any) are considered by the decision maker.

20.3. Person who is subject of complaint has right to be heard

20.3.1 This clause applies if a complaint involves an allegation that a member, employee, Director, or the Club (the respondent) —

- (a) has engaged in misconduct; or

(b) has breached, or is likely to breach, a duty under the society's constitution or bylaws or the Incorporated Societies Act 2022; or

(c) has damaged the rights or interests of a member or the rights or interests of members generally.

20.3.2 The respondent has a right to be heard before the complaint is resolved or any outcome is determined.

20.3.3 If the respondent is the Club, a Director may exercise the right on behalf of the society.

20.3.4 Without limiting the manner in which a respondent may be given a right to be heard, a respondent must be taken to have been given the right if —

(a) the respondent is fairly advised of all allegations concerning the respondent, with sufficient details and time given to enable the respondent to prepare a response; and

(b) the respondent has a reasonable opportunity to be heard in writing or at an oral hearing (if one is held); and

(c) an oral hearing is held if the decision maker considers that an oral hearing is needed to ensure an adequate hearing; and

(d) an oral hearing (if any) is held before the decision maker; and

(e) the respondent's written statement or submissions (if any) are considered by the decision maker.

20.4. Investigating and determining dispute

20.4.1 The Club must, as soon as is reasonably practicable after receiving or becoming aware of a complaint made in accordance with its constitution, ensure that the dispute is investigated and determined.

20.4.2 Disputes must be dealt with under the constitution in a fair, efficient, and effective manner.

20.5. Club may decide not to proceed further with complaint

20.5.1 Despite the clause 'Investigating and determining dispute' above, the Club may decide not to proceed further with a complaint if —

(a) the complaint is trivial; or

(b) the complaint does not appear to disclose or involve any allegation of the following kind:

(i) that a member, employee, or Director has engaged in material misconduct;

(ii) that a member, Director, or the Club has materially breached, or is likely to materially breach, a duty under the Club's constitution or bylaws or the Incorporated Societies Act 2022:

- (iii) that a member's rights or interests or members' rights or interests generally have been materially damaged:
- (c) the complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) the person who makes the complaint has an insignificant interest in the matter; or
- (e) the conduct, incident, event, or issue giving rise to the complaint has already been investigated and dealt with under the constitution; or
- (f) there has been an undue delay in making the complaint.

20.6. Club may refer complaint

20.6.1 The Club may refer a complaint to —

- (a) a subcommittee or an external person to investigate and report; or
- (b) a subcommittee, an arbitral tribunal, or an external person to investigate and make a decision.

20.6.2 The Club may, with the consent of all parties to a complaint, refer the complaint to any type of consensual dispute resolution (for example, mediation, facilitation, or a tikanga-based practice).

20.7. Decision makers

20.7.1 A person may not act as a decision maker in relation to a complaint if 2 or more members of the committee or a complaints subcommittee consider that there are reasonable grounds to believe that the person may not be —

- (a) impartial; or
- (b) able to consider the matter without a predetermined view.

21.0 ALTERATION OF RULES

21.1 These Rules may be amended or replaced by resolution of any General Meeting passed by a 75 percent majority of those Members present and entitled to vote.

21.2 Any proposed motion to amend or replace these Rules must be submitted by the Board, or signed by at least fifteen (15) Ordinary Members and given in writing to the Board, at least twenty-eight (28) clear days before the General Meeting at which the motion is to be considered, and accompanied by a written explanation of the reasons for the proposal.

21.3 At least twenty eight (28) days before the General Meeting at which any such proposal is to be considered, the Board must post and/or circulate via email written notice of the proposed motion, of the reasons for the proposal, and of any recommendations from the Board in

respect thereof to all Members of the Club. Any Member not on email must be sent notice by post.

22.0 WINDING UP

22.1 The Club may be wound up under the provisions of the Incorporated Societies Act 1908.

22.2 If the Club is wound up, after payment of all debts, costs and liabilities, the surplus will be paid to an organisation with similar objectives to those referred in rule 3.0 above, as the Members decide by resolution at a General Meeting called for that purpose.