

**DALKEITH-NEDLANDS BOWLING CLUB INC.**  
**(“the Club”)**  
**SPECIAL GENERAL MEETING 7 OCTOBER 2021**  
**PROPOSED CHANGES TO THE CONSTITUTION**  
**EXPLANATORY STATEMENT**

## **Background**

In October 2019 the Club, in Special General Meeting, approved changes to its Constitution. The purpose of those changes was to establish a Future Fund within the Club.

The objective of the Future Fund was to establish a mechanism to assist with the long term financial viability of the Club, particularly for capital works. The changes approved at that time were essentially identical to those now proposed.

The Club (as with most not for profit bodies) is governed by the Associations Incorporation Act (“the Act.”) It is a requirement of the Act that, to be effective, amendments to a constitution must be submitted to and approved by the relevant Government authority within 28 days of being passed by Members.

That was not done with the result that the changes considered in 2019 are not in force. It is therefore necessary to approve them again (and we will ensure they are submitted within the statutory period.)

As Members are aware, the Club has actually established a Future Fund and its activities have been conducted in accordance with the proposed Constitution. In having done so the Club has not done anything in breach of its Constitution.

The description of the proposed changes that follows is the same as provided with the Notice for the 2019 meeting.

## **Description of Proposed Changes**

- 1.** The Club has been considering how to build a fund to ensure the future sustainability of the Club, including providing for possible future capital works and projects.
- 2.** After obtaining advice and considering alternatives the committee proposes establishing a Fund, to be known as “**the Future Fund**”. The Future Fund will be a fund held by the Club, however it will be subject to controls independent of the Committee through the appointment of Fund Custodians as explained in this Explanatory Statement.
- 3.** We considered establishing a separate trust to hold the Future Fund however, we have been advised that a trust will not necessarily be immune from claims of creditors and may not be tax exempt.
- 4.** The provisions dealing with the Future Fund are set out in proposed clause 32 of the amended Constitution.

5. The following will be paid into the Future Fund:

- (i) funds which the Committee resolves shall be paid into the Future Fund;
- (ii) gifts or grants made to the Club on the express condition that they are paid into the Future Fund;
- (iii) fundraising undertaken by the Club which are solicited on the condition that the funds shall be paid into the Future Fund;
- (iv) gifts by will unless they are made for other specific purposes; and
- (v) interest on funds held by the Future Fund, proceeds of sale of investment or returns on investment held by the Future Fund and refunds of franking credits

No other funds will be paid into the Future Fund.

The Future Fund will be held in a separate bank account. The Future Fund Custodians, referred to below, will be the signatories to the Future Fund's bank account. There must be at least two signatories to transactions on the bank account.

6. Three Future Fund Custodians (**Custodians**) will be appointed. The Custodians must be Ordinary or Life Members and will be elected by members of the Club in General Meeting. Members of the Club's Committee cannot act as Custodians. Subject as mentioned in paragraph 7 below, the Custodians will hold office for 3 years unless they retire any of the following occur:

- (i) They are subject to any event which, if they were a Committee member would disqualify them-such as becoming bankrupt or are convicted of an offence involving fraud or dishonesty;
- (ii) They become a member of the Committee; or
- (iii) They are removed by a Special Resolution.

7. The initial Custodians will hold office until the 2024 AGM.

8. With effect from the 3<sup>rd</sup> year following adoption of clause 32, there will be rotation of 1/3<sup>rd</sup> of the Custodians. Custodians may stand for re-election.

9. Where a casual vacancy arises, provided that there are two Custodians they may appoint another Custodian to fill the vacancy.

10. The Fund Custodians may co-opt up to two persons who may attend meetings of the Fund Custodians to speak but not vote (**Co-Opted Members**). The purpose of appointing the Co-Opted members is to obtain the benefit of their experience in particular matters, for example finance. The Co-Opted Members may be appointed and removed by the Custodians.

**11.** Payments may only be made from the Future Fund in the following circumstances:

(i) (A) where The Committee has requested that a payment be made from the Future Fund; and

(B) where it has been authorised by the Fund Custodians or by a Special Resolution passed at a General Meeting as referred to in paragraph 13 of this Explanatory Statement; or

(ii) where it relates to a proper expense incurred in connection with the operation of the Future Fund approved by the Fund Custodians; or

(iii) in connection with the acquisition of investments on behalf of the Future Fund which have been approved by the Fund Custodians.

Payments made from the Future Fund may include, but are not limited to, capital works, repairs, maintenance of premises and or equipment. When the Committee makes a request for a payment from the Future Fund it must provide the Fund Custodians with details of how the funds will be expended, together with all relevant quotes of contractors who will be supply goods or services. The 3 Fund Custodians may require the Committee to provide additional or further information before considering the proposal.

**12.** The level of approval of the Custodians depends on the amount of the proposed expenditure.

(i) Any decision of the Fund Custodians approving payment from the Future Fund which does not exceed two hundred thousand dollars (\$200,000) requires a simple majority resolution of all of the Fund Custodians and not simply those attending the relevant meeting; and

(ii) Any decision of the Fund Custodians approving a payment from the Future Fund in excess of two hundred thousand dollars (\$200,000) requires a unanimous resolution of all of the Fund Custodians and not simply those attending the relevant meeting.

Where a project or proposed expenditure from the Future Fund exceeds two hundred thousand dollars (\$200,000) unanimous approval must be obtained from all of the Fund Custodians as above for the aggregate expenditure. Any revisions to proposed expenditure must be approved by the Fund Custodians and where as a consequence of revisions the proposed expenditure exceeds two hundred thousand dollars (\$200,000) unanimous approval must be obtained from all of the Fund Custodians as above.

**13.** There is provision for the decisions of the Custodians to be reviewed if they do not approve proposed expenditure.

(i) If the Fund Custodians do not approve a payment from the Future Fund requested by the Committee, the Committee may request the Fund Custodians to consider the request a second time.

(ii) If the Fund Custodians have rejected or have not approved the request by The Committee to make the same payment from the Future Fund on two (2) occasions, then the Committee may convene at a General Meeting to consider and if considered appropriate approve the payment from the Future Fund by a Special Resolution. If a Special Resolution is passed at the General Meeting, the relevant payment shall be made from the Future Fund.

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