



## The Rotorua Mountain Bike Club Incorporated

### Constitution and Rules

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1. Definitions

In this Constitution, unless the context otherwise requires:

**Act** means the Incorporated Societies Act 2022, and any amendment to, or replacement of this legislation.

**Approved Signatories** means no less than two signatories from the signatories authorised as signatories by the Committee pursuant to clause 14.2.

**Club** and/or **RMTBC** means The Rotorua Mountain Bike Club Incorporated.

**Committee** means the Committee of the Club as set out in clause 5.

**Committee Member** means a Member of the Committee.

**Financial Interest** has the meaning as set out in clauses 8.5 and 8.6.

**Financial Statements** means the annual financial statements of the Club prepared in accordance with this Constitution, Act and other relevant legislation.

**Financial Year** means 1 July to 30 June or such other period as the Committee may determine.

**General Meeting** means the Annual General Meeting or any Special General Meeting of the Club.

**Member** means a current member of the Club.

**Members' Register** means the register of Members of the Club to be kept pursuant to clause 4.7.

**MTBNZ** means Mountain Bike New Zealand Incorporated.

**Objectives** means the Objectives of the Club specified in clause 3.1.

**Registrar** means the Registrar of Incorporated Societies under the Act.

**Regulations** mean the Incorporated Societies Regulations 1979, and any amendment to, replacement of, or additional regulations made which apply to the Act.

**Subscription** means the Club's subscription fees for membership as provided in clause 4.9.



## 1.2. Interpretation

In this Constitution, unless the context otherwise requires:

- (a) The headings appear as a matter of convenience and are not to affect this construction of this Constitution;
- (b) In the absence of an express indication to the contrary, references to clauses are to clauses of this Constitution;
- (c) A reference to any statute, statutory regulation or other statutory instrument includes the statute, statutory regulation or instrument as from time to time amended or re-enacted or substituted;
- (d) The singular includes the plural and vice versa and one gender includes any other;
- (e) The words “written” and “in writing” include electronic communications and any other means of communication resulting in permanent visible reproduction;
- (f) The words “day” and “days” mean calendar days; and
- (g) Words or expressions defined in the Act have the same meaning where they are used in this Constitution.

## 2. NAME, COMMON SEAL, BADGE AND REGISTERED OFFICE

- (a) The name of the Club is THE ROTORUA MOUNTAIN BIKE CLUB INCORPORATED
- (b) The common seal of the Club will bear the following words:

*“The Rotorua Mountain Bike Club Incorporated”*

and will be under the control of and only used by the authority of the Committee.

- (c) The registered office of the Club is at the address appointed from time to time by the Committee and published on the Club’s website.

## 3. OBJECTIVES AND POWERS

### 3.1. Objectives

The Objectives of the Club are:

- (a) Promoting and supporting an inclusive and non-discriminatory mountain bike culture in Rotorua that welcomes all participants and provides opportunities for people to experience and take part in mountain biking;



- (b) Be an organisation in which any person with an interest in mountain biking can be a part of, and promote membership of, the Club and its Members;
- (c) Promoting and organising mountain bike related events and races;
- (d) Encouraging the development of the local mountain biking industry;
- (e) Maintaining and enhancing the reputation of mountain biking and Rotorua (and its surrounding region);
- (f) Advocating for mountain biking locally, regionally and nationally;
- (g) Affiliating with MTBNZ and other bodies or associations which have similar Objectives to the Club or can assist the Club in furthering its Objectives;
- (h) Working with the Rotorua Lakes Council, Department of Conservation, local iwi and other groups and agencies to promote the development of mountain biking and further the Objectives;
- (i) Supporting the development of junior mountain biking.

3.2. Pecuniary gain is not an objective or purpose of the Club.

### 3.3. Powers

Subject to the Act, the Club will have all the rights, powers (including the power to borrow money) and privileges of a natural person.

## 4. MEMBERSHIP

### 4.1. Types of Membership

Membership of the Club consists of:

- (a) **Individual Member:** any Member who has paid the Individual Subscription;
- (b) **Family Member:** Maximum of two adults and three juniors under eighteen who have paid the subscription for a Family Subscription;
- (c) **Junior Member:** any member who is under the age of eighteen years and has paid the Junior Subscription
- (d) **Life Member:** any Member who is nominated by the Committee for having rendered distinguished, meritorious and long service during their membership. It is recognition that their contribution has been outstanding and has provided considerable benefit to the Club over an extended period of time. Decided by majority vote of the Committee.

### 4.2. Cycling New Zealand Affiliation

4.3. Subject to its constitution and rules, the Club and Individual Members shall be eligible to be a member of Cycling New Zealand.



#### 4.4. Admission of Members

To become a Member, a person must:

- (a) Join online via Hivepass (or any other membership platform the Club may use from time to time);
- (b) Supply any other information the Club requires; and
- (c) Consent to being a Member by creating an online account and making payment with Hivepass.

#### 4.5. Compliance with Constitution

Members acknowledge and agree that:

- (a) This Constitution is a contract between each Member and the Club and they are bound by this Constitution; and
- (b) They will comply with, uphold and observe this Constitution and any determination, resolution or policy which may be made or passed by the Committee or at a General Meeting of the Club.

#### 4.6. Termination of Membership

Membership of the Club will be terminated as follows:

- (a) By the resignation of the Member by notice in writing to the Club, such resignation to be effective as at the date such notice is received by the Club; or
- (b) By resolution of the Committee, after compliance with clause 15 if it is applicable, on the grounds that the Member has failed to comply with this Constitution or any of the other duties of a Member, or that the conduct of the Member is considered by the Committee to be injurious to the character, interests, or objectives of the Club. Unless otherwise specified in the resolution, termination is effective as at the date of the resolution;
- (c) By resolution of the Committee on account of default in payment by the Member of any payments due to the Club. Before such termination can occur, the Committee must give the Member notice specifying the payment due and requesting payment by a due date, being not less than 30 days from the date of notice.

#### 4.7. Members' Register

- (a) The Secretary or Membership Officer must keep, or cause to be kept, a register of Members recording each Member's name, the date the person became a Member and the Member's principal method of contact which includes one or more of the Member's postal address, email address, telephone number or any such other method of communication in common usage being appropriate for the sending and receiving of any required notice.



- (b) If a Member's name or principal method of contact changes, then the Member must give the Secretary or Membership Officer the updated information. The Secretary must then ensure the Members' Register is updated as soon as practicable.

#### 4.8. Access to Members' Register

- (a) A Committee Member may access the Members' Register if access is necessary for the performance of the Committee Member's functions or the exercise of the Committee Member's powers.
- (b) A Member may make a request to the Secretary for access to the Members' Register. The Secretary will provide access to the extent that, following the request, Members have consented to access being granted to information about themselves on the Members' Register.

#### 4.9. Subscription

The Subscription for Members/any membership will be annually assessed and established by the Committee.

#### 4.10. Continuance of Membership

The persons who are included in the membership of the Club as at the date of adoption of this Constitution will be deemed to be included in the membership of the Club under this Constitution despite any other provision of this Constitution.

### 5. COMMITTEE

#### 5.1. Composition of the Committee

- (a) The Committee will consist of a President, Secretary, and Treasurer and up to twelve other Members, provided that the total Members of the Committee shall be no less than seven individuals.
- (b) The immediate past president must automatically assume a Committee Member role to ensure continuity of committee/work/projects/knowledge etc.
- (c) The Committee must be elected at each Annual General Meeting.

#### 5.2. Nomination

- (a) Except for the President (who shall automatically become a Committee Member on the election of a new President), no Member may be elected as a Committee Member at the Annual General Meeting unless that Member has:
  - (i) been nominated in writing to the Secretary by two Members who will be entitled to attend and vote at the Annual General Meeting; and
  - (ii) given their consent to such nomination.
- (b) The closing date for nominations is 14 days prior to the Annual General Meeting.



- (c) If nominations received do not exceed the vacancies for the Committee Members, the Members so nominated will be declared elected at the Annual General Meeting.

### 5.3. Term

Committee Members will be elected for a term expiring at the end of the next Annual General Meeting and will be eligible for re-election in accordance with clause 5.2.

### 5.4. Powers and Functions of the Committee

- (a) Other than the powers required to be exercised by the Club at a General Meeting, and subject to clause 5.5, the Committee may exercise all the powers of the Club to do anything it considers necessary, desirable or conducive to the attainment of the Objectives.
- (b) Pursuant to those powers, the Committee:
  - (i) will manage, direct and supervise the operation and affairs of the Club and the Committee has all powers necessary to do this; and
  - (ii) may develop certain rules, policies and procedures from time to time in order to exercise its functions.

### 5.5. Duties of the Committee and Committee Members

Subject to the Act and Regulations, the Committee and each Committee Member owes the following duties to the Club:

- (a) to act in good faith and in the best interests of the Club and use their powers for proper purposes;
- (b) to comply with the Act and to comply with this Constitution (except where this Constitution contradicts the Act);
- (c) to exercise the degree of care and diligence that a reasonable person with the same responsibilities within the Club would exercise in the circumstances applying at the time;
- (d) to not agree to cause or allow the activities of the Club to be carried on recklessly or in a manner that is likely to create substantial risk of serious loss to the Club or its creditors; and
- (e) to not agree to the Club incurring obligations which it is not reasonable to believe can be performed.

### 5.6. Removal

- (a) Any Committee Member may be removed either by a majority resolution of the Committee or by a majority resolution of the Members passed at a General Meeting. In each case, not less than 21 days' notice must be given to the Secretary of the intention to move a resolution for the removal of a Committee Member. The Committee must



follow a fair and transparent process when considering any removal of a Committee Member and should have regard to the dispute resolution process contained in clauses 15.1 and 15.3 (a) and (b).

- (b) If any Committee Member is absent from three consecutive committee meetings without leave of absence the President may declare that the person is no longer a Committee Member.
- (c) The President must declare that a Committee Member is no longer a Committee Member if the Committee Member is disqualified under the Act or any other applicable legislation and the disqualifying factor has not been waived by the Registrar.

#### **5.7. Causal Vacancy**

Where a Committee Member resigns before the end of their term, or is removed in accordance with clause 5.6, or otherwise ceases to be a Committee Member, then the Committee may, by majority resolution appoint another person to be an office holder or Committee Member to hold the vacated office or position until the next Annual General Meeting.

#### **5.8. Power to co-opt**

The Committee may co-opt up to three additional Members to be additional Committee Members for specific projects. The persons so co-opted must retire at the next Annual General Meeting. Co-opted Committee Members will have voting rights.

#### **5.9. Sub-committees**

The Committee may appoint subcommittees of Members or other persons to assist the Committee in the conduct of the Club's affairs. Membership of a subcommittee does not confer voting rights at a Committee Meeting upon any person who is not a Committee Member.

#### **5.10. Continuance of existing Committee Members**

Unless adopted at an Annual General Meeting, Members who are Committee Members as at the date of adoption of this Constitution will be deemed to be the Committee Members under this Constitution until the end of the next Annual General Meeting following registration of this Constitution with the Registrar.

### **6. OFFICE HOLDERS OF THE CLUB**

#### **6.1. President:**

- (a) The President will be elected annually at the Annual General Meeting.
- (b) The President must:
  - (i) preside over General Meetings and Committee Meetings (except in relation to the appointment or removal of the President);



- (ii) provide an annual report on the operations of the Club to present to the Members at the Annual General Meeting outlining the Club's activities since the previous Annual General Meeting; and
  - (iii) ensure the affairs of the Club are properly conducted.
- (c) The President will have a casting vote on any issue on any matter to be decided by the Committee or put to Members at a General Meeting for resolution (except in relation to the appointment or removal of the President).

#### 6.2. Secretary:

- (a) The Secretary will be elected by the Committee at its first Committee Meeting following the Annual General Meeting.
- (b) In the event of death, incapacitation, resignation or other inability of the President to act, the Secretary will assume the office as President until a new President is elected at the next Annual General Meeting.
- (c) The Secretary must:
  - (i) Prepare, or cause to be prepared, notices and agenda for General Meetings and Committee Meetings;
  - (ii) Keep, or cause to be kept, minutes of General Meetings and Committee Meetings;
  - (iii) Keep, or cause to be kept, an accurate and up to date Members' Register;
  - (iv) Keep, or cause to be kept, an accurate and up to date Interests' Register;
  - (v) keep and store, or cause to be, the Club's records.

#### 6.3. Treasurer

- (a) The Club will have a Treasurer who will:
  - (i) be responsible for keeping proper accounting records;
  - (ii) prepare, or cause to be prepared, the Financial Statements and present them to the Club at each Annual General Meeting;
  - (iii) provide financial information (including the Financial Statements) to the Committee and as appropriate, to the Meetings upon request;
  - (iv) be responsible for the receipt and deposit of funds; and
  - (v) be responsible for the payment of bills of the Club.
- (b) The Treasurer will be appointed by the Committee for a period and on such terms as determined by the Committee. The Treasurer may, but need not, be a Committee Member.



#### **6.4. Absence of President and Secretary**

In the event that the President and Secretary are absent from a General Meeting or Committee Meeting, the Members (in the case of a General Meeting) and the Committee Members (in the case of a Committee Meeting) will appoint one of the Committee Members as the acting President with the same powers and duties as the President.

#### **6.5. Offices vacant**

Should the office of Secretary or Treasurer become vacant between Annual General Meetings, the position will be filled by a Committee Member as soon as practicable.

#### **6.6. Period of office**

The period of office of the President will commence at the end of the Annual General Meeting at which he or she is elected and will expire at the end of the next following Annual General Meeting unless previously terminated in accordance with this Constitution.

#### **6.7. Contact officer**

- (a) The Committee must appoint a Contact Officer, ensure that the Club has a Contact Officer at all times, and provide the Registrar with the contact details of the Contact Officer.
- (b) The role of Contact Officer may be held separately or in conjunction with any other role within the Committee.
- (c) The Contact Officer must be the person, on behalf of the Club, who the Registrar can contact when needed.
- (d) Where the Contact Officer resigns, the Committee must appoint another Committee Member to the role within 20 working days of the vacancy arising.
- (e) Where the Contact Officer changes, the Club must ensure it notifies the Registrar of the new Contact Officer's contact information as soon as reasonably practicable and within 20 working days.

### **7. COMMITTEE MEETINGS**

#### **7.1. Meetings**

There must be no fewer than four Committee Meetings annually, which must be called by the President with no less than 7 days' notice. The Secretary will at the same time distribute an agenda. Meetings may be held in person or by any other means by which those participating may hear each other simultaneously.

#### **7.2. Quorum**



A quorum of the Committee must be at least half of the Members comprising the Committee at any given time.

### 7.3. **Voting**

Resolutions of the Committee will be passed by a simple majority, subject to clause 6.1(c).

### 7.4. **Resolution in writing**

A resolution in writing made by the Committee (without a meeting) will be valid and effective as if it had been voted upon at a Committee Meeting properly convened and held. Any such resolution may consist of:

- (a) several documents in similar form each signed by the Committee Members;
- (b) several emails or equivalent form of commonly used electronic communications in similar form each sent or transmitted by the Committee Members.

### 7.5. **Minutes**

The Secretary must ensure that minutes are taken of all Committee Meetings and that a copy of these minutes are placed in the Club's records, together with any other reports or information presented or considered at the Committee Meetings.

## 8. **CONFLICTS OF INTEREST**

### 8.1. **Interested Party**

Any Committee Member who has a Financial Interest (an **Interested Party**) in a matter being considered by or affecting the Club must, as soon as practicably possible after he or she becomes aware of their Financial Interest in the matter, disclose the nature and extent of the Financial Interest to the Committee, which shall be recorded in the Interests Register.

### 8.2. **Consequences of being interested**

An Interested Party:

- (a) must not vote or take part in the decision of the Committee relating to the matter; and
- (b) must not sign any document relating to the entry into a transaction or the initiation of the matter; but
- (c) may take part in any discussion of the Committee relating to the matter and be present at the time of the decision of the Committee (unless the Committee decides otherwise);

provided that, the provisions in paragraphs (a) and (b) of this clause 8.2 may be suspended in a given case with the consent of all Committee Members who are not Interested Parties.

### 8.3. **Part of quorum**



An Interested Party who is prevented from voting on a matter because he or she has a Financial Interest in that matter may continue to be counted as part of the quorum.

#### 8.4. Requirement for General Meeting

Where at least half of the Committee Members who would form a quorum are prevented from voting on the matter because they have disclosed a Financial Interest, then the remaining Committee Members must call a General Meeting to determine the matter.

#### 8.5. Financial Interest definition

A Committee Member has a Financial Interest in a matter if he or she:

- (a) may derive a financial benefit from the matter;
- (b) is the spouse, partner, child or parent of a person who may derive a financial benefit from the matter;
- (c) may have a financial interest in an entity to that the matter related; or
- (d) is a partner, director, officer, board member, or trustee of a person who may have a financial interest in an entity to that the matter relates.

#### 8.6. Exclusions from Financial Interest

The following interests are excluded from the definition of Financial Interest:

- (a) remote or insignificant interests of a nature that could not reasonably be regarded as likely to influence the Committee Member in carrying out their responsibilities;
- (b) an interest that a Committee Member has in common with other Members as a result of membership; and
- (c) receipt of an indemnity, insurance cover, remuneration of other benefits authorised by the Act.

#### 8.7. Interests Register

The Secretary will maintain a register of disclosures made by the Committee Members of Financial Interests in matters that are being considered by or affect the Club (**Interests' Register**). The Committee must present a summary at each Annual General Meeting of the nature and extent of any disclosures recorded during the year (though the summary does not need to disclose the identity of the Interested Party, nor the details of the interest disclosed). The Interests' Register will be made available for inspection by a Committee Member at any time.

### 9. NOTICE TO MEMBERS

- (a) Any notice or publication required to be made or given to Members by or on behalf of the Club will be effected by:



- (i) sending to Members via the principal method of contact then recorded in the Members Register; and
  - (ii) publishing on the Club's website; or
  - (iii) publishing via the Club's social media accounts.
- (b) If the Committee or Secretary in good faith has made reasonable efforts to publish any notice to Members, any meeting or other business will not be invalidated because one or more Members do not receive or see the notice.

## 10. GENERAL MEETINGS

### 10.1. Notice of General Meetings

The Secretary must give at least 14 days' notice to Members informing them of the date, time and place of the General Meeting and the business to be conducted, including an agenda.

### 10.2. Attendance

A General Meeting may be held by a meeting of Members together at the time and place appointed by the Committee or by means of audio, audio and visual, or any other form of communication permitted by the Committee. A Member participating in a General Meeting by any of these methods will be deemed present and in attendance.

### 10.3. Quorum

No business can be conducted at a General Meeting unless a quorum is present. A quorum is no fewer than 20 Members who are entitled to vote at the meeting and who are present. If within half an hour of the time set for the meeting a quorum is not present the meeting must be adjourned to the same day the following week at the same time and place, and if at such adjourned meeting a quorum is not present within half an hour after the time set for the meeting, the Members present will be a quorum.

### 10.4. Entitlement to vote

All Members will be entitled to vote at a General Meeting.

### 10.5. Voting

- (a) Except where otherwise provided in this Constitution or the Act, the majority of all votes cast at a General Meeting will decide all resolutions. In the case of an equality of votes, the President will have the casting vote as well as an ordinary vote.
- (b) Every Member entitled to vote and attending a meeting will have one vote.
- (c) Every motion submitted to any General Meeting will be decided:
  - (i) in the first instance on the voices, or by show of hands, of the Members; or



- (ii) by direction of the President; or
  - (iii) on the request of any three Members entitled to vote, by a poll.
- (d) At any General Meeting a declaration by the President that a resolution has been carried will be conclusive. An entry to that effect in Club's minutes of the General Meeting will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

#### 10.6. Minutes

The Secretary must ensure that minutes are taken of all General Meetings.

### 11. ANNUAL GENERAL MEETINGS

#### 11.1. Date of Annual General Meeting

The Annual General Meeting must be held within 6 months of the Club's end of financial year and no later than 31 October in each calendar year.

#### 11.2. Business

The business of the Annual General Meeting will include:

- (a) The election of the Committee as provided in clause 5.1;
- (b) The consideration of a report of the President;
- (c) The consideration and approval of the Financial Statements, presented by the Treasurer;
- (d) The presentation by the Secretary of a summary of the Interests' Register as provided in clause 8.7;
- (e) If required by the Regulations, the appointment of the Auditor;
- (f) Deciding on any notice of motion which may be duly submitted to the meeting which is either put forward by the Committee or of which notice in writing has been lodged by any Member with the Secretary not less than 14 days before the date of the meeting;
- (g) Consideration of the summary of the Interests Register as required by clause 8;
- (h) Any other business or matter which the Committee decide to bring before the Members.

### 12. SPECIAL GENERAL MEETINGS

- (a) The Committee may, whenever it thinks necessary or desirable, or must within 28 days of receiving the written request of at least 15 Members to the Secretary, give notice of a Special General Meeting of Members.
- (b) No business other than that stated in the notice of Special General Meeting can be transacted or considered at the meeting.



## **13. INFORMATION**

### **13.1. Request for information**

A Member will be entitled in a timely manner, by written application to:

- (a) the Secretary:
  - (i) to receive a copy of the minutes of previous General Meetings; and
  - (ii) to receive a copy of the Minutes of any Committee Meeting; and
  - (iii) to inspect the Members' Register subject always to clause 4.8; and
  - (iv) to receive such other information to which they are entitled by the Act;
- (b) the Treasurer, to inspect the Financial Statements.

### **13.2. Fee**

The Committee may, at its sole discretion, require the Member to pay a fee to cover the cost of providing the Member with the information.

## **14. MANAGEMENT OF FINANCES**

### **14.1. Club Funds**

The funds of the Club must be used to further the Objectives, as decided by the Committee, or the Club by resolution passed at General Meeting.

### **14.2. Approved Signatories**

The Committee shall appoint no less than two Committee Members as Approved Signatories.

### **14.3. Payments**

Any payment made by the Club must be made or approved by the Approved Signatories.

### **14.4. Presumption of no audit or review**

- (a) The Club shall not have its accounts audited or reviewed unless required by the Act, Regulations or other applicable legislation, the Committee considers it reasonably necessary, or a resolution is passed at a General Meeting requiring that the accounts be audited or reviewed.
- (b) Where an audit or review is required, it must be carried out by a member of Chartered Accountants Australia and New Zealand (or its successor) appointed at a General Meeting on the recommendation of the Committee, who will audit or review the accounts of the Club and must be given access to all statements, books, vouchers, minutes and any other necessary information connected with the Club.



## **15. PROCEDURES FOR RESOLVING DISPUTES BETWEEN MEMBERS AND BETWEEN MEMBERS AND THE CLUB**

### **15.1. Resolution of Disputes generally**

Members are encouraged where possible to raise concerns directly with the person who has behaved in a way causing concern. Self-managed informal resolution must be approached respectfully. Members are encouraged to first discuss the concern with a trusted friend, or family member for another point of view. For various reasons it may not be possible for the Member to raise the concern directly with the other person. In these situations the Member is encouraged to raise the concern with the President or a Committee Member, who will consider the concern and determine whether informal resolution is appropriate.

### **15.2. Disputes between Members**

- (a) A Member may make a complaint against another Member by notice in writing to the Committee. The Committee must, as soon as is reasonably practicable after receiving the complaint, give written notice to the Members involved of its intended process to:
  - (i) Seek a response from the Members involved, including whether they are agreeable to informally attempting to resolve the complaint in person, facilitated by an independent Committee Member; and
  - (ii) Seek to facilitate an informal resolution meeting with the Members to resolve the complaint as soon as possible; and
  - (iii) Investigate the circumstances of the complaint; and
  - (iv) Determine if there should be an oral hearing of the complaint before the Committee; and
  - (v) Advise the Members involved in writing of its determination of the complaint; and
  - (vi) Decide if any disciplinary action will be taken.
- (b) The Members involved must be given reasonable opportunity to make submissions to the Committee regarding the complaint and must receive adequate notice of the Committee's process involved given the nature of the complaint.

### **15.3. Disputes between Members and the Club**

- (a) A Member can make a complaint against the Club by notice in writing to the Committee. The Committee must, as soon as reasonably practicable after receiving the complaint, give written notice to the Member involved of its intended process to:
  - (i) Assess whether an informal resolution meeting is appropriate and if so, hold one between the Member and Club as soon as possible; and
  - (ii) Investigate the circumstances of the complaint; and



- (iii) If requested by the Member involved, conduct an oral hearing of the complaint before the Committee; and
  - (iv) Advise the Member involved in writing of its determination of the complaint.
- (b) The Member involved must be given reasonable opportunity to make submissions to the Committee regarding the complaint and must receive adequate notice of the Committee's process involved given the nature of the complaint.
- (c) If the Member involved is not satisfied with the Committee's determination of the complaint, he or she may within 14 days of the Committee's determination give written notice to the Committee requesting that the matter be determined by arbitration. Any arbitration will be conducted in all respects in accordance with the Arbitration Act 1996 and otherwise on the following terms:
- (i) The place of the arbitration will be Rotorua, New Zealand and the law applicable to this arbitration clause and the arbitration proceedings will be New Zealand law;
  - (ii) The arbitration must be before a single arbitrator agreed by the parties or, if the parties cannot agree on an arbitrator within ten days after the notice has been given, then either party may promptly request the president of the Arbitrators' and Mediators' Institute of New Zealand (or his or her nominee) to select the arbitrator;
  - (iii) The costs associated with a determination by the arbitrator will be met equally by the Club and the Member involved, or otherwise by agreement between the Club and the Member involved;
  - (iv) The decision of the arbitrator will be final and binding on all parties.

#### **15.4. Committee may decide not to progress disputes procedure**

Despite clauses 15.2 and 15.3, the Committee may decide not to proceed with a complaint if the Committee determines that:

- (a) The matter is trivial; or
- (b) The complaint does not appear to disclose any material misconduct or any material damage to a Member's rights or interests; or
- (c) The complaint appears to be without foundation or there is no apparent evidence to support it; or
- (d) The Member who made the complaint or brings the grievance does not have a sufficient interest in the matter; or
- (e) The conduct, incident, event or issue has already been investigated and dealt with by or on behalf of the Club.

#### **15.5. Committee may refer a complaint to a subcommittee or other adjudicator**



The Committee may refer a complaint it receives under this clause to a subcommittee, to an external adjudicator, or recommend the complaint be managed and resolved by the Sports and Recreation Complaints Mediation Service, any of which the Committee has determined is adequately qualified to act on its behalf under clauses 15.2(a) and 15.3(a).

#### **15.6. Decision makers**

A person may not act as a decision maker in relation to a complaint or grievance if two or more members of the Committee consider that there are reasonable grounds to believe that the person may not:

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

### **16. CONSTITUTION**

#### **16.1. Alteration**

This Constitution can only be altered, amended, revoked or replaced by a resolution passed by at least two-thirds majority of Members present and entitled to vote at a General Meeting provided that no alteration or revocation of clause 17 (restrictions on making payments and providing benefits) or clause 19 (winding up) can be made without prior approval of the Inland Revenue Department.

#### **16.2. Filing with Registrar**

If any such resolution is passed, then the amendment must be filed with the Registrar in accordance with the Act and Charities Services.

#### **16.3. Interpretation**

Any doubt or difficulty arising as to the interpretation of this Constitution must be determined by the Committee whose decision will be final, but subject to review by any Court of competent jurisdiction or by an independent arbitrator nominated by the President of the Arbitrators' and Mediators' Institute of New Zealand.

#### **16.4. Inspection**

A copy of this Constitution must be published by the Club and made available for inspection at the registered office of the Club by any Member at any time during normal business hours.

### **17. RESTRICTIONS ON MAKING PAYMENTS AND PROVIDING BENEFITS**

#### **17.1. Charitable status of the Club**

- (a) The following provisions are intended to ensure that the Club retains its charitable status for the purposes of taxation assessment under the Income Tax Act 2007 or its successor.



- (b) The Committee, in determining all reimbursements, remuneration, charges and payments in terms of this Constitution, must ensure that the restrictions imposed by the following clauses are strictly observed.

#### **17.2. No pecuniary profits by Members**

No private pecuniary profit or financial gain may be made from the Club by any Member, except that (but subject to clause 17.3):

- (a) With the Committee's prior approval, a Member may receive full reimbursement for all costs, charges and expenses properly incurred by the Member in connection with the affairs of the Club;
- (b) The Club may pay reasonable and proper remuneration to any person or entity in return for services provided to the Club;
- (c) A Member may be paid all usual professional, business or trade charges for services, provided, time spent and acts done in connection with the affairs of the Club by the Member, or by any entity of which the Member is a member, employee or associate; and
- (d) A Member may retain any remuneration properly payable to the Member by any entity with which the Club may be in any way concerned or involved and for which the Member has acted in any capacity whatever. This applies even if the Member's connection with that entity is in some way attributable to the Member's connection with the Club.

#### **17.3. No benefit to persons with material influence**

- (a) This clause is intended to ensure that the Club complies with section CW42(5)-(8) of the Income Tax Act 2007 (which regulates charitable status). This clause does not apply if and to the extent there is an exclusion for the application of that section under any other law of New Zealand.
- (b) Regardless of anything to the contrary elsewhere in this Constitution, the Club may not provide to:
  - (i) a Member or a Committee Member; or
  - (ii) a shareholder or director of any company carrying on any business of or for the Club; or
  - (iii) a settlor or trustee of any trust which is a shareholder of any company carrying on any business of or for the Club; or
  - (iv) an associated person of any of the above persons (including a relative, or a company in which any of the above persons has a greater than 25% interest);

a benefit (including any advantage or income) from any business carried on or by or for the benefit of the Club, where the person receiving the benefit is able, because of that person's status or relationship described above, to materially influence the provision of that benefit in any way (including the nature or extent of the benefit, or the circumstances in which the benefit is provided).



- (c) Where a person provides professional services to the Club (or to any company that carries on any business of the Club), as part of the person's professional public practice, this alone is not sufficient for that person to breach this clause.

## **18. INDEMNITY AND INSURANCE**

### **18.1. Indemnity for costs**

The Club will indemnify the Committee Members and its employees and volunteers for any costs incurred by any of them in any proceeding:

- (a) that relates to the liability for any act or omission in his or her capacity as a Committee Member, employee or volunteer of the Club; and
- (b) in which judgment is given in his or her favour, or in which he or she is acquitted, or which is discontinued.

### **18.2. Insurance**

The Club will, with the prior approval of the Committee, effect insurance for each Committee Member and its employees and volunteers in respect of:

- (a) liability not being criminal liability for any act or omission in his or her capacity as a Committee Member or employee;
- (b) costs incurred by that Committee Member or employee in defending or settling any claim or proceeding relating to any such liability; and
- (c) costs incurred by that Committee Member or employee in defending any criminal proceedings:
  - (i) that have been brought against the Committee Member or employee in relation to any act or omission in his or her capacity as a Committee Member or employee; and
  - (ii) in which he or she is acquitted.

## **19. WINDING UP**

### **19.1. Voting on resolutions**

Any resolution to wind up the Club must be carried by at least a two-thirds majority of the Members present at a Special General Meeting specially called to consider the matter. This resolution to wind up must be confirmed at a subsequent Special General Meeting called for that purpose and held no earlier than 30 days and not more than 60 days after the date on which the resolution was first passed.

### **19.2. Liquidator**

The resolution to wind up the Club must also include the appointment of a liquidator to conduct the winding up process.



**19.3. Distribution of surplus assets**

On winding up, any available funds or assets after settlement of all liabilities must be distributed to the Rotorua Trails Trust or any other not-for-profit entity or entities acting for the benefit of the Rotorua mountain biking community determined by the Members by majority resolution.

Barbara M Jenks 12/10/23  
(PRESIDENT)

