

**CONSTITUTION OF**  
Golden Bay  
Swimming  
**INCORPORATED**  
(2638332)

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# CONSTITUTION OF GOLDEN BAY SWIMMING INCORPORATED

*Vision: To promote water competence and confidence by providing swimming tuition from the age of eight years old.*

## Section One: Core Provisions

### 1. Name

1.1 The name of the organisation is Golden Bay Swimming Incorporated.

### 2. Definitions and Interpretation

2.1 In this constitution:

**AGM** means annual general meeting;

**Appointment Panel (AP)** means the panel which selects persons eligible for the Committee;

**Committee** means the committee of Golden Bay Swimming Incorporated;

**Coach Coordinator** - communicates all things coaching to coaches and committee

**Club** means Golden Bay Swimming Incorporated;

**Club Management System** means Golden Bay Swimming Incorporated friendly manager;

**Friendly Manager** means Swimming NZ's database of Members;

**Financial Year** means the financial year of Golden Bay Swimming Incorporated; **GM** means a general meeting either an AGM or SGM;

**Learn to Swim Swimmers** are persons undergoing instruction about how to swim who are not eligible to compete in national, regional or inter-club competitions which are on the national or regional competitive calendar;

**Member** means a member of Golden Bay Swimming Incorporated;

**Member Club** is a swimming club which is a member of a Regional Association **and** Swimming NZ;

**Objectives** mean the objectives of Golden Bay Swimming Incorporated;

**Officer** means a member of the Golden Bay Swimming Committee;

**Ordinary Resolution** means a resolution requiring a majority of the votes cast; **President** means the president of Golden Bay Swimming;

**Regional Association** shall refer to Swimming Nelson Marlborough;

**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;

**Squad Swimmer** means swimmers who train for fitness and receive tuition and correction in stroke application;

**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;

**Golden Bay Swimming Incorporated Life Member** means a person awarded life membership of Golden Bay Swimming Incorporated.

### 3. Status

3.1 Golden Bay Swimming Incorporated is an incorporated society established under the Incorporated Societies Act 1908.

### 4. Objectives

4.1 The primary objective of Golden Bay Swimming Incorporated is to support the growth and performance of the sport of swimming, from entry level swimmers to entry level competitive swimmers.

4.2 Promote water safety by providing swimming tuition at all levels including swimming for recreation and fitness.

4.3 To promote positive attitudes and behaviour conducive to fair play within the sport of swimming.

4.4 Golden Bay Swimming Incorporated as a member of Swimming NZ, will adhere to and comply with the policies and standards set by Swimming NZ. We will work with Swimming NZ, its Regional Association, and other Member Clubs within the Region by:

- a. encourage people to choose to participate in the sport of swimming;
- b. identify and co-ordinate competitive talent at all levels (from within and outside of the sport);
- c. develop and provide oversight of competitions and pathways from club to regional;
- d. provide coaching innovation and research and coach training, education and development;
- e. ensure training, education and development of athletes, team managers, officials and volunteers;
- f. adhere to policies and standards for the Sport SNZ;
- g. maintain a strong interest in Learn to Swim.

4.5 Golden Bay Swimming Incorporated is exclusively not for profit and includes the promotion of amateur sport for the pursuit of physical fitness and other purposes beneficial to the

community and including the training, education and development of all those involved in the Sport.

## **5. Powers and Obligations**

5.1 Golden Bay Swimming Incorporated has full powers, jurisdiction and authority (except as restricted by this constitution) to:

- a. acquire or receive the benefit of any property and deal with property in any way (including lease, 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 Golden Bay Swimming Incorporated in, through or with them;
- d. produce, create, licence, use and protect intellectual property;
- e. determine who are its Members and Golden Bay Swimming Incorporated Associates and their entitlements, and withdraw, suspend, terminate or restrict membership and other benefits;
- f. elect Golden Bay Swimming Incorporated Life Members and award service and honours awards;
- g. make, alter, rescind and enforce rules, policies, plans, charters and procedures to effect the Objectives, or for the governance and operation of Golden Bay Swimming Incorporated;
- h. determine, implement and enforce disciplinary, disputes and appeal procedures including making decisions, conducting hearings and imposing sanctions and penalties;
- i. engage and dismiss employees and contractors;
- j. delegate powers of Golden Bay Swimming Incorporated to any person, committee or sub-committees (the composition of which is not limited to Members) and for that purpose to establish, fund and set the terms of reference and structure;
- k. contract, engage or make any arrangements with any person to fulfil the Objectives;
- l. be a member of or affiliate to and/or be associated in any way with any person which has Objectives which are similar in whole or in part to the Objectives in New Zealand and/or internationally;
- m. produce, publish and distribute any communications, newsletters or publications;
- n. do any other acts or things which it determines are incidental to or conducive to the attainment of the Objectives; and

5.2 Golden Bay Swimming Incorporated shall:

- a. support and work with Swimming Nelson Marlborough to build a culture of trust, collaboration and discipline for the Sport;
- b. work with Swimming NZ, its Regional Association, and other Member Clubs for the benefit of the Sport;
- c. cooperate with Swimming NZ, its Regional Association and other Member Clubs in respect of inter-zonal competitions and the development of competition pathways to

- inter-zonal competitions;
- d. work collectively with other Member Clubs in its Competition Zone, to support the development and running of inter-zonal competitions;
- e. pay any Amount owed by it to Swimming NZ and its Regional Association;
- f. 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
- g. where possible, provide accurate data on a timely basis for it, its Regional Association as required by Swimming NZ for the Database or otherwise.

## **Section Two: Members**

### **6. Golden Bay Swimming Membership and Database**

6.1 A Member of Golden Bay Swimming Incorporated is:

- a. approved by Golden Bay Swimming Incorporated;
- b. parents and caregivers of participants in the learn to swim and training programmes within Golden Bay Swimming Incorporated;
- d. coach of the Golden Bay Swimming Incorporated and/or officials registered with Nelson Marlborough Swimming;
- e. Golden Bay Swimming Incorporated Life Members;
- f. Golden Bay Swimming Committee members.

6.2 Members must pay all Amounts due to Golden Bay Swimming Incorporated and Swimming NZ before being eligible to participate in the events described in Clause 6.1.

6.3 Golden Bay Swimming Club must maintain the Club Management System:

- a. which as a minimum must include each member's full name, postal address, email address, membership category, date of birth, consent for swimmers and emergency contact details.
- b. may use information on the Database to further its objectives, and for administrative, communication, funding and sponsorship purposes.
- c. may communicate directly with any person on the Database.

### **7. Rights and Obligations of Member**

7.1 A Member is bound by this constitution and:

- a. by all rules, policies, charters, procedures and decisions of Golden Bay Swimming Incorporated and where applicable those of Swimming NZ and FINA;
- b. must pay all Amounts imposed on them by Golden Bay Swimming Incorporated and Swimming NZ;
- c. must advise Golden Bay Swimming Incorporated promptly of their database details and any changes to them.

7.2 A Member ceases to be a member of Golden Bay Swimming incorporated:

- a. by written agreement with, or written resignation delivered to, Golden Bay Swimming Incorporated;
- b. if they fail to pay their Golden Bay Incorporated fees in accordance with the fees policy;
- c. upon expulsion from membership;
- d. if no longer eligible to be a member under the rule 6.

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

- a. suspension for a period; and/or
- b. expulsion;
- c. such other sanction as the Committee may in its sole discretion impose.

7.4 Any transfer of membership of a Member between Member Clubs shall be effective once approved in writing by the two Member Clubs involved.

## **Section Three: Governance**

### **8. Committee Composition**

8.1 The Committee comprises a minimum number of three (3) Officers:

- a President, who shall also be the Chair
- a Secretary
- a Treasurer
- a Coach Coordinator

provided that, if it is considered desirable at any time, the Officers of the above can be combined or split.

- Ordinary Committee Officers: These members may take on specific roles such as Club Recorder, Head Coach, Property Officer may be elected if deemed necessary.

8.2 The following persons are not eligible to be a Committee Officer:

- an employee of a Member Club, a Regional Association or Swimming NZ;

8.3 All Committee Officers are elected by Members at an AGM; or SGM if not enough Committee Officers are elected at the AGM. Notwithstanding anything else in this Constitution, each Member is entitled to one vote for the election of each elected Committee Officer.

8.4 Each Member:

- a. may nominate one candidate for election to the Committee for each vacant position on the Committee; and
- b. must have the consent of any candidate to their nomination; and
- c. may provide to the Committee such further information as it thinks fit in support of its candidate(s).

8.5 A Committee Officer is deemed to have vacated the Committee 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;
- d. being convicted of a criminal offence or being sentenced to imprisonment;
- e. dying;
- f. A motion for removal being approved under rule 8.6.

8.6 The process for removal of an Officer and the consequences of removal are:

- a. Where an Officer has in the opinion of the other Officers failed to comply properly with their responsibilities as an Officer (by way of example but not limited to: bad behaviour, breach of Committee confidentiality, lack of preparation for, or attendance at Committee meetings, failure to disclose a conflict of interest), that Officer may be removed from the Committee if, by majority the other Officer vote in favour of a motion for removal of the Officer from the Committee.
- b. A person so removed may subsequently apply to be an Officer;
- c. Where a person is removed under rule 8.6a, the Officers who voted in favour of that removal/stand down from the Committee at the conclusion of the next AGM or at any SGM under rule 8.7 (whichever occurs first);
- d. An Officer removed under rule 8.6a or stood down under rule 8.6c is not eligible for the Committee unless they are again approved in the AP process. A person stood down under rule 8.6c is not approved unless the AP is satisfied both with the justification of that person's decision to vote for removal of the Officer and that the person remains a suitable candidate. If elected or appointed that commences a new Committee term.

8.7 Casual vacancies are dealt with as follows:

- a. The Committee may fill casual vacancies on the Committee (including those arising because insufficient candidates are elected or appointed under rules 8.3 or 8.4);
- b. If the Committee has insufficient members to form a quorum the remaining Officers can fill casual vacancies under rule 8.7a to enable the Committee to operate but must immediately call a SGM to appoint and /or elect new Officers. The AP process in rules 7 and 8 is followed except that if the AP determines that there is insufficient time before the SGM to complete the AP applicant assessment process and/or the voting on Elected Officers by email or electronic voting, then the voting is undertaken at the SGM and

appointment of Appointed Officers by the AP is completed not later than 21 days after the SGM;

- c. The requirement under rule 8.7b to call a SGM does not apply if the lack of a quorum for Committee meetings occurs in the period between 30 June and the next AGM;
- d. The term of any appointments due to casual vacancies in rule 8.7b is until the conclusion of the SGM but in the case of rule 8.7b is until the conclusion of the next AGM;
- e. Appointments due to casual vacancies will count as one term as an Officer;
- f. Any person appointed to fill a casual vacancy may later stand for election or appointment to the Committee but is subject to the AP process;
- g. A person who fills a casual vacancy cannot fill a casual vacancy again; and
- h. A person who has unsuccessfully contested an election to the Committee cannot fill a casual vacancy.

## **9. Committee Procedure**

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

9.2 The role and responsibility of the Committee is to act in the best interests of Golden Bay Swimming Incorporated and to provide good governance to Golden Bay Swimming Incorporated including through the following:

- a. monitoring and reviewing performance against the annual strategic plan and financial report;
- b. addressing the ongoing viability and sustainability of Golden Bay Swimming Incorporated;
- c. establishing, reviewing, and monitoring policies to guide and govern Golden Bay Swimming Incorporated;
- d. adopting and communicating a continual best practice performance culture;
- e. preparing an annual report and procuring an annual statement of accounts.

9.3 The quorum for a Committee meeting is four (4) Officers.

9.4 The Committee can determine its own rules for any matters not specified in this constitution, including for conduct, operation and meetings of the Committee.

The following rules apply:

- a. there must be at least five Committee meetings each year;
- b. a resolution signed by all Officers is as effective as if passed at a meeting;
- c. a Committee meeting may be called by the President or by request of three (3) Officers;
- d. decisions are by Ordinary Resolution (unless otherwise required by this constitution) by voice, or if requested by the President by show of hands, and, if requested by any Officer by secret ballot;

- e. each Officer has one vote;
- f. the Committee must ensure minutes are kept of all Committee meetings;
- g. the Committee must at periods of not more than three years review all Golden Bay Swimming Incorporated policies.

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

## **Section Four: Meetings, Elections and Voting**

### **10. General Meetings**

10.1 A GM of Golden Bay Swimming Incorporated is either an AGM or a SGM. All Members may be present 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 Committee.

#### **10.2 AGM**

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

- a. consider the Committee's annual report;
- b. consider the annual financial report;
- c. consider the reviewed statement of accounts;
- d. elect Officers in accordance with Clause 8;
- e. agree the coach appreciation and the swimmers membership discount for the Committee;
- f. agree the swimmers membership fee for upcoming season;
- g. appointment of reviewer;
- h. consider any other business that is notified as an item of business under Clause 10.3.

An item of business must be considered at an AGM if notified to Golden Bay Swimming Incorporated by the Committee or by not less than one third of Members within seven days of notice of an AGM being given.

#### **10.3 SGM:**

- a. may be called by the Committee at any time;
- b. must be called by the Committee within 21 days of Golden Bay Swimming Incorporated receiving a written request setting out the reasons for the SGM from not less than one third of the total number of Members of the Club;
- 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 Committee to comply with such resolution;

- f. if determined to be appropriate by the Committee, may be held electronically or by teleconference with post, email or electronic voting; and if the Committee determines that a SGM is undesirable because of content, time and/or expense, the Committee 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 Members of the Club.

#### 10.4 GM

- a. a quorum for a GM is to be at least four (4) Officers;
- b. GMs are chaired by the President and in his or her absence by the Vice President;
- c. matters not provided for that occur at or in relation to a GM are decided by such chairperson;
- d. all Members at a GM must comply with any Committee policy relating to speaking at a GM;
- e. minutes must be kept of each GM;
- f. 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:
  - the chairperson in his/her discretion determines that it is still appropriate for the GM to proceed despite the irregularity, error or omission; and
  - 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 Golden Bay Swimming Incorporated to all Members and may be given to any other persons as determined by the Committee.
- 11.2 Notice of the date, time and place of a GM must be given by Golden Bay Swimming Incorporated not less than 14 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 sent to Committee members 14 days prior to the GM.
- 11.4 Any notice to be given by Golden Bay Swimming Incorporated 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 Committee.

### 12. Elections and Voting

- 12.1 Officers are entitled to vote at a GM.
  - a. All Officers who are present may vote. Voting can be done by voices or by show of

- hands or by written communication, as determined by the chairperson of the GM;
- b. the Committee may determine that a GM may be held electronically or by teleconference with post, email or electronic voting;
  - c. any matter may be by a secret ballot if it is called for by the whole committee or by the President of the GM;
  - d. motions are passed by Ordinary Resolution unless required by this constitution to be passed by Special Resolution;
  - e. Life Members, Golden Bay Swimming Incorporated and Associates do not have individual voting rights at GMs.

## **Section Five: Other**

### **13. Finance**

- 13.1 The Committee must ensure that proper financial records are kept and it has appropriate policies for management of Golden Bay Swimming Incorporated finances.
- 13.2 All monies held by Golden Bay Swimming shall be held in bank account(s) in the name Golden Bay Swimming, and all payments from this (these) account(s) must be authorized or approved by another signatory.
- 13.3 The Financial Year of the Club shall be from April 1<sup>st</sup> to March 31<sup>st</sup>.
- 13.4 The annual reviewed statement of income and expenditure must be presented at the AGM and a copy then forwarded to the Registrar of Incorporated Societies.
- 13.5 The signatories of the Club shall be: the President, the Vice President, the Secretary, the Treasurer and, if deemed necessary, one other who may be appointed by the Committee.
- 13.6 Authorisation rights of the internet account must be determined by the Committee at the Committee meeting following the election of a new Treasurer. Golden Bay Swimming Incorporated's funds may be invested in such manner as determined by the Committee.

### **14. Common Seal**

- 14.1 Golden Bay Swimming Incorporated must have a common seal. The Committee 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 10 and subject to the prior written consent of Golden Bay Swimming incorporated, this constitution may be changed by Special Resolution at a GM for which such change has been notified in accordance with Clause 10.2
- 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 Golden Bay Swimming Incorporated to cease to retain its preferential tax status as a society for the promotion of amateur sport.

## **16. Disputes/Appeals**

16.1 The Committee must adopt a policy that addresses formal complaint, suspension, expulsion and appeal procedures. This policy requires adherence by Members to processes that it considers will enable the fair, efficient and timely resolution of:

- a. disputes that arise with or between Members or involving Golden Bay Swimming Incorporated Members, involving an important activity or responsibility of Golden Bay Swimming Incorporated and which the Committee considers in its discretion is of such importance or is causing such a level of disruption to Members or to the activities of Golden Bay Swimming Incorporated that it must be addressed; and
- b. appeals by a Member against a decision of Golden Bay Swimming Incorporated 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 Committee may request the President or any other person to act as a mediator in disputes involving Members.

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

16.4 In relation to doping, Golden Bay Swimming Incorporated and its Members shall abide by and be subject to the doping provisions set out in the constitution of Swimming NZ.

## **17. Disestablishment of Club**

17.1 Golden Bay Swimming Incorporated may be voluntarily liquidated if, at a GM a Special Resolution is passed requiring Golden Bay Swimming Incorporated 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 Golden Bay Swimming Incorporated, there remains after the satisfaction of all Golden Bay Swimming Incorporated debts and liabilities any property whatsoever, the property shall be given to an organisation or organisations (selected by the Members exercising the voting entitlement set out in Clause 12.1) having Objectives similar to the Objectives.

17.3 Subject to the written approval of Swimming NZ and satisfaction of all Golden Bay Swimming Incorporated debts and liabilities, Golden Bay Swimming Incorporated may in accordance with a Special Resolution at a GM called for that purpose to disestablish all assets shall be given to an organisation or organisations (selected by the Members exercising the voting entitlement set out in Clause 12.1) having Objectives similar to the Objectives or merge with another Member Club having Objectives similar to the Objectives.

## **18. Prohibition of Personal Benefit**

- 18.1 All income, benefit or advantage must be applied to the Objectives.
- 18.2 No Member or Officer or any person associated with a Member or Officer shall participate in or materially influence any decision made by Golden Bay Swimming Incorporated in respect of the payment to or on behalf of that Member 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 Objectives 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 Officer has any liability to Golden Bay Swimming Incorporated or the Members or any Golden Bay Swimming Incorporated Associate for any act or omission in their capacity as an Officer 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 Officer is indemnified by and out of the assets of Golden Bay Swimming Incorporated against:
- a. any liability arising out of any act or omission in their capacity as an Officer 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 Officer.
- 19.4 If any matter arises in relation to Golden Bay Swimming Incorporated that is not provided for in this constitution, the matter shall be dealt with as required by the Committee.

## **20. Transitions**

This Clause 21 enables transition of Golden Bay Swimming Incorporated 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.

All Officers, under the Previous Constitution shall hold office under this constitution until the end of the next AGM unless the Officer retires or vacates his or her position earlier. Swimming Club Incorporated Life Members on the date of adoption of this constitution shall continue as GB Swimming Club Incorporated Life Members under this constitution.