

5 September 2011

To: All Regions
Ross Butler, Acting Chairman of Board SNZ
Board of SNZ
Mike Byrne, CEO of SNZ

Swimming Bay of Plenty would like to thank the CEO of Swimming New Zealand for his 'summary' of the remits supplied by Swimming Bay of Plenty and other regions for the forthcoming SNZ AGM. It is not our intention to provide commentary on that 'summary' document, however it has always been our intention to correspond with our regional colleagues to explain the background to these remits and why we feel they are both necessary and worthy of your support.

We have recently studied at some length the evolution of the current SNZ Constitution over the past 10 years. There are aspects of the original construction of the constitution which in our opinion serve the sport very well. We do value what is often described as the federal nature of the constitution. This allows for some element of accountability, checks and balances over the organization. What is evident from our studies of the Constitution which have been necessitated because of some of the well publicised issues we face as a sport is that the Constitution itself has evolved incrementally over time rather than been created as a single coherent document. This has resulted in the document under which our sport is governed having some marked deficiencies, some of which only become apparent when we are faced with difficulties.

We have consulted with one of New Zealand's leading sports law specialists who have been engaged by several NSOs, and has within the recent past been responsible for re-drafting the complete constitutions of these NSOs in accordance with current best practice. We have together considered at length the issues which we face as a sport and how we might best correct these. In considering the Constitution we have recognized that making reactive changes simply to correct a problem does not necessarily make for a better Constitution and have sought only to propose changes which our legal advice confirms are in accordance with current best practice. That is certainly the case as it relates to the two remits from Swimming Bay of Plenty which I shall refer to as Remit 1 and Remit 2, to be consistent with the referencing made by Mr Byrne.

| Remit 1 | Removal of the Board |
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| SNZ Summary | No one on the Board or the SPARC advisors has ever come across a measure like this before. Also, there is no awareness of a similar ability for clubs to remove regional board members or boards. An SGM can be called at any time to pass a remit should it be deemed necessary. |

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| | <p>It would be normal for a constitution to require the resignation of a director in certain circumstances e.g. they become of unsound mind, convicted of a criminal offence, fail to fulfil the duties of a board director etc. Such a clause is absent from the current constitution and probably should be added.</p> <p>Any removal of the entire Board would create major practical problems in terms of who replaces the Board. People would need to be willing to stand in their place and if they are not it would render the organisation rudderless.</p> <p>That would cause loss of confidence in funders and supporters. Swimming NZ has to work on the presumption that the Board was elected for a reason and if members don't like people on the Board they don't have to vote for them when it comes to re-election.</p> |
| <p>BOP Response</p> | <p>The current SNZ Constitution contains no capacity to sanction or hold the SNZ Board accountable for its actions. The Board are appointed by the regional membership through an electoral process but those members are unable to hold their elected representatives accountable for their actions. It is our opinion that any sanctioning of a board as a whole or of members as individuals should be an extreme action reserved for only the most extreme of circumstances. There must be checks and balances and the sanctioning of a board should never be undertaken lightly but the very essence of our democratic process requires that there must be accountability. This does not exist under our present constitution.</p> <p>Swimming Bay of Plenty received legal advice that the absence of a capacity to sanction the board left Swimming in a unique position amongst major sports and that this should be corrected. Remit 1 seeks to correct this position.</p> <p>The wording for Remit 1 has been provided by our legal advisers and is in accordance with current best practice. We are surprised by the comment made by the CEO of SNZ that:</p> <p style="text-align: center;"><i>"No one on the Board or the SPARC advisors has ever come across a measure like this before. Also, there is no awareness of a similar ability for clubs to remove regional board members or boards. An SGM can be called at any time to pass a remit should it be deemed necessary."</i></p> <p>The wording of this remit is similar, if not identical to that which is found in the current constitutions for amongst other sports Bike NZ (the former employer of the current SNZ CEO), Surf Lifesaving NZ (for whom Mr MacDonald the SPARC adviser was a member of the Project Groundswell Advisory Board) and Gymsports New Zealand which has been frequently cited in Project Vanguard work as being a sport whom Swimming should</p> |

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| | <p>follow. In addition our own research shows very similar provisions both in intent and wording in the constitution of the NZ Rugby Union, Basketball NZ, Athletics NZ and Netball NZ to name but a few. Indeed the challenge in our research has been to find a sport which does not contain similar provisions.</p> <p>The concluding sentence of the CEO's comment is that an SGM can be called at any time to pass a remit should it be deemed necessary. We are unsure of what the CEO intends by this statement, but we at Swimming Bay of Plenty feel that it is appropriate to make these provisions (whether we choose to use them or not) to ensure that our sport meets current best practice. We also consider that we are faced with a current necessity and that the AGM is the correct place to make these changes rather than in an SGM.</p> |
| Remit 2 | Casual Vacancies on the Board |
| SNZ Summary | <p>It is acknowledged that the current constitution does not provide for the filling of casual vacancies. Best practice however would be for the Board to identify and appoint a suitable replacement until the next AGM.</p> <p>There is a significant cost associated with calling an SGM which should be avoided if at all possible. If the members don't like the casual appointment then it comes up for election at the next AGM anyway.</p> |
| BOP Response | <p>While reviewing issues surrounding accountability of the board another major operating deficiency was identified in as much the SNZ Constitution does not contain any provision for the replacement of board members who may retire mid-term (between AGMs) either through voluntary retirement, ill health, death, or disqualification. As recently as last year there was a mid-term retirement, and while a new appointment was made this was done in accordance with a practice established by the Board and outside of the constitution. We have been advised that this action was effectively unconstitutional, and that more correctly the seat should have been vacated until the AGM. We do not believe that this position is desirable or that it serves our sport well. We note the CEO suggests that:</p> <p style="text-align: center;"><i>"best practice ... would be for the Board to identify and appoint a suitable replacement until the AGM".</i></p> <p>However, this is not what happened when faced with the fact, and that even though in his opinion this may be best practice, it is still not constitutional.</p> <p>Swimming Bay of Plenty's opinion is that best practice is to provide for this eventuality in</p> |

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| | the Constitution in the first place as other sports do, and to ensure that matters as important as this are not left to the whim of interpretation. Further, it was suggested by the CEO that a SGM should be avoided on grounds of cost, but we would note the provisions which already exist for SGMs to be concluded by postal ballot, and would therefore suggest that cost would not be a factor in implementation of this provision, if and when it is required. |
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Conclusion

Swimming Bay of Plenty believes that it is vital that we seek to incorporate best practise in our governance structures. We are clearly faced with challenging times at present. Swimming Bay of Plenty's two remits are intended to provide tools to address some of those issues in accordance with best practise and as adopted by other sports.

We fail to understand why our sport's CEO and Board should recommend that best practise not be adopted, but would urge all of our regional colleagues, regardless of your persuasion on current political issues, to support both these remits to ensure that our sport is brought into line with the very best legal advice and governance practice as it relates to these specific issues. We believe that the acceptance of these two remits will do exactly that.

Bronwen Radford
President of Swimming Bay of Plenty