

## **Note on Proposed Changes to Memorandum and Articles of Association of Avoca Hockey Club prepared by Dennis O'Connor, Club Board Member<sup>1</sup>.**

### The Club's Governance Structure:

Avoca Hockey Club became a company limited by guarantee (CLG) in 2014 with its Memorandum & Articles (M&A's) of Association becoming the Club's Constitution or Governing Instrument. Prior to that it was unincorporated, but it did have a pitch company where 2 club members, as trustees of the Club, served as Directors.<sup>2</sup> In the incorporating as a CLG the pitch company became a subsidiary of the CLG and thereafter its assets & liabilities absorbed by the CLG. Since 2014 the Club has been the responsibility of its Board with the day to day running delegated to the Executive Committee which is a sub-committee of the Clubs Board. The Board has consisted of the President, Vice President, Finance Director (Treasurer), 2 Governing Directors<sup>3</sup> since 2014 until 2019 when a number of Directors were Co-opted<sup>4</sup>.

### Compliance Requirements:

- As a CLG the Club is subject to the Companies Act<sup>5</sup> and regulation by the Director of Corporate Enforcement.
- As an approved Sport Body<sup>6</sup>, the Club is exempt from Corporation taxes but subject to the requirements of the Revenue Commissioners who grants this approval.
- As a Sports Club that is a member of Hockey Ireland the Club is required to adhere to the Governance Code<sup>7</sup>, set out by Sport Ireland, for Sports Bodies. Since 2014 the Companies Act changed significantly, and a new Governance code was adopted by Sport Ireland.

### Issues with the Club's current M&A's:

- Currently the Club's M&A's do not comply with the new Companies Act
- They are also not fully compliant with the new Governance code for Sports Bodies.
- In addition, the current M&A's contained a number of clauses which were unclear, poorly worded or did not in practice reflect the intention when drafted.

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<sup>1</sup> Dennis O'Connor has been involved in Avoca Hockey Club since 2007/08 Season when his Daughter Ellen started with U14's. He spent a number of years as a Parent Volunteer in Junior Section in roles of Team Manager, Age group Co-ordinator and Coach (Securing his Level 1 badge in the process) before starting to play with Men's Vets and then with Men's 3s and now Men's 4s where he was player Manager for last 2 seasons. He served for some six years on the Club Committee as Development Chair leading on the development of the 2 five-year plans and securing the ground sharing agreement with Sion Hill and the funds from Sports Capital and Leinster Hockey to finance it. He started the Give Hockey a Go programme 3 years ago and is currently managing this initiative on behalf of the Club. He was co-opted to the Club Board 2 years ago and during the last year led on the review of the Club's Governance structure. He runs a business, 2into3, that provides consulting, recruitment and research services to Ireland's Nonprofit sector (including Sports Bodies). 2into3 ([www.2into3.com](http://www.2into3.com)), on a pro-bono basis, has managed the recruitment process for the Club's Administrator and Director of Hockey, supported the 2014 and 2021 Sports Capital application and is currently supporting the Club on the development of its fundraising strategy. Dennis is a Judge on Carmichaels Centres Good Governance Awards.

<sup>2</sup> Peter Agnew and Nigel Kingston

<sup>3</sup> These were term limited under current M&A's to 6 Years.

<sup>4</sup> Dennis O'Connor and Hilary Murray (Former Girls Chair), then Dennis O'Connor and Peter Agnew and currently Dennis O'Connor and Caroline Daly.

<sup>5</sup> <http://www.irishstatutebook.ie/eli/2014/act/38/enacted/en/html>

<sup>6</sup> <https://www.revenue.ie/en/companies-and-charities/charities-and-sports-bodies/tax-relief-on-donations-to-certain-sporting-bodies/what-is-an-approved-sports-body.aspx>

<sup>7</sup> <https://www.sportireland.ie/GovernanceCode>

- The Boards experience, since 2014, of operating under the current M&A's also suggested some gaps.

How the M&A's were reviewed and proposed changes developed:

A detailed review of the M&A's was conducted by the Board and Mason Hays Curran (MHC) were instructed to prepared an updated version. Their advice was that due to the substantial changes required as a result of the new Companies act that a new set of M&A's which complied with that act and the Sports Governance code, and reflected the Club's preferred Governance structure, was the best route.

How the proposed changes were considered by the Club's members to date:

A new M&A was prepared and was presented at the Club's recent AGM. As a result of feedback one clause was revised and an amended new M&A was presented, discussed and voted on that AGM and while 60% of those members who voted were in favour the new M&A's were not approved as it requires a vote in favour of 75% of members present who vote to approve it.

As a result of feedback, the Board convened a Club Forum to which all members were invited and at it the new M&A's were again discussed and feedback sought. As of today, 26<sup>th</sup> November 2021, no further suggested changes to new M&A's have been made. At the Club Forum it was suggested that the principal changes would be set out showing current and new clauses along with an explanation. That is what this note aims to achieve.

The principal Governance changes from the current M&A to the new M&A are:

- **Expanded Mission to reflect that Avoca is a Community Club:**

In the current M&A's Clause 2 (Main Object) of the Memorandum of Association states " The Main object for which the Company is established is to foster the development of the sport of Hockey in and from the Avoca Hockey pitch and premises located at Newpark Comprehensive School, Newtownpark Avenue, Blackrock, Co. Dublin (the "Pitch") and/or in and from such other pitches and premises as the Company may select in addition thereto and/or in replacement thereof from time to time".

In the new M&A's Clause 3 (Principal Object) of the Memorandum of Association states " The principal object for which the Company is established is the advancement of sport by promoting, fostering and organising the playing of Hockey in the Blackrock, Deansgrange, Dun Laoghaire, Monkstown, Booterstown, Foxrock, Mount Merrion, Kilmacud, and Stillorgan areas of Co. Dublin, and such other areas as decided by the Company, from premises located at Newpark Comprehensive School, Newtownpark Avenue, Blackrock, Co. Dublin, Dominican College Sion Hill, Cross Avenue, Blackrock, Co. Dublin and/or in and from such other pitches and premises as the Company may select in addition thereto and/or in replacement thereof from time to time.

*Comment: The new clauses sets out a specific geographic catchment area for the club as well as recognising that it now has tenure both at Newpark and Sion Hill.*

- **Separation of Chair & CEO (Club President) roles:**

In the current M&A's Clause 29 of the Articles of Association ( Proceedings at General Meetings) states “ The President, or in his absence some other Board Member nominated by the Board shall preside as chairperson of the meeting....” And Clause 43 (b) states “ ...The President or in his absence a member of the Board, chosen by the Board, shall preside at all meetings of the Board....”.

In the new M&A's Clause 4.3 of the Articles of Association (Chairperson of General Meetings) states “ The Chairperson shall preside as chairperson at every general meeting of the members or if there is no such chairperson ....the Directors present shall elect one of their number of to be the chairperson of the meeting.” And Clause 7.2.2 (A) (Appointment of Directors) states “ The Chairperson, who is elected at annual general meeting in accordance with Article 8.1;” and Clause 8 (Officer Roles) states “ The Chairperson is elected at annual general meeting and is the chairperson of Board meetings and general meetings. Only Adult members may be elected as Chairperson. Individuals who are President, Vice President or Finance Director may no be elected as Chairperson.”.

*Comment: In Avoca Hockey Club the President is the Companies (and Clubs) Chief Executive. It is good corporate governance for the Chief Executive to report to a Board (albeit they are a member of that Board) but not to Chair that Board (or any General Meeting) as that would mean that they report to themselves which is not appropriate for any Nonprofit including any Sporting organisation.*

- **Clear Terms and Term Limits for all Board Members:**

The current M&A's Clause 43 (a) (The Board) of the Articles of Association states “ the President, who may not hold that position for more than two three year terms...the Vice President, who may not hold that position for more than two three year terms...the Governing Directors, who may not hold that position for more two three year terms...the Finance Director, who shall hold office for a one year term or until date of the of the Annual General Meeting next...persons co-opted by the Board...until conclusion of next AGM”.

In the new M&A's Clause 9 (Terms of Office of Directors) of the Articles of Association states

“ 9.1.1 The President, Vice President, Finance Director and Directors appointed under Article 7.2.3 serve for 2 years from date of election or appointment.

9.1.2 The Foundation Directors serve for three years from date of election.

9.1.3 The Chairperson serves for four years from the date of election.

9.1.4 Subject to Article 9.1.5 persons may not serve as Director for more than nine consecutive years, or more than 12 years in total (including consecutive and non-consecutive years).

9.1.5 Notwithstanding the provisions of Article 9.1.4 Directors who have been appointed by the Board in accordance with Article 7.2.3 may not serve for more than four years (consecutively or in total).

9.1.6 Directors who have already served as Director in an Officer Role may serve as Director, and seek nomination/appointment/selection, in a different Officer Role, subject to the restrictions in Articles 7.2.4,8,9.1.4 and 9.1.5. “

*Comment: The new M&A's are both very clear about term limits and in line with good corporate governance by including a reasonable yet clear maximum at 12 years in any capacity.*

#### **Clear Election process for Governing/Foundation Directors.**

The current M&A's Clause 1 (Interpretation and Preliminary) of the Articles of Association states “ Governing Directors means a member of the Board designated as a Governing Director on his appointment and Clause 43 (The Board) (a) the Board shall consist of the following positions....(iii) the Governing Directors, who may not hold that position for more than two three terms as Governing Directors but shall be eligible for appointment as...”.

The new M&A's Clause 1.1 (Definitions) of the Articles of Association states “Foundation Director means a person who has been a Director since the incorporation of the Company or a person who has replaced such a Director from time to time in accordance with clause 7.2.4 and 7.2.4 When a Foundation Director retires, or ceases to be a Director for any reason, the outgoing Foundation Director (or in the event he is indisposed or unable to act, the other remaining Foundation Director) may nominate any Adult Member to serve as a Foundation Director. The Members may, at their discretion, elect that nominee as a Foundation Director at annual general meeting. Should the Members decide not to elect that nominee as a Foundation Director, then any Adult Member may be elected by the Members as a Foundation Director at annual general meeting.”

*Comment: The intention had been in 2014 for there to be a process for electing Governing/Foundation Directors but it was not clearly worded. The new wording is clear about how such directors are elected and places members in a clear position to elect such Foundation Directors.*

- **Expansion of Board to allow 3 Co-opted Directors instead of 2.**

The current M&A's Clause 43 (The Board) of the articles of Association states (a) the Board shall consist of the following positions:...(v) persons co-opted by the Board: the Board shall have the power to co-opt any persons it deems advantageous to the Board to hold office for such period as may be decided by the Board during the lifetime of the particular Board (ie until, at the latest, conclusion of the next AGM), provided that no person may be so co-opted unless he is a member. A maximum of two such appointees shall be on the Board at any time.”

The new M&A's Clause 7.2 (Appointment of Directors) of the articles of Association states “7.2.2 The Board is comprised of between 6 and 9 individuals being:....(F) three Directors appointed by the Board in accordance with 7.2.3 ...The Board shall have the power at any time, from time to time, to appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number od Directors shall not at any time exceed the number fixed in accordance with these Articles.

*Comment: It is good corporate governance for a board of any Nonprofit organisation (including Sporting Bodies) to be able to co-opt additional Directors to those elected by its members to add skills & experience and provide balance so long as total board size is appropriate. Mason Hays Curran have advised that a Board of 9 is an appropriate size for an organisation like Avoca Hockey Club.*

- **Clear Membership Categories with full voting rights for all Adult Members.**

The Current M&A's Clause 1 (Interpretation and Preliminary) of the Articles of Association states " Full Member means any individual who is duly registered as a member of the Company and whose membership was not either lapsed or been terminated by the Company and has paid all fees, subscriptions or periodic contributions payable to the Company under these Articles, the Bye-laws or Other rules and Junior means, in relation to any particular day, a person who will be under the age of 19 years on the 31<sup>st</sup> December in the year in which that day falls and Junior Member means a Junior who seeks and is granted admission as a Junior member and Clause 10 (Membership) ...there shall be the following categories of membership of the Company: (a) Full Members and (b) Junior Members and Clause 11 Full Members are entitled to notice of, to attend and to vote at all general meetings of the Company and to cast one vote each. Junior members are entitled to notice of, to attend at but not to cast any votes at all general meetings of the Company and Clause 27 (Proceedings at General Meetings) states " ..a quorum shall be five Full Members...and Clause 40 (Votes of Members) the voting rights which apply with respect to the different categories of Member are set out in Article 13. On a vote taken every Member present and entitled to vote shall have one vote.

The new M&A's Clause 1.1 (Definitions) of Articles of Association states " Adult Non-Playing Member means any adult individual who does not play Hockey as part of the Company's activities but who is duly admitted by the Board and registered as a Member and who has paid all fees, subscriptions, or periodic contributions payable to the Company under this Constitution and any rules or regulations of the Company ...Adult Member means an Adult Non-Playing Member, Full Member or Honorary Life Member....Full Member means any adult individual who plays Hockey as part of the Company's activities and who is duly admitted by the Board and registered as a Member and who has paid all fees, subscriptions or periodic contributions payable to the Company under this Constitution and any rules or regulations of the Company...Honorary Life Member means any adult individual who has been admitted as Honorary Life Member in accordance with the criteria set by the Board from time to time...Junior means in relation to any particular day, a person less than 16 years of age who trains and plays with underage teams in the Company...Junior Member means any person less than 16 years of age who is duly registered as a Member and who has paid all fees, subscriptions, or periodic contributions payable to the Company under this Constitution and rules or regulations of the Company and Clause 2.2 (Appointment and Replacement of Members) 2.2.1 the categories of membership are: (A) Full Members (B) Junior Members, (C) Adult Non-Playing Members and (D) Honorary Life Members and Clause 2.2.4 All classes of Members have the same rights save that (A) Junior Members may not vote (B) subscriptions are not payable by Honorary Life Members and (C) the membership of Honorary Life Members is valid for life subject to Articles 2.2.5 to 2.2.7, Article 2.2.9 and

Article 6 and Clause 4.5.2 subject to Article 3.1.3 every Full Member, Adult Non-Playing Member and Honorary Life Member present at a general meeting shall have one vote. “

*Comment: The current M&A's allow clear voting rights only to members paying subscriptions payable. The proposed change will allow full voting rights to all adult members.*

- **A range of changes to comply with Companies Act.**

Comment: These are numerous, technical in nature and legally required so not optional and it is not feasible to do a comparison.