

INVALID NOTICE OF GENERAL MEETING - MEMBERS TO BE BETTER INFORMED

A recent case explained the need to carefully consider the requirements of the Club's Constitution and the obligations of Directors to properly inform Members on important questions.

In [*Kahler v Castle Hill Country Club Ltd \[2017\] NSWSC 851*](#), handed down by the New South Supreme Court ("the Court") on 27 June 2017, a Club Member was successful in preventing a General Meeting of Members of Castle Hill Country Club Ltd ("the Club") from proceeding. The General Meeting was seeking to grant member approval for the Board to consider various joint ventures to develop the Clubhouse and some parts of the Club's lands.

The Court noted in its judgement:-

"According to its website Castle Hill Country Club (the "Club") is "one of Sydney's leading private golf clubs and for many years has been recognised among the top 100 golf courses in Australia"..... Like many such clubs, it has been exploring renovating its members' facilities by entering into an agreement with a commercial third party, including dealing with some of the Club's land."

A Notice of General Meeting was circulated to Members with a proposed Resolution and general Explanatory Memorandum.

The Resolution proposed was:-

"Ordinary Resolution: Dealings with real estate and approvals for Board action. To consider and if thought fit, pass with or without modification, the following resolution:

The members:

- declare that none of the possible redevelopment area (PRA) identified by this meeting notice is core property of the Club except for the Club's licensed premises as approved for the purposes of the Club's club liquor licence for those premises from time to time; and*

- *for the purposes of Rules 43 and 44 give approval for any sales, the entering into liabilities, any spending or commitment of a corpus amount, and any borrowings, approved by the Board in connection with any redevelopment within the PRA.”*

Rules 43 and 44 of the Club’s Constitution constrained the general power of the Board to conduct the affairs of the Club by requiring Member approval for:-

1. dealing with the Club’s lands, or incurring a liability for the purchase of land, buildings and equipment in excess of \$400,000; and
2. borrowings (except by way of overdraft) of the Club.

Mr Kahler sought an injunction to prevent the General Meeting from being held on the basis that the Notice was invalid because it did not provide sufficient information pursuant to Rules 43 and 44 for Members to make an informed decision. The Court noted that Mr Kahler was not objecting in principle to the possible redevelopment and/or joint venture.

Section 41 of the [Registered Clubs Act](#) also imposes a requirement for Clubs to obtain the approval of Members in dealing with core property. Core property is essentially the licensed premises and lands used for Member’s facilities.

The Court held that:-

- “1. the Resolution would be ineffective for the purposes of the Clubs Act and the Club’s Constitution as an approval to enter into sale and other commitments in connection with any proposed redevelopment; and*
 - 2. the Explanation was inadequate, in breach of the directors’ fiduciary obligation of full and proper disclosure,*
- such that the Notice was invalid or ineffective to convene a lawful general meeting of the Club.”*

Accordingly, the Court determined that the intent of Rules 43 and 44 of the Club’s Constitution required not only Member approval but informed Member approval. The effect of the invalid Notice of Meeting and the decision is that the General Meeting could not proceed.

The importance of this decision highlights the need to carefully consider a Club’s Constitution and compliance with its terms to give valid Notice of a General Meeting and to validly conduct certain business at a General Meeting. In this case the Court found that the intent of Rules 43 and 44 were clear and would be subverted if Members were unable to receive more specific information and make an informed decision.

Many Clubs have similar type provisions, although many Clubs do not. Accordingly, as always it is important to consider the terms of the Club's Constitution to ensure that Directors do not run the risk of breaching their fiduciary duties to the Club and its Members.

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