

Report to: Creative Sounds Society Inc Members

From: Creative Sounds Society Management Committee

Date: 28 August 2017

## **CONSTITUTION REVIEW**

### **1. Reason for Report**

To present the findings and recommendations of the constitution review to members for consideration and approval.

### **2. Background**

At the June 2016 Special General Meeting, one or two members of the Society raised concerns about the constitution and the objectives of the Society. In addition, the Management Committee was advised by the Department of Internal Affairs that the winding up clause should be strengthened.

As a result of the discussion at the 2016 Special General Meeting, the Management Committee undertook to review the Constitution to ensure it remains fit for purpose. Specific concerns raised by members were that the objectives were not sufficiently inclusionary, and that the interplay between strategy and objectives was not well understood – with one member querying whether the objectives in the strategic plan replaced those in the constitution.

### **3. Review Panel**

A small group was convened to lead the review. This group comprised:

- Dr Chris Gallavin, Professor of Law
- Stuart Hubbard, CSSI Secretary and longstanding CSSI member
- Jeff Braid, external panelist, Vice President, Manawatu Car Club

The group focused their review on three specific areas:

1. Objectives of the Society – does the Society have the appropriate delegations to achieve the goals of its community?
2. Membership – is the membership of the Society set appropriately?
3. Structure of the Constitution – is the constitution clear and unambiguous?
4. Protections – does the constitution provide sufficient protections of the Society's assets?

### **4. Objectives of the Society**

The review panel advise that objectives should be worded broadly and as aspirations. They are not minimum standards to adhere to nor a contractual obligation, but are empowering by outlining the outer limits of the possible work of the Society. Objectives that are too specific could create problems for the growth

and development of the society and for future management committees and members.

On considering the advice of the Panel, key changes recommended by the Management Committee are:

- Removal of 'modern and alternative' and replacing it with 'all genres'.
- Enabling recognition of the special place Māori hold as tangata whenua.

Additionally, the Management Committee would like to recommend:

- That 'other arts' be clarified as 'related arts' to signify that music is the primary medium.

In recommending these changes to the objectives, including retitling as 'objects and purposes', members are invited to consider the context of history, strategy, and resourcing:

#### **4.1 History**

The Society was established in 1988 in collaboration with the Palmerston North city Council to make use of the Unemployed Workers Rights centre. The Society was formed to find positive means through which individual self-esteem and community cultural development could be enabled, during a troubled time in Palmerston North's history. This remains at the heart of the Society's purpose, with music the medium through which self-esteem and community cultural development is fostered. No change is proposed to this genesis ethos.

In much of the Society's 30-year history, creativity and self-expression has been fostered through a focus on original and 'alternative' music. The primary reason for this is:

- The opportunity to develop a uniquely local voice through self-expression;
- The opportunity for empowerment of those who may otherwise be disenfranchised as being outside the mainstream;
- Other forms of music are already served through other means, some examples are: The Jazz Society, the Savage Club, various church groups, Manawatu Scottish Society, Youth Orchestra;
- Covers bands are more likely to be offered paid/ regular shows in licensed venues.

Some members of the Management Committee were concerned that this focus on original music was insufficiently protected in the objectives; however, the objectives are there to enable, not to limit, and on reflection, it is considered appropriate not to limit the objectives in this way, but to clarify this orientation through the strategy of the organisation.

#### **4.2 Strategy**

Discussion at the SGM indicated that some members were confused between the objectives of the Society as outlined in the constitution and the strategic and operational goals as outlined in the Strategic Plan. For clarification:

- Objects outline what activities the Society is permitted by its constitution to undertake.

- The strategy is a plan that outlines what the current priorities are and how they will be achieved.

The Management Committee will approve a Strategic Plan from time to time, the most recent iteration was approved in 2015 and prioritises:

- Presence and status in the community
- Live performance and collaboration
- Education and outreach
- Service provision
- Networking and collaboration

Achievement of the strategic plan is outlined in both the Statement of Performance and the Convenor's report to the Society.

#### **4.3 Funding/ Resourcing**

Any aspirations of the Society will be enabled or limited by the resourcing available to the Society. Most grants come with terms attached. The bulk of the Society's funding comes from the Palmerston North City Council under a performance contract. This contract specifies what activities the PNCC will fund, and while the Society is free to provide services beyond the contract, it can only do so with the funds that do not have such conditions, such as the revenue it generates from operations.

### **5. Membership of the Society**

At present two forms of society membership are open to users of The Stomach and other interested people. General and voting membership are both free and can be obtained by filling out the appropriate form. This arrangement encourages the local music community to engage with the society and enable the view of members to be exercised in the decision-making fora of general (all of society) meetings.

The panel has recommended some amendments to the membership:

- Clarification that voting and general membership is limited to individuals;
- Inclusion of an age-limit for voting membership;
- Clarification of the Management Committee's role in determining the rules;
- Clarification of the rights of members;
- Enable the raising of subscriptions through membership.

The Management Committee is considering introducing a third class of membership in the form of a financial membership which would provide opportunities to:

- Engage non-regular users of The Stomach such as parents or whānau/ relatives of users;
- Engage a broader community who support the kaupapa of Creative Sounds but do not directly engage with the services we provide;
- Raise revenue that would be used toward operational expenses involved in realising the Society's objects.

In considering the introduction of a financial membership, the Management Committee is mindful that:

- The purpose of a financial membership would be to raise revenue for and awareness of the work CSSI does.
- Membership on a financial basis (i.e. paying to be a member) should not earn that member, individual or organisation, any power greater than that granted to General or Voting membership.
- Membership on a financial basis should also not correlate with access to services. Services are already subsidised and priced in a way that ensures access for all based on usage.
- Administering the financial membership and revenue raised would create additional work for the treasurer and staff.
- The payment to CSSI would need to be on a charitable basis. This will require further investigation.
- Some kind of recognition for the financial contribution might be appropriate. This might take the form of a tax certificate (the Society has donee status), an acknowledgement at general meetings, or a newsletter that shows what CSSI has been doing specifically showing how the revenue raised is being used.
- Financial membership would need to be enacted carefully so that other members or users are not marginalised by their inability to contribute financially.
- Financial membership may form another pillar of regular funding.

No decision has been made yet, but the Management Committee wishes to signal the commencement of deliberations.

## **6. Structure of the Constitution**

The current constitution is structured so that like matters such as voting and quorum are considered together in the one section. This makes the interpretation of the constitution difficult as matters pertaining to the Society and general meetings are conflated with matters pertaining to the Management Committee and Management Committee meetings.

General meetings are where all members of the Society are invited to attend and vote on the business at hand, such as the Annual General Meeting, where the financial statements are approved and the auditor appointed.

The Management Committee is the governance arm of the Society and provides strategic and operational leadership. Management Committee meetings are primarily for the Management Committee to provide direction to the employees.

It is proposed to realign the constitution to make the rules clearer and to distinguish between sections that relate to the Society and sections that relate to the Management Committee. This is a formatting change rather than a change to the rules. The change in structure is outlined in the table below:

Current Constitution	Proposed Change	Proposed Constitution
1. Preamble		Preamble
		1. Registered Office
2. Objectives	Expansion of Title	2. Charitable Objects and Purposes
3. Membership	Clarification that membership is of the Society	3. Membership of the Society
	Addition of Conflicts of Interest section	4. Conflicts of Interest
4. Rights of Members		5. Rights of Members
5. Termination of Membership		6. Termination of Membership
6. Registered Office	Re-number as 1.	
7. Management Committee	Re-number as 10.	
8. Meetings	Split into Society (6) and ManCom (11)	7. General Meetings of the Society
		8. Auditor
9. Quorums	Split into Society (8) and ManCom (12)	9. Quorum for General Meetings of the Society
10. Voting	Split into Society (9) and ManCom (13)	10. Voting at General Society Meetings
		11. Management Committee
		12. Management Committee Meetings
		13. Quorum for Management Committee Meetings
		14. Voting at Management Committee Meetings
11. Powers of Management Committee		15. Powers of Management Committee
12. Control of Funds		16. Control of Funds
13. Auditor	Re-number as 7.	
14. Constitution		17. Constitution
15. Winding Up	Expansion of Title	18. Disposition of Surplus Assets upon Winding Up
16. Common Seal		19. Common Seal

**Note that any changes to the clauses within the constitution are outlined separately in this report and made visible in track changes.**

## 7. Protections

A key consideration of the Review Panel was ensuring that the Constitution provided adequate protection to the Society. This included strengthening the provisions of the Winding Up clause on the advice of the DIA, and consideration of the events of 2015 where a small group of disgruntled members attempted to interfere in an employment situation by seeking to overthrow the Management Committee.

While the constitution and elected Management Committee stood up well to this hostility, it did expose how few people it took to generate such disruption. It also highlighted how vulnerable the Society could be to any future group with hostile ambitions, for example another community group trying to force a hostile takeover. Given Creative Sounds is not the only community group to be confronted with such a scenario in the last two years, the review panel has recommended the following changes:

- Strengthening the winding up clause to dispose of assets to another charity with similar purposes;
- Co-locating the Conflicts of Interest section and requiring the Management Committee to maintain a register and refer to this as a standing item on all agendas;
- Increasing the number of members to call an SGM.

The review panel suggested increasing the number of members to call an SGM to 25, but the Management Committee in considering this advice, is recommending that the requirement be 10% of the current membership. This is essential to prevent the enrolling of members specifically to force a hostile takeover and/or calling costly special meetings on spurious grounds.

## 8. Other Proposed Amendments

In addition to the recommended changes outlined in previous sections of this report, the following changes are proposed:

- Notification of General Meetings in the morning newspaper – Palmerston North no longer has a morning paper, and members are more likely to prefer to be contacted via electronic means such as email and Facebook.
- Removal of the clause requiring IRD approval to change the objectives of the Society as it is not the IRD's role to set the direction of the organisation. The IRD advise:

*"Some organisations may have rules that prevent additions or alterations to the charitable objects, personal benefit and winding up clauses without first getting our approval. If you are registering your charitable organisation with Charities Services, we don't need to give approval for changes to rules. Instead, we give general consent to any amendment removing such a rule. We recommend that you remove this requirement from your rules"<sup>1</sup>.*

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<sup>1</sup> <http://www.ird.govt.nz/charitable-organisations/chart-orgs-intro/> Retrieved 28/8/2017

**9. Recommendations**

**It is recommended that the members present at the AGM:**

- 8.1 Note the issues explored by the Review Panel;**
- 8.2 Note the different roles that objectives, strategy, and resourcing, play in determining the direction of the organisation;**
- 8.3 Confirm the proposed objectives are appropriate;**
- 8.4 Note the consideration of a financial class of membership;**
- 8.5 Approve the revised constitution.**