

# CONSTITUTION

## of

### Blue Mountains Football Club Inc.

#### 1. NAME OF ASSOCIATION

The name of the Association is Blue Mountains Football Club Inc.

#### 2. DEFINITIONS AND INTERPRETATION

##### 2.1 Definitions

In this Constitution unless the contrary intention appears:

“**Act**” means the *Associations Incorporation Act 2009 (NSW)*.

“**Annual General Meeting**” means the annual general meeting of the Club held in accordance with **clause 20**.

“**BMFC**” means Blue Mountains Football Club Inc.

“**Board**” means the body consisting of the Directors.

“**Club**” means Blue Mountains Football Club Inc.

“**Club Official**” means any person involved with the administration, management or organisation of the Club (whether paid or unpaid) including employees and volunteers.

“**Constitution**” means this Constitution of the Club.

“**Director**” means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution.

“**Expulsion Ground**” exists for a Member if:

- (a) The Member breaches:
  - (i) The Constitution, bylaws or Regulations;
  - (ii) NFA’s constitution, bylaws, regulations, policies or directives;
  - (iii) FNSW’s constitution, bylaws, regulations, policies or directives;
  - (iv) FFA’s constitution, bylaws, regulations, policies or directives; or
  - (v) FIFA Laws of the Game;
- (b) The Member wilfully disobeys the rules or instructions of the Club or permits or counsels any individual under its jurisdiction or control to do so;
- (c) The Member engages in, condones or does not take effective measures to prevent conduct that is injurious or prejudicial to the Club, its character or interests or the sport of football generally;
- (d) The Member brings the sport of football into disrepute; or
- (e) The Member is not a fit and proper person or entity to be a Member of the Club.

“**FFA**” means the Football Federation of Australia, Australia’s football governing body.

“**FIFA**” means the Federation Internationale de Football Association, the worlds football governing body.

“**Financial year**” means the year ending on the next 1 September following incorporation and thereafter a period of 12 months commencing on 1 September and ending on 30 August each year.

“**FNSW**” means Football New South Wales, New South Wales state governing body.

“**General Meeting**” means the annual or any special general meeting of the Club.

“**Individual Member**” means a registered, financial member of a Club who is at least 18 years of age or a natural person who is otherwise recognised by the Club as an Individual Member.

“**Intellectual Property**” means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Club or any activity of or conducted, promoted or administered by the Club in the Nepean Region.

“**Junior Member**” means a registered Member of the Club who is younger than 18 years of age.

“**Life Member**” means an individual appointed as a Life Member of the Club under **clause 5.2**.

“**Match Official**” means a referee, assistant referee, match commissioner, referee inspector, selector, any person in charge of safety or any other person appointed by the Club to assume responsibility in connection with a football match or competition;

“**Member**” means a member for the time being of the Club under **clause 5**.

“**NFA**” means Nepean Football Association Inc.

“**Official**” means an Club Official;

“**Objects**” means the objects of the Club in **clause 3**.

“**Poll**” means the process of voting to reach a decision. A poll may be taken by a show of hands (or similar), or a secret ballot whereby the opinion of the voter is recorded on a voting slip or ballot paper. The results of such ballots are counted to reach an outcome of a matter being considered by a vote, or to determine the outcome of an election of candidates.

“**Public Officer**” means the person appointed to be the public officer of the Club in accordance with the Act.

“**Nepean Region**” means the geographical area for which the Nepean Football Association is responsible as recognised by FNSW.

“**Register**” means a register of Members kept and maintained in accordance with **clause 7**.

“**Regulations**” means any Regulations made by the Board under **clause 34**.

“**Seal**” means the common seal of the Club (if any).

“**Secretary**” means the portfolio undertaken by an elected director whose role and responsibilities are defined by the regulations.

“**Special General Meeting**” means a special general meeting of the Club held in accordance with **clause 21**.

“**Special Resolution**” means a special resolution passed by 75% of votes cast by Members entitled to vote in the resolution at a General Meeting or such higher percentage if required under the Act.

## **2.2 Interpretation**

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

## **2.3 Severance**

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

## **2.4 The Act**

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this Constitution.

## **3. OBJECTS OF THE CLUB**

The Club is established solely for the Objects. The Objects of the Club are to:

- (a) participate as a member of NFA so football can be conducted, encouraged, promoted, advanced and administered in the Nepean Region and New South Wales;
- (b) conduct, encourage, promote, advance and administer football within the Nepean Region;
- (c) ensure the maintenance and enhancement of the Club, NFA, FNSW, FFA, the Members and football, along with its standards, quality and reputation for the benefit of the Members and football;
- (d) at all times promote mutual trust and confidence between the Club, NFA, FNSW, FFA and the Members in pursuit of these Objects;
- (e) at all times act on behalf of, and in the interest of, the Members and football in the Nepean Region;
- (f) to provide a regulatory, disciplinary and governance regime for football in the Nepean Region;

- (g) promote the economic and community service success, strength and stability of the Club, the Members and football in the Nepean Region;
- (h) affiliate and otherwise liaise with the NFA and adopt its rule and policy framework to further these Objects and football,
- (i) use and protect the Intellectual Property;
- (j) apply the property and capacity of the Club towards the fulfilment and achievement of these Objects;
- (k) strive for government, commercial and public recognition of the Club;
- (l) abide by, promulgate, enforce and secure uniformity in the application of the rules of football as may be determined from time to time by NFA, FNSW or FFA or FIFA and as may be necessary for the management and control of football and related activities in the Nepean Region;
- (m) advance the operations and activities of the Club within the Nepean Region;
- (n) further develop football into an organised institution and with these Objects in view, to foster, regulate, organise and manage examinations, competitions, displays and other activities and to issue badges, medallions and certificates and award trophies to successful Members;
- (o) pursue such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further the interests of football in the Nepean Region;
- (p) adopt and implement such policies as may be developed by NFA, FFA or FNSW, including (as relevant and applicable) member protection, anti-doping, health and safety, junior sport, infectious diseases and such other matters as may arise as issues to be addressed in football;
- (q) represent the interests of its Members and of football generally in any appropriate forum in the Nepean Region;
- (r) have regard to the public interest in its operations;
- (s) do all that is reasonably necessary to enable these Objects to be achieved and enable Members to receive the benefits which these Objects are intended to achieve;
- (t) promote the health and safety of Members and all other participants in football in the Nepean Region;
- (u) seek and obtain improved facilities for the enjoyment of football in the Nepean Region; and
- (v) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects.

#### **4. POWERS OF THE CLUB**

Solely for furthering the Objects, the Club has, in addition to the rights, powers and privileges conferred on it under section 25 of the Act, the legal capacity and powers of a company as set out under section 124 of the *Corporations Act 2001 (Cth)*.

## 5. MEMBERS

### 5.1 Categories of Members

The Members of the Club shall consist of:

- (a) Individual Members, shall have the right to receive notice of General Meetings and to be present, to debate and to vote at General Meetings.
- (b) Life Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present and to debate and to vote at General Meetings;
- (c) Junior Members, who subject to this Constitution, shall have no right to receive notice of General Meetings and no right to be present or debate or vote at General Meetings or be a Director of the Club
- (d) such new or other categories of Members as may be established by the Board. Any new category of Member established by the Board can not be granted voting rights without the approval of the Club in General Meeting.

### 5.2 Life Members

- (a) The Board may recommend to the Annual General Meeting that any natural person who has rendered distinguished service to the Club or football, where such service is deemed to have assisted the advancement of football in the Nepean Region, be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership (subject to **clause 5.2 (c)**) on the recommendation of the Board must be a Special Resolution.
- (c) A person may accept or reject the Club's resolution to confer life membership. Upon acceptance, the person's details shall be entered upon the Register, and from the time of entry on the Register the person shall be a Life Member.

## 6. MEMBERSHIP

### 6.1 The Club shall join and affiliate with NFA as a member in accordance with the Constitution, regulations and bylaws of NFA and will comply with all lawful requirements of NFA, FNSW, FFA and FIFA.

### 6.2 Application for Membership

An application for membership must be:

- (a) in accordance with the procedures set down by the Club in Regulations from the applicant or their nominated representative;
- (b) accompanied by the appropriate fee (if any).
- (c) Discretion to Accept or Reject Application
- (d) The Club may accept or reject an application whether the applicant has complied with the requirements in **clause 6.1** or not. The Club shall not be required or compelled to provide any reason for such acceptance or rejection.
- (e) Where the Club accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Club. The Register shall be amended accordingly as soon as practicable.
- (f) Where the Club rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Club.

### **6.3 Renewal of Membership**

- (a) Members (other than Life Members) must renew their membership annually in accordance with the procedures set down by the Club in Regulations.

### **6.4 Deemed Membership**

- (a) All members which or who are, prior to the approval of this Constitution under the Act, members of the Club, shall be deemed Members from the time of approval of this Constitution under the Act.
- (b) Any Members of the Club, prior to approval of this Constitution under the Act, who are not deemed Members under **clause 6.4 (a)** shall be entitled to carry on such functions analogous to their previous functions as are provided for under this Constitution.

## **7. REGISTER OF MEMBERS**

### **7.1 Club to keep Register**

The Club shall keep and maintain a Register in which shall be entered (as a minimum):

- (a) the full name, address, category of membership and date of entry to membership of each member; and
- (b) the full name, residential address and date of entry to membership of each Director and Life Member; and
- (c) where applicable, the date of termination of membership of any member.
- (d) Members and Life Members shall provide notice of any change and required details to the Club within one month of such change.

### **7.2 Inspection of Register**

Having regard to the Act, confidentiality considerations and privacy laws, an extract of the Register, excluding the address or other direct contact details of any Life Member or Director, shall be available for inspection (but not copying) by Members who make a reasonable request.

### **7.3 Use of Register**

Subject to the Act, confidentiality considerations and privacy laws, the Register may be used to further the Objects, in such manner as the Board considers appropriate.

## **8. EFFECT OF MEMBERSHIP**

Members acknowledge and agree that:

- (a) this Constitution constitutes a contract between each of them and the Club and that they are bound by this Constitution, bylaws (if any) and the Regulations and the NFA, FNSW and FFA constitutions, bylaws, statutes and regulations;
- (b) they shall comply with and observe this Constitution and the Regulations and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
- (c) by submitting to this Constitution and Regulations they are subject to the exclusive jurisdiction of the Club, NFA, FNSW and FFA;

- (d) it submits exclusively to the jurisdiction of the internal grievance resolution procedures of the Club, NFA, FNSW and FFA in relation to any disputes and/or grievances between the Club and Members pursuant to this Constitution, bylaws (if any) and the Regulations and the NFA, FNSW and FFA constitutions, bylaws, statutes and regulations;
- (e) it will not attempt to resolve any grievance or dispute with the Club or any Member in a court of law;
- (f) the Constitution and Regulations are necessary and reasonable for promoting the Objects and particularly the advancement and protection of football in the Nepean Region; and
- (g) they are entitled to all benefits, advantages, privileges and services of Club membership.

## 9. DISCONTINUANCE OF MEMBERSHIP

### 9.1 Notice of Resignation

- (a) A Member having paid all arrears of fees payable to the Club may resign or withdraw from membership of the Club by giving notice in writing to the Club of such resignation or withdrawal.
- (b) Any member who deregisters from playing with the Club shall be considered to have resigned their membership of the Club under **clause 9.1 (a)**.
- (c) Upon the Club receiving notice of resignation of membership given under **clause 9.1 (a)**, an entry in the Register shall be made recording the date on which the Member who or which gave notice ceased to be a Member.

### 9.2 Discontinuance for breach

- (a) The Board may consider whether to expel or suspend a Member if:
  - (i) a person makes a complaint to the Board to the effect that an Expulsion Ground exists for the Member; or
  - (ii) the Board considers, on its own discretion, that there is an arguable case that an Expulsion Ground exists for the Member.
- (b) if the Board proposes to consider whether to expel or suspend a Member, the Board will refer it to an independent tribunal or committee established in accordance with the Regulations.
- (c) the Board must ensure the Secretary gives the Member at least 14 days' notice setting out the date, time and venue for the hearing at which the expulsion is to be considered.
- (d) in addition to any other requirement set out in the Regulations, a Member given notice under **clause 9.2 (c)** may:
  - (i) give the tribunal or committee written submissions;
  - (ii) attend the hearing stated in the notice and make submissions (but may not be represented by a lawyer); or
  - (iii) do both.
- (e) At the hearing the panel:
  - (i) must consider any submissions made under clause 9.2 (d); and
  - (ii) is not bound by the rules of evidence; and
  - (iii) may resolve to:

- (A) expel the Member from the Club; or
  - (B) suspend the Member for a specified period and on terms and conditions it deems fit.
- (f) The Register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.
  - (g) A Member may, within 7 days after being given notice of the decision to expel or suspend membership pursuant to **clause 9.2 (e)**, give notice to the Secretary appealing the decision.
  - (h) The process for an appeal of the decision must be conducted in accordance with the Regulations or as directed by the Board. The members of the appeals committee or tribunal must be independent of the parties and the decision made by the appeals tribunal or committee is final and not appealable.
  - (i) A decision by an appeals tribunal or committee formed under **clause 9.2 (h)** will be final and not appealable.
  - (j) For the avoidance of doubt, a party to a decision made under this **clause 9.2** shall not be entitled to raise a grievance or dispute under **clause 28** at any point. The grievance procedures set out in **clause 28** is a separate process and cannot be used in conjunction with any matter or decision made under this **clause 9.2**.

### **9.3 Member to Re-apply**

A Member whose membership has been discontinued under **clause 9.2**:

- (a) must seek renewal or re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted at the discretion of the Board with such conditions as it deems appropriate.

### **9.4 Forfeiture of Rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Club and its property and shall not use any property of the Club including Intellectual Property. Any Club documents, records or other property in the possession, custody or control of that Member shall be returned to the Club immediately. Where a Club ceases to be a Member it shall also forfeit all representation rights on the Board and at General Meetings.

### **9.5 Delegated Function Lapses**

Any delegated functions the member may hold shall lapse immediately on cessation of membership of the Club.

### **9.6 Refund of Membership Fees**

Membership fees or subscriptions paid by the discontinued Member may be refunded on a pro-rata basis to the Member upon discontinuance.

## **10. SUBSCRIPTIONS AND FEES**

The annual membership subscription (if any) and any fees or other levies payable by Members to the Club, the time for and manner of payment, shall be as determined by the Board.



## 11. EXISTING DIRECTORS

The members of the administrative or governing body (by whatever name called) of the Club in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next General Meeting following such adoption of this Constitution. After this General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.

## 12. POWERS OF THE BOARD

Subject to the Act and this Constitution, the business of the Club shall be managed, and the powers of the Club shall be exercised, by the Board. In particular, the Board shall act in accordance with the Objects and shall operate for the benefit of the Members and the community within the Nepean Region.

## 13. COMPOSITION OF THE BOARD

### 13.1 Composition of the Board

- (a) The Board shall comprise:
  - (b) five (5) elected Directors who must all be Members; who shall be elected under **clause 14**;
- and
- (c) up to two (2) appointed Directors who need not be Members; who shall be appointed by the Directors in accordance with **clause 15**.

### 13.2 Election and Appointment of Directors

- (a) The elected Directors shall be elected under **clause 14**.
- (b) The appointed Directors may be appointed under **clause 15**.

### 13.3 Portfolios

The Board may allocate portfolios and/or titles to Directors.

## 14. ELECTED DIRECTORS

### 14.1 Nominations

- (a) Nominations for elected Director positions shall be called for twenty eight (28) days prior to the Annual General Meeting. When calling for nominations details of the necessary qualifications and job descriptions for the positions shall also be provided. Qualifications and job descriptions shall be as determined by the Board.
- (b) Nominees for elected Director positions must declare any position they hold in a football related organisation including as an officer (howsoever described including as a Delegate) or as a full time employee.

- (c) Nominations must be:
  - (i) in writing;
  - (ii) on the prescribed form provided for that purpose;
  - (iii) signed by two (2) Members of the Club who are not Junoir Members;
  - (iv) certified by the nominee expressing his willingness to accept the position for which they are nominated; and
  - (v) delivered to the Club not less than fourteen (14) days before the date fixed for the Annual General Meeting.

## 14.2 Elections

- (a) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be declared elected only if approved by the majority of Members entitled to vote.
- (b) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Members under **clause 14.2 (a)**, the positions will be deemed casual vacancies under **clause 16.1**.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order, for each vacancy on the Board.
- (d) Voting shall be conducted in such a manner and by such a method as determined by the Board.

## 14.3 Term of Appointment for Elected Directors

- (a) Directors elected under this **clause 14** shall be elected for a term of two (2) years. Subject to provisions in this Constitution relating to earlier retirement or removal of Directors, elected Directors shall remain in office from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.
- (b) Three (3) elected Directors shall retire in each odd year and two (2) elected Directors shall retire in each even year until, after two (2) years the five (5) original elected Directors have retired after which those elected Directors (or their replacements) who first retired, shall retire and so on.
- (c) The sequence of retirements under **clause 14.3 (b)** to ensure rotational terms shall be determined by the Board. If the Board cannot agree it will be determined by lot.
- (d) Following the adoption of this Constitution, no person who has served as an elected Director for a period of four (4) consecutive full terms shall be eligible for election as an elected Director until the next annual general meeting following the date of conclusion of their last term as an elected Director.
- (e) Any person not eligible to be elected a Director under **clause 14.3 (d)** may be appointed by the Board to fill any casual vacancy occurring in the position of Elected Director in accordance with **clause 16.1**.

## 15. APPOINTED DIRECTORS

### 15.1 Appointment of Directors

- (a) Subject to this **clause 15.1**, the elected Directors may appoint up to two (2) appointed Directors.
- (b) The Directors must, from time to time and for such period as they determine, establish a nominations committee comprising of at least three (3) elected Directors.
- (c) The Committee may consider each candidate for election as a Director and will assess:
  - (i) the commitment of the Candidate to a strong governance regime for the Club;
  - (ii) the commitment of the Candidate to the Club developing policies and strategies for football;
  - (iii) that the Candidate has not been involved in activities which could, or could reasonably be perceived to, materially interfere with the Candidate's ability to act in the best interests of the Club;
  - (iv) that the Candidate is free from any interest and any relationship which could, or could reasonably be perceived to, materially interfere with the nominee's ability to act in the best interests of the Club; and
  - (v) that the Candidate satisfies the Core Competencies.

and may, in its absolute discretion and acting in good faith, approve or object to the Candidate being appointed as a Director. Written notice of the Committee's decision must be given to the Club by a date specified by the Board.

- (d) The Committee is not required to provide any reasons for its decisions.
- (e) Unless the Committee approves the Candidate under **clause 15.1 (c)**, the Candidate is not eligible to be appointed by the Board.
- (f) The Committee may request the Club to provide or obtain any information that the Committee requires in respect of a nominee or a person proposed to be appointed as a Director.
- (g) All information obtained by the Committee and all deliberations and records of deliberations are confidential and must not be disclosed to any person who is not a member of the Committee.
- (h) The Committee may make its own rules regarding its conduct, subject to any rules made in this regard by the Directors and subject to **clause 15.1 (i)**.
- (i) A quorum consists of all three members of the Committee present at the meeting of the Committee.
- (j) A decision made by the Committee under this **clause 15.1** is final and not subject to challenge.
- (k) For the purposes of **clause 16.1 (c) (v)** the Core Competencies are that a nominee must possess are:
  - (i) demonstrated leadership at a senior level in an environment compatible with the requirements of the Club.
  - (ii) demonstrated commitment to strong governance principles and an understanding and appreciation of the duties and responsibilities of the role of Director;
  - (iii) a commitment to and record of ethical behaviour including not having been the subject of an adverse finding or the current subject of an inquiry or investigation by any statutory, regulatory or law enforcement authority or agency including a disciplinary body of Football NSW, FFA or the NFA relating to any serious ethical matter.

## 15.2 Qualifications for Appointed Directors

The appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition.

## 15.3 Term of Appointment for Appointed Directors

- (a) Appointed Directors may be appointed by the elected Directors under this Constitution for a term of two (2) years, which shall commence from the first Board meeting after the Annual General Meeting until after the conclusion of the second Annual General Meeting following.
- (b) Appointed Directors may be appointed to ensure rotational terms that coincide with the elected Directors' rotational terms.
- (c) Any adjustment to the term of appointed Directors appointed under this Constitution necessary to ensure rotational terms under this Constitution, shall be determined by the Board.
- (d) Following the adoption of this Constitution, no person who has served as an appointed Director for a period of four (4) consecutive full terms shall be eligible for appointment as an appointed Director until the next Annual General Meeting following the date of conclusion of his last term as an appointed Director.

## 16. VACANCIES ON THE BOARD

### 16.1 Casual Vacancies

Any casual vacancy occurring in the position of Director may be filled by the remaining Directors from among appropriately qualified persons. Any casual vacancy may only be filled for the remainder of the Director's term under this Constitution.

### 16.2 Grounds for Termination of Director

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if the Director:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns his office in writing to the Club;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of six (6) months;
- (f) holds any office of employment with the Club;
- (g) is directly or indirectly interested in any contract or proposed contract with the Club and fails to declare the nature of his interest;
- (h) in the opinion of the Board (but subject always to this Constitution):
  - (i) has acted in a manner unbecoming or prejudicial to the Objects and interests of the Club; or
- (i) has brought the Club into disrepute;
- (j) is removed by Special Resolution; or
- (k) would otherwise be prohibited from being a Director of a corporation under the *Corporations Act 2001 (Cth)*.

### **16.3 Board May Act**

In the event of a casual vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

## **17. MEETINGS OF THE BOARD**

### **17.1 Board to Meet**

The Board shall meet as often as is deemed necessary in every calendar year for the dispatch of business (and shall be at least as often as is required under the Act) and subject to this Constitution may adjourn and otherwise regulate its meetings as it thinks fit. A Director may at any time convene a meeting of the Board within a reasonable time.

### **17.2 Decisions of Board**

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one (1) vote on any question. Where voting is equal, the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote, the motion will be lost.

### **17.3 Resolutions not in Meeting**

- (a) A resolution in writing, signed or assented to by telegram, cablegram, radiogram, facsimile, telex or other form of visible or other electronic communication by all the Directors for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one (1) or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where one (1) or more of the Directors is not physically present at the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively simultaneously and instantaneously whether by means of telephone or other form of communication;
  - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution and such notice specifies that Directors are not required to be present in person;
  - (iii) if a failure in communications prevents clause 17.3 (b) (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held then the meeting shall be suspended until clause 17.3 (b) (i) is satisfied again. If such condition is not satisfied within fifteen (15) minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
  - (iv) any meeting held where one (1) or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

## **17.4 Quorum**

At meetings of the Board the number of Directors whose presence is required to constitute a quorum is three (3).

## **17.5 Notice of Board Meetings**

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than seven (7) days written notice of the meeting of the Board shall be given to each Director. The agenda shall be forwarded to each Director not less than two (2) days prior to such meeting.

## **17.6 Chairperson**

The Board shall appoint a President from among its number. The President shall act as the chairperson. The President shall be the nominal head of the Club and will act as chair of any Board meeting or General Meeting at which they are present. If the chairperson is not present, or is unwilling or unable to preside at a board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

## **17.7 Directors' Interests**

A Director is disqualified by holding any place of profit or position of employment in the Club or in any company or incorporated association in which the Club is a shareholder or otherwise interested or from contracting with the Club either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Club in which any Director is in any way interested will be void unless approved by the Board.

## **17.8 Conflict of Interest**

A Director shall declare his interest in any:

- (a) contractual matter;
- (b) selection matter;
- (c) disciplinary matter; or
- (d) financial matter;

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent themselves from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

## **17.9 Disclosure of Interests**

- (a) The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the relevant matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a matter after it is made or entered into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.
- (b) All disclosed interests must also be disclosed to each Annual General Meeting in accordance with the Act.

### **17.10 General Disclosure**

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **clause 17.9** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

### **17.11 Recording Disclosures**

Any declaration made, any disclosure or any general notice given by a Director in accordance with **clauses 17.8, 17.9 and/or 17.9(b)** must be recorded in the minutes of the relevant meeting.

## **18. DELEGATIONS**

### **18.1 Board may Delegate Functions**

The Board may by instrument in writing create or establish or appoint special committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines from time to time. In exercising its power under this **clause 18.1** the Board must take into account broad stakeholder involvement.

### **18.2 Delegation by Instrument**

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board by the Act or any other law, or this Constitution or by resolution of the Club in General Meeting.

### **18.3 Delegated Function Exercised in Accordance With Terms**

A function, the exercise of which has been delegated under this **clause 18.3**, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

### **18.4 Procedure of Delegated Entity**

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 17**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall promptly provide the Board with details of all material decisions and shall provide any other reports, minutes and information as the Board may require from time to time.

### **18.5 Delegation may be Conditional**

A delegation under this **clause 18.5** may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

### **18.6 Revocation of Delegation**

The Board may by instrument in writing, at any time revoke wholly or in part any delegation made under this **clause 18.6**, and may amend or repeal any decision made by such body or person under this **clause 18.6**.

## **19. SEAL**

- (a) The Club may have a Seal upon which its corporate name shall appear in legible characters.
- (b) The Seal must not be used without the express authorisation of the Board. Every use of the Seal shall be recorded in the Club's minute book. The affixing of the Seal must be witnessed by two (2) Directors, unless the Board determines otherwise.

## **20. ANNUAL GENERAL MEETING**

- (a) An Annual General Meeting of the Club shall be held in accordance with the Act and this Constitution and on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

## **21. SPECIAL GENERAL MEETINGS**

### **21.1 Special General Meetings May be Held**

The Board may, whenever it thinks fit, convene a Special General Meeting of the Club and, where, but for this **clause 21.1** more than fifteen (15) months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.

### **21.2 Requisition of Special General Meetings**

- (a) The Board shall on the requisition in writing of not less than five percent (5%) of voting Members convene a Special General Meeting.
- (b) The requisition for a Special General Meeting shall state the object(s) of the meeting, shall be signed by the Members making the requisition and be sent to the Club and may consist of several documents in a like form, each signed by one or more of the Members making the requisition.
- (c) If the Board does not cause a Special General Meeting to be held within one (1) month after the date on which the requisition is sent to the Club, the Members making the requisition, or any of them, may convene a Special General Meeting to be held not later than three (3) months after that date.
- (d) A Special General Meeting convened by Members under this Constitution shall be convened in the same manner, or as nearly as possible as that, in which meetings are convened by the Board.

## **22. NOTICE OF GENERAL MEETING**

- (a) Notice of every General Meeting shall be given to every Individual Member and Life Member at the address appearing in the Register kept by the Club. No other person shall be entitled as of right to receive notices of General Meetings.
- (b) A notice of a General Meeting shall specify the place and day and hour of meeting and shall state the business to be transacted at the meeting.



- (c) At least twenty-one (21) days' notice of a General Meeting shall be given to those Members entitled to receive notice, together with:
  - (i) the agenda for the meeting;
  - (ii) any notice of motion received from Members entitled to vote.
- (d) Notice of every General Meeting shall be given in the manner authorised in **clause 36**.

## **23. BUSINESS**

- (a) The business to be transacted at the Annual General Meeting includes the consideration of accounts and the reports of the Board, the election of Directors under this Constitution.
- (b) All business that is transacted at a General Meeting and all business that is transacted at an Annual General Meeting, with the exception of those matters set down in **clause 23 (a)** shall be special business.
- (c) No business other than that stated on the notice for a General Meeting shall be transacted at that meeting.

## **24. NOTICES OF MOTION**

Members entitled to vote may submit notices of motion for inclusion as special business at a General Meeting. All notices of motion must be submitted in writing to the Secretary not less than fourteen (14) days (excluding receiving date and meeting date) prior to the General Meeting.

## **25. PROCEEDINGS AT GENERAL MEETINGS**

### **25.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings of the Club shall be 5% of Members.

### **25.2 Chairperson to preside**

The chairperson of the Board shall, subject to this Constitution, preside as chair at every General Meeting except:

- (a) in relation to any election for which the chairperson is a nominee; or
- (b) where a conflict of interest exists.

If the chairperson is not present, or is unwilling or unable to preside the Delegates present shall appoint another Director to preside as chairperson for that meeting only.

### **25.3 Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the meeting, a quorum is not present the meeting shall be adjourned until the same day in the next week at the same time and place or to such other day and at such other time and place as the chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.

- (b) The chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **clause 25.3 (c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

#### **25.4 Voting Procedure**

At any meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:

- (a) the chairperson; or
- (b) a simple majority of the Members.

#### **25.5 Recording of Determinations**

Unless a poll is demanded under **clause 25.4**, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Club shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

#### **25.6 Where Poll Demanded**

If a poll is duly demanded under **clause 25.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

### **26. VOTING AT GENERAL MEETINGS**

#### **26.1 Members Entitled to Vote**

Each Individual Member and Life Member shall be entitled to one vote at General Meetings. No other Member shall be entitled to vote but shall, subject to this Constitution, have and be entitled to exercise those rights set out in **clause 5.1**.

#### **26.2 Chairperson May Exercise Casting Vote**

Where voting at General Meetings is equal the chairperson may exercise a casting vote. If the chairperson does not exercise a casting vote the motion will be lost.

#### **26.3 Postal Voting**

No motion shall be determined by a postal ballot unless determined by the Board. If the Board so determines, the postal ballot shall be conducted under the procedures set by the Board.

## 27. PROXY VOTING

- (a) Proxy voting shall be permitted at all General Meetings provided a proxy form in the form approved by the Board, has been duly completed and executed and is lodged with the Secretary at or before the commencement of the meeting. Proxies shall only be exercised by Members entitled to vote. No Member entitled to vote shall exercise more than one (1) proxy vote at any one (1) time.
- (b) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Delegate shall be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may exercise the proxy vote as they think fit.

## 28. GRIEVANCE PROCEDURE

- (a) The grievance procedure set out in this rule applies to disputes under these rules between a Member and:
  - (i) another Member; or
  - (ii) the Club.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties must, within ten (10) days, refer the dispute for resolution to an independent tribunal established by the Board in accordance with the procedures determined by the Board. The decision made by the independent tribunal is final and not appealable.
- (d) The Board may prescribe additional grievance procedures in Regulations consistent with this **clause 28**.

## 29. RECORDS AND ACCOUNTS

### 29.1 Records

The Club shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Club and the Board and shall produce these as appropriate at each Board or General Meeting.

### 29.2 Records Kept in Accordance with Act

Proper accounting and other records shall be kept in accordance with the Act. The books of account shall be kept in the care and control of the Secretary.

### 29.3 Club to Retain Records

The Club shall retain such records for seven (7) years after the completion of the transactions or operations to which they relate.

### 29.4 Board to Submit Accounts

The Board shall submit to the Members at the Annual General Meeting the statements of account of the Club in accordance with this Constitution and the Act.

## **29.5 Accounts Conclusive**

The statements of account when approved or adopted by an Annual General Meeting shall be conclusive except as regards any error discovered in them within three (3) months after such approval or adoption.

## **29.6 Accounts to be Sent to Members**

The Secretary shall cause to be sent to all persons entitled to receive notice of Annual General Meetings in accordance with this Constitution, a copy of the statements of account, the Board's report and every other document required under the Act (if any).

## **29.7 Negotiable Instruments**

All cheques, promissory notes, bankers, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Club, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two (2) duly authorised Directors or in such other manner as the Board determines.

# **30. INCOME**

**30.1 Income and property of the Club shall be derived from such sources as the Board determines.**

**30.2 The income and property of the Club shall be applied solely towards the promotion of the Objects.**

**30.3 Except as prescribed in this Constitution or the Act:**

- (a) no portion of the income or property of the Club shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
- (b) no remuneration or other benefit in money or money's worth shall be paid or given by the Club to any Member who holds any office of the Club with the exception as detailed in **clause 30.3 (c)**.
- (c) Each member of the Board may be granted an honorarium payment, per annum as determined by the Members at the Annual General Meeting.

**30.4 Nothing in clauses 30.2 or 30.3 shall prevent payment in good faith of or to any Member for:**

- (a) any services actually rendered to the Club whether as an employee, Director or otherwise;
- (b) goods supplied to the Club in the ordinary and usual course of operation;
- (c) interest on money borrowed from any Member;
- (d) rent for premises demised or let by any Member to the Club;
- (e) any out-of-pocket expenses incurred by the Member on behalf of the Club;

provided that any such payment shall not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

## **31. WINDING UP**

- (a) Subject to this Constitution the Club may be wound up in accordance with the Act.
- (b) The liability of the Members of the Club is limited.
- (c) Every Member undertakes to contribute to the assets of the Club if it is wound up while a Member, or within one year after ceasing to be a Member, for payment of the debts and liabilities of the Club contracted before the time at which it ceases to be a Member and the costs, charges and expenses of winding up the Club, such an amount not exceeding one dollar (\$1.00).

## **32. DISTRIBUTION OF PROPERTY ON WINDING UP**

If upon winding up or dissolution of the Club there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to another organisation or organisations having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Club by this Constitution. Such organisation(s) to be determined by the Members in General Meeting at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of New South Wales or other Court as may have or acquire jurisdiction in the matter.

## **33. ALTERATION OF CONSTITUTION**

This Constitution shall not be altered except by Special Resolution.

## **34. REGULATIONS**

### **34.1 Board to Formulate Regulations**

The Board may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, management and administration of the Club, the advancement of the purposes of the Club and football in the Nepean Region as it thinks necessary or desirable. Such Regulations must be consistent with the Constitution, NFA, FNSW and FFA Constitutions, any regulations made by the NFA, FNSW or FFA and any policy directives of the Board.

### **34.2 Regulations Binding**

All Regulations are binding on the Club and all Members.

### **34.3 Regulations Deemed Applicable**

All clauses, rules, bylaws and regulations of the Club in force at the date of the approval of this Constitution (as long as such clauses, rules, bylaws and regulations are not inconsistent with or have been replaced by, this Constitution) shall be deemed to be Regulations and shall continue to apply.

### **34.4 Bulletins Binding on Members**

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by means of bulletins approved by the Board and prepared and issued by the Club. The Club shall take reasonable steps to distribute information in the bulletins to Members. The matters in the bulletins are binding on all Members.

## **35. STATUS AND COMPLIANCE OF CLUB**

### **35.1 Recognition of Club**

The Club is a member of NFA and is recognised by NFA as providing club football within the Nepean Region and subject to compliance with this Constitution and the NFA, FNSW and FFA constitution shall continue to be so recognised and shall provide club football within the Nepean Region in accordance with the objects.

### **35.2 Compliance of Club**

The Members acknowledge and agree the Club shall:

- (a) be or remain incorporated in New South Wales;
- (b) apply its property and capacity solely in pursuit of the Objects and football;
- (c) do all that is reasonably necessary to enable the Objects to be achieved;
- (d) act in good faith and loyalty to ensure the maintenance and enhancement of football, its standards, quality and reputation for the benefit of the Members and football;
- (e) at all times act in the interests of the Members and football;
- (f) not resign, disaffiliate or otherwise seek to withdraw from NFA without approval by Special Resolution; and
- (g) abide by the NFA, FNSW and FFA constitutions and the rules and abide by the FIFA rules of football.

### **35.3 Operation of Constitution**

The Club and the Members acknowledge and agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and football are to be conducted, promoted, encouraged, advanced and administered within the Nepean Region; and
- (b) to ensure the maintenance and enhancement of football, its standards, quality and reputation for the benefit of the Members and football;
- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of football and its maintenance and enhancement;
- (d) to promote the economic and community service success, strength and stability of each other and to act interdependently with each other in pursuit of their respective objects;
- (e) to act in the interests of football and the Members.

## **36. NOTICE**

- (a) Notices may be given by the Club to any person entitled under this Constitution to receive any notice by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's Registered address or facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected three (3) days after posting.

- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected the next business day after it was sent.

### **37. PATRONS AND VICE PATRONS**

The Club at its Annual General Meeting may appoint annually on the recommendation of the Board a chief patron and such number of patrons as it considers necessary, subject to approval of that person or persons.

### **38. INDEMNITY**

- (a) Every Director and employee of the Club shall be indemnified out of the property and assets of the Club against any liability incurred by them in their capacity as Director or employee in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the Court.
- (b) The Club shall indemnify its Directors and employees against all damages and losses (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any act or omission except wilful misconduct:
  - (i) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Club; and
  - (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Club.