

ASSOCIATIONS INCORPORATION ACT 2009 (NSW)

CONSTITUTION

PORT UNITED FOOTBALL CLUB INCORPORATED

(formerly Port Macquarie United Soccer Club)

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ASSOCIATIONS INCORPORATION ACT 2009 (NSW)

CONSTITUTION

PORT UNITED FOOTBALL CLUB INCORPORATED

(formerly Port Macquarie United Soccer Club)

1. NAME OF CLUB

The name of the Club is Port United Football Club.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution unless the contrary intention appears:

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

Board means the body managing the Club and consisting of the Board Members.

Board Member means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this.

Club means Port United Football Club.

Constitution means this Constitution of the Club.

Financial Year means (unless determined otherwise by the Board) the year ending on the next 31 December following incorporation and thereafter a period of 12 months commencing on 1 January and ending on 31 December each year.

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

Incapacitated means unable to fulfil duties as required by this Constitution or the Act, including being able to:

- (a) understand the information relevant to the decisions that will have to be made in the role of a Board Member;
- (b) retain that information to the extent necessary to make those decisions;
- (c) use or weigh that information as part of the decision making process; or
- (d) communicate the decisions in some way.

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.

ISO means the International Sporting Organisation being Federation Internationale de Football Association (FIFA).

Local area means the geographical area for which the Club is responsible as recognised by the RSO and/or SSO for the Sport of which the Club is a Member.

Member means a Member of the Club for the time being under **clause 5** and includes Life Members, Player Members, Non-Player Members, Junior Player Members and Committee Members.

NSO means the National Sporting Organisation for the Sport being Football Australia (FA).

Objects means the Objects of the Club in **clause 3**.

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

A Board Member of the Club should perform the role of Public Officer. The Public Officer is the conduit for information flow between the Club and the regulator, therefore it is important that the Public Officer is a Board Member and informed about the Club's activities. Further, as the Public Officer has numerous responsibilities, it is important that they are a Board Member and therefore owe a duty to act in the best interests of the Club.

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

Regulations means any rules, by-laws or regulations made by the Board under **clause 35**.

RSO means the Regional Sporting Organisation (being Football Mid North Coast (FMNC) at the time of adoption of this Constitution), which is a member of or affiliated with the SSO.

Seal means the common Seal of the Club (if any).

Special Resolution means a Special Resolution defined in the Act.

Sport means the sport of Football (also known as Association Football, or Soccer).

SSO means the State Sport Organisation for Football being Northern NSW Football (NNSWF).

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 transmission.

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. The model constitution under the Act is 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) conduct, encourage, promote, advance and administer the Sport throughout the Local area;
- (b) act, at all times, on behalf of and in the interest of the Members and the Sport in the Local area;
- (c) affiliate and otherwise liaise with FMNC, NNSWF and/or FA of which the Club is a Member and adopt their rule and policy frameworks to further these Objects;
- (d) abide by, promulgate, enforce and secure uniformity in the application of the rules of Football as may be determined from time to time by FA and as may be necessary for the management and control of Football and related activities in New South Wales;
- (e) advance the operations and activities of the Club throughout the local area;
- (f) have regard to the public interest in its operations; and
- (g) 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 19 of the Act, the legal capacity and powers of a company limited by guarantee as set out under section 124 of the *Corporations Act 2001 (Cth)*.

5. MEMBERS ®

5.1 Members ®

The Members of the Club shall consist of:

- (a) Life Members appointed under clause 5.2;
- (b) Player Members accepted under clause 6.2;
- (c) Non-Player Members accepted under clause 6.2;
- (d) Board Members elected at an Annual General Meeting.

Subject to this Constitution, the following shall have the right to receive notice of General Meetings and to be present, to debate and to vote at, General Meetings:

- (a) Life Members,
- (b) Player Members, unless the Player Member is younger than 18 years of age, in which case, one parent/guardian of the Player Member,
- (c) Non-Player Members, and
- (d) Board Members.

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 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 must accept or reject the Club's resolution to confer life membership in writing. Upon written 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 APPLICATION ®

6.1 Application for Membership

An application for membership must be:

- (a) from the applicant, and, subject to paragraph (c), may be in writing or electronic form; and
- (b) accompanied by the appropriate fee (if any).
- (c) Subject to paragraph (d), an application to register as a player, coach, or volunteer for the Club through the Play Football website shall be deemed to be an application to be a Player Member of the Club, and the registration fee to play shall be deemed to be the appropriate fee required under paragraph (b).
- (d) An application under paragraph (c), where the Player Member is younger than 18 years of age, a parent/guardian shall be nominated as the representative of the Player Member.

By applying, an applicant acknowledges and agrees that they voluntarily agree to be bound by the rules, regulations and policies of the Club (as well as those of the RSO, SSO and NSO) including but not only this Constitution.

6.2 Discretion to Accept or Reject Application

- (a) The Board, may, acting in the best interests of the Club and in good faith, 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.
- (b) Where the Board accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Board. The Register shall be amended accordingly as soon as practicable.
- (c) Where the Board rejects an application, it shall refund any fees forwarded with the application and the application shall be deemed rejected by the Club. No reasons for rejection need be given.
- (d) There is no right of appeal where the Board rejects an application for membership, whether a new application or a renewal application.

6.3 Renewal

- (a) Members (other than Life Members) must re-apply for membership annually in accordance with the timeframes and procedures set down by the Club from time to time. Members acknowledge and agree that membership renewal is not automatic. **Clause 6.2** applies to re-applications for membership.

- (b) Upon re-application a Member must provide details of any change in their personal details, and any other information reasonably required by the Club.

6.4 Deemed Membership

- (a) All persons 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 persons, 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 (electronically or otherwise) in which shall be entered (as a minimum):

- (a) the full name and address (or email address) of the Member;
- (b) the category of membership of the Member;
- (c) the date on which the Member became a Member;
- (d) any other information determined by the Board; and
- (e) where applicable, the date of cessation of membership of any Member.

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 privacy and confidentiality considerations, inspection of the Register will only be available as required by the Act and under **clause 29.2(b)**. If permitted, only an extract of the Register, excluding the address or other direct contact details of any Member, shall be made available for inspection (but not copying) by Members.

7.3 Use of Register

Subject to the Act, confidentiality considerations and privacy laws, the Register may be used by the Club solely to further the Objects, as the Board considers appropriate.

8. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- (a) this Constitution forms a contract between each of them and the Club and that they are bound by this Constitution and the 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 the Regulations, they are subject to the jurisdiction of the Club, RSO, SSO and NSO;
- (d) the Constitution and the Regulations are necessary and reasonable for promoting the Objects and particularly the advancement and protection of the Sport;

- (e) neither membership of the Club nor this Constitution gives rise to:
 - (i) any proprietary right of Members in, to or over the Club or its property or assets;
 - (ii) any automatic right of a Member to renewal of their membership of the Club;
 - (iii) subject to the Act and the Club acting in good faith, the right of Members to natural justice, unless expressly provided for in this Constitution;
- (f) they are entitled to all benefits, advantages, privileges and services of Club membership; and
- (g) a right, privilege or obligation of a person by reason of their membership of the Club:
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates upon the cessation of membership whether by death, resignation or otherwise.

9. DISCONTINUANCE OF MEMBERSHIP

9.1 Notice of Resignation

- (a) A Member who has 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 withdrawal or resignation.
- (b) When the Club receives a notice given under **clause 9.1(a)**, it must make an entry in the Register that records the date on which the Member ceased to be a Member.

9.2 Discontinuance for Breach

Notwithstanding anything in the Act or this Constitution:

- (a) membership of the Club may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations, including, but not limited to, the failure to pay any monies owed to the Club, failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee;
- (b) membership shall not be discontinued by the Board under **clause 9.2(a)** without the Board first giving the accused Member the opportunity to explain the breach and/or remedy the breach; and
- (c) where a Member fails, in the Board's view to adequately explain the breach, that Member's membership shall be discontinued under **clause 9.2(a)** by the Board giving written notice of the discontinuance to the Member. The Register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.

9.3 Member to Re-Apply

A Member whose membership has ceased or been discontinued under **clauses 9.1** or **9.2**:

- (a) must seek renewal and re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted at the discretion of the Board. There is no right of appeal where the Board refuses to re-admit a former Member under this clause.

9.4 Forfeiture of Rights

A Member who 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.

9.5 Membership may be Reinstated

Membership which has been discontinued under this **clause 9** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

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. DISCIPLINE ®

10.1 Disciplinary proceedings

The Board may commence or cause to be commenced disciplinary proceedings against a Member who has allegedly:

- (a) breached, failed, refused or neglected to comply with a provision of this Constitution, the Regulations or any resolution or determination of the Board or any duly authorised committee;
- (b) acted in a manner unbecoming of a Member, or prejudicial to the purposes and interests of the Club and/or the Sport; or
- (c) brought themselves, the Club, any other Member or the Sport into disrepute.

10.2 Procedure

- (a) That Member will be subject to and submits unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Club set out in the Regulations or as otherwise determined by the Board.
- (b) Without limiting the operation of **clause 10.2(a)** the Board may appoint a Judiciary Committee to deal with any disciplinary matter referred to it. Such a Judiciary Committee shall operate in accordance with the procedures expressed in the Regulations or as otherwise determined by the Board but subject always to the Act.

11. SUBSCRIPTIONS AND FEES ®

The fees of the Club are the sole province of the Board NOT the membership. Should the Members seek to interfere or assume responsibility for the setting of fees and/or budgets, they risk potential liability.

- (a) The annual membership subscription and any other fees or levies payable by Members or categories of Members to the Club, the benefits which apply, the time for, and manner of payment, shall be determined by the Board from time to time.
- (b) The Board is empowered to prevent any Member whose annual subscription or any other fees are in arrears from exercising the whole or any of the rights or privileges of membership of the Club, including but not limited to the right to vote at General Meetings. There is no right to natural justice or any right of appeal where the Board exercises its power under this **clause 11(b)**.

12. EXISTING BOARD MEMBERS

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 annual general meeting following such adoption of this Constitution. After this General Meeting the positions of Board Members shall be filled, vacated and otherwise dealt with in accordance with this Constitution.

13. POWERS OF THE BOARD

Taken from the ASC's Sports Governance Principles:

The Board's primary responsibility is one of trusteeship on behalf of its stakeholders, ensuring that the legal entity, the Club, remains viable and effective in the present and for the future. The Board's role includes determining the Club's strategic direction, core values and ethical framework, as well as key objectives and performance measures. A key critical component of this role is the Board's ultimate authority and responsibility for financial operations and budgeting to ensure the achievement of strategic objectives.

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 Sport and community throughout the Local area.

14. COMPOSITION OF THE BOARD

14.1 Composition of the Board

The Board shall comprise up to:

- (a) twelve (12) elected Board Members who must all be Members and who shall be elected under **clause 15**; and
- (b) two (2) appointed Board Members who need not be Members and who may be appointed by the Board Members under **clause 16**.

14.2 Election and Appointment of Board Members ®

The process for electing and appointing Board Members is not entrenched in the Constitution. It can be set out in the Regulations and can be by such process as the Club deems appropriate.

- (a) The elected Board Members shall be elected under **clause 15**.
- (b) The appointed Board Members may be appointed under **clause 16**.

14.3 Portfolios ®

The trend in sporting organisations is not to entrench portfolios or titles in the Constitution. If it is determined to allocate portfolios or titles to Board Members, it is considered that the discretion simply be retained in the Board so as to maintain flexibility and not require Constitutional change if a portfolio is no longer required. Structure, participation and operation of portfolios can be documented in the Club Regulations.

The Board may allocate portfolios and/or titles to Board Members. Subject to this Constitution and any properly passed resolution of the Board, the allocation of portfolios or titles does not effect the powers and duties of Board Members.

15. ELECTED BOARD MEMBERS

15.1 Nomination for Board Member ®

- (a) Nominations for elected Board Member positions shall be called for twenty-one (21) 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 may be determined by the Board from time to time.
- (b) Nominees for elected Board Member positions must declare any position they hold in the NSO, SSO or RSO.

15.2 Form of Nomination

The requirements in the nomination form may be varied.

Nominations must be:

- (a) in writing or electronic means;
- (b) on the prescribed form (if any) provided for that purpose;
- (c) signed or supported by two (2) Individual Members;
- (d) the nominee (who must be an Individual Member) must confirm their willingness to accept the position for which they are nominated; and
- (e) delivered (electronically or otherwise) to the Club before the annual general meeting.
- (f) The Members may, by vote at the annual general meeting, accept a nomination during the meeting, if there are insufficient nominations received to fill all vacancies on the Board.

15.3 Elections ®

The election process is to be set out in the Regulations. It should be the process which the Club considers is best for it.

- (a) If the number of nominations received 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 may be declared elected only if approved by a majority of Members present and 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 15.3(a)**, the positions will be deemed casual vacancies under **clause 17.1**.

- (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 from time to time.

Alternate Board Members and Observers

- (e) Any nominee that is not elected, is eligible to act as an alternate member of the Board if an elected member is unable to attend any particular meeting and that member notifies the Board that the alternate is to represent the unavailable member at that meeting.
- (f) At the absolute discretion of the Board, any nominee that is not elected is able to attend any meeting of the Board as an observer and contribute to any discussion but not be entitled to vote as a Board Member.

15.4 Term of Appointment for Elected Board Members

- (a) Board Members elected under **clause 15** shall be elected for a term of two (2) years. Subject to provisions in this Constitution relating to early retirement or removal of Board Members, elected Board Members 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) Board Members may, at the end of the two year term, re-nominate for a further 2 years.

16. APPOINTED BOARD MEMBERS

Appointed Board Members need not be appointed. The principle behind their potential appointment is to provide the Elected Board Members with additional skills that may facilitate or assist the Board with a particular issue over time. For example, a Club may require marketing or lobbying skills. It can then approach and invite an appropriately skilled person to join the Board as an Appointed Board Member.

16.1 Appointment of Board Members

The elected Board Members may appoint up to two (2) appointed Board Members.

16.2 Qualifications for Appointed Board Members

The appointed Board Members may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition. They do not need to be Members.

16.3 Term of Appointment

- (a) Appointed Board Members may be appointed by the elected Board Members under this Constitution for a term of two years (2), which shall commence from the first Board meeting after the annual General Meeting until after the conclusion of the second annual General Meeting that follows.

17. VACANCIES ON THE BOARD

17.1 Casual Vacancies

Any casual vacancy occurring in the position of Board Member may be filled any Alternate Board Member or Observer identified at the previous Annual General Meeting.

Any casual vacancy may only be filled for the remainder of the vacant Board Member's term under this Constitution.

17.2 Grounds for Termination of Board Member

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

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (c) after reasonable consideration by the Board, is determined by the Board to have become Incapacitated and the Board reasonably expects the Board Member will remain Incapacitated for a period exceeding 3 months, provided always that:
 - (i) the Board Member is first given the opportunity to make written or oral submissions to the Board before a determination is made; and
 - (ii) any determination made under this **clause 17.2** shall be made with the Board Members acting reasonably; or
- (d) resigns their 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 three (3) months;
- (f) holds any office of employment with the Club without the approval of the Board;
- (g) is directly or indirectly interested in any contract or proposed contract with the Club and fails to declare the nature of that interest;
- (h) in the reasonable opinion of the Board (but subject always to this Constitution) has:
 - (i) acted in a manner unbecoming or prejudicial to the Objects and interests of the Club;
 - (ii) brought themselves or the Club into disrepute;
- (i) is removed by Special Resolution; or
- (j) would otherwise be prohibited from being a Board Member of a corporation under the *Corporations Act 2001 (Cth.)*.

17.3 Board May Act

If a casual vacancy or vacancies arises in the office of a Board Member or Board Members, the remaining Board Members may act. If the number of remaining Board Members is not sufficient to constitute a quorum at a meeting of the Board however, they may act only for the purpose of increasing the number of Board Members to a number sufficient to constitute a quorum.

18. MEETINGS OF THE BOARD

These clauses of the template have been drafted so that they comply with the law, but also to provide the Board maximum flexibility in terms of how it meets the ASC Sports Governance Principles. The principles recommend that a Board meet no less than six times per year and as often as monthly. A small Club may only need to meet bi-monthly to properly conduct its business. In alternate months it may meet not as a Board, but as a committee to address operational issues thereby keeping separate the strategic and operational dimensions of running a Club.

18.1 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). Subject to this Constitution, it may adjourn and otherwise regulate its meetings as it thinks fit. A Board Member may at any time convene a meeting of the Board within a reasonable time.

18.2 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 Board Members shall for all purposes be deemed a determination of the Board. All Board Members shall have one (1) vote on any question. Where voting is equal, the chair may exercise a casting vote. If the chair does not exercise a casting vote, the motion will be lost.

This template gives the chair a discretionary casting vote. This is optional.

The ASC Sports Governance Principles recommend that 'votes taken at Board or General Meetings should be passed by a majority of Board Members/Members and not be subject to a casting vote. The principle is based on the premise that if a majority cannot agree on an issue then the issue should be forfeited'.

18.3 Resolutions Not in Meeting

This clause provides for electronic meetings of the Board.

- (a) A resolution in writing that has been signed or assented to by any form of visible or other electronic communication by all the Board Members for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of Board Members duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Board Members.
- (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 or more of the Board Members 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 Board Member entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution. The notice will specify that Board Member are not required to be present in person;
 - (iii) if a failure in communications prevents **clause 18.3(b)(i)** from being satisfied by the number of Board Member which constitutes a quorum, and none of such Board Member are present at the place where the meeting is deemed by virtue of the further provisions of this clause to be held, then the meeting shall be suspended until **clause 18.3(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 been terminated or adjourned; and
 - (iv) any meeting held where one or more of the Board Member is not physically present shall be deemed to be held at the place specified in the notice of the meeting, provided a Board is there present. If no Board is there present, the meeting shall be deemed to be held at the place where the chair of the meeting is located.

18.4 Quorum

The quorum for a Board meeting can be varied. It should, at least, be more than half of the Board Member in office. For example, if there are six Board Member the quorum should be four. If there are seven Board Member the quorum should also be four. If there are ten Board Member the quorum should be six and so on.

At meetings of the Board the number of Board Members whose presence is required to constitute a quorum is 51% of the current number of Board Members. A quorum must remain present throughout the meeting.

18.5 Notice of Board Meetings

Unless all Board Member agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than four (4) days electronic or written notice of the meeting of the Board shall be given to each Board Member. The agenda shall be forwarded to each Board not less than two (2) days prior to such meeting.

18.6 Chair

The Board shall appoint a chair from among its number. The Chair will act as chair of any Board meeting or General Meeting at which they are present. If the chair is not present, or is unwilling or unable to preside at a Board meeting the remaining Board Members shall appoint another Board Member to preside as Chair for that meeting only.

18.7 Conflict of Interest ®

A Board shall declare their interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise. He shall, unless otherwise determined by the Board, absent himself from discussions of such matters and shall not be entitled to vote in respect of such matters. If the Board casts a vote, the vote shall not be counted. If there is any uncertainty as to whether it is necessary for a Board to absent themselves from discussions and refrain from voting, the issue should be immediately determined by the Board. If this is not possible, the matter shall be adjourned or deferred.

18.8 Disclosure of Interests

- (a) The nature of the interest of a Board must be declared at the meeting of the Board at which the relevant matter is first taken into consideration, if the interest then exists. In any other case, the interest should be disclosed to the Board at the next meeting of the Board. If a Board 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 Board interest has arisen.
- (b) All disclosed interests must also be disclosed to each annual General Meeting.

18.9 General Disclosure

A general notice stating that a Board is a member of any specified firm or company and that they are 'interested' in all transactions with that firm or company is sufficient declaration under **clause 18.8**. After such general notice, it is not necessary for the Board to give a special notice regarding any particular transaction with that firm or company.

18.10 Recording Disclosures ®

Any declaration made, any disclosure or any general notice given by a Board under **clauses 18.7, 18.8** and/or **18.9** must be recorded in the minutes of the relevant meeting and otherwise in accordance with the Act.

19. DELEGATIONS ®

The delegations clause recognises that the Board has to delegate functions and tasks to special committees or individuals. In sport, these are common. For example, rules and

technical committees, selection committees and judicial committees. This clause sets out how such delegations should be made and how they operate.

This clause also allows that roles can be delegated to people who are not on the Board except those powers defined by clause 19.2, with such people being accountable to the Board.

This clause sets out how such delegations should be made and how they operate; clause 19.1 refers to an 'instrument in writing' that outlines delegations. The standard practice is that the instrument is a list/register of delegations, which is subject to a formal resolution of the Board. In addition to the register of delegations, the resolution to approve the delegations should be clearly recorded in the Board minutes.

Delegations can and should in some cases include the authority to spend the Club's funds in accordance with the agreed budget.

19.1 Board May Delegate Functions

The Board may, by instrument in writing or electronically, create, establish or appoint special committees, individual officers and consultants to carry out specific duties and functions. The Board will determine what powers these committees are given. In exercising its power under this clause, the Board should take into account broad stakeholder involvement.

19.2 Delegation by Instrument

In the establishing instrument, the Board may 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, any other law or this Constitution.

19.3 Delegated Function Exercised in Accordance with Terms

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

19.4 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 18**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and it shall promptly provide the Board with details of all material decisions. The entity shall also provide any other reports, minutes and information as required by the Board from time to time.

19.5 Delegation May Be Conditional

A delegation under this clause may be made subject to certain conditions or limitations regarding the exercise of any function. These may be specified in the delegation.

19.6 Revocation of Delegation

The Board may by resolution and/or instrument in writing, at any time revoke wholly or in part any delegation made under this clause. The Board may also amend or repeal any decision made by a body or person under this **clause 19**.

20. SEAL

- (a) The Club may have a Seal upon which its corporate name shall appear in legible characters.

- (b) The Seal shall not be used without the express authorisation of the Board. Every use of the Seal shall be recorded in the Club's minute book. Two (2) Board Member must witness every use of the Seal, unless the Board determines otherwise.

In addition to recording the use of the seal in the Board minutes, the Club should consider establishing a register for the use of the seal.

21. ANNUAL GENERAL MEETING

- (a) The Club's annual General Meeting shall be held in accordance with the Act and this Constitution. It should be held on a date and at a venue 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.

22. SPECIAL GENERAL MEETINGS

22.1 Special General Meetings May be Held

The Board may, whenever it thinks fit, convene a special General Meeting. When, but for this clause, more than fifteen (15) months elapses between annual General Meetings, the Board shall convene a special General Meeting before the expiration of that period.

22.2 Requisition of Special General Meetings

- (a) The secretary will convene a special General Meeting when at least five per cent (5%) of Members entitled to vote submit a requisition in writing.

The number or percentage of Members who can requisition a special general meeting can be varied.

- (b) The requisition for a special General Meeting shall state the object(s) of the meeting, be signed by the Members making the requisition and be sent to the Club. The requisition may consist of several documents in a like form, each signed by one (1) or more of the Members making the requisition.
- (c) If the Board does not cause a special General Meeting to be held one (1) month after the date in 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 no 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 close as possible, as those convened by the Board.

23. NOTICE OF GENERAL MEETING

- (a) Notice of every General Meeting shall be given to every Life Member and Individual Member entitled to receive notice. Notices shall be sent to the addresses appearing in the Club's Register. Addresses may be email addresses. The auditor and Board Member shall also be entitled to receive notice of every General Meeting. 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, day and hour of the 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. The notice shall also invite interested members to nominate for membership of the Board.

- (d) At least seven (7) days prior to the meeting, the members will be sent electronically:
 - (i) the agenda for the meeting;
 - (ii) any nominations received for membership of the Board, and
 - (iii) any notice of motion received from Members entitled to vote.
- (e) Notice of every General Meeting shall be given in the manner in **clause 37**.

Proxy voting has not been provided for in this template. It is optional and does not need to be provided for under the Act. See also clause 27.3.

Should you choose to allow proxy voting we recommend that you adopt the following clause as 23(c)(iii): “forms of authority in blank for proxy votes” and the word “and” should be moved to after the word “vote” in clause 23(c)(ii) See also 27.3.

24. BUSINESS

- (a) The business to be transacted at the annual General Meeting includes the consideration of accounts and the reports of the Board and auditors, the election of Board Member under this Constitution and subject to the requirements of the Act, the appointment of the auditors.
- (b) All business that is transacted at a General Meeting and at an annual General Meeting, with the exception of those matters set down in **clause 24(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.

25. 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 or electronically to the Club no less than fourteen (14) days (excluding receiving date and meeting date) prior to the General Meeting.

Timelines: This Constitution contains several timelines around General Meetings, these are linked so changing one can affect others:

The call for nominations for Board members is 21 days (see clause 15.1).

The close of call for notices of motion is 14 days (see this clause 25). This allows 7 days to prepare the agenda and notices of the meeting.

The notice of the meeting is to be sent out 21 days in advance (see clause 23(c)), and agenda 14 days in advance allowing Members 2 weeks to consider the motions and nominees.

In a club run by volunteers, sufficient time needs to be allowed for each step to be completed. For example, some clubs may require Board Members to undertake criminal history checks. If your club requires more time to complete each step, the timeframes set out in this Constitution should be increased.

26. PROCEEDINGS AT GENERAL MEETINGS

26.1 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 **10%** of Members entitled to vote.

Again, the quorum for a general meeting will vary. The number or percentage of present and voting Members required must be realistic so that a meeting can proceed.

26.2 Chair to Preside

The chair 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 chair is a nominee; or
- (b) where a conflict of interest exists.

If the chair is not present, or is unwilling or unable to preside, the Member present shall appoint another Board to preside as chair for that meeting only.

26.3 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 a date, time or place determined by the chair. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting may proceed without a quorum and make decisions as if a quorum was present.
- (b) The chair 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. 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 26.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

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

26.5 Recording of Determinations

Unless a poll is demanded under **clause 26.4**, the chair's declaration shall be conclusive evidence of the result of a resolution decided by a show of hands. The declaration does not need to record the number of votes in favour of or against the resolution; the result of the resolution must be recorded in the Club's book of proceedings.

26.6 Where Poll Demanded

If a poll is duly demanded under **clause 26.4** it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chair directs. The result of the poll shall be the resolution of the meeting.

26.7 Procedural irregularities

- (a) No decision of the Club, the Board or any Board authorised entity shall be invalid merely because of a failure to give proper notice under this Constitution or the Regulations or other irregularity in procedure required by this Constitution or the

Regulations unless a person suffers substantial prejudice as a result of that failure to give proper notice or irregularity in procedure.

- (b) The Club, the Board or other Board authorised entity may confirm an earlier decision which may have been otherwise invalid because of a failure to give proper notice or other irregularity in procedure and the decision shall be deemed to be valid from the time it was originally made.

27. VOTING AT GENERAL MEETINGS ®

Voting at General Meetings will depend on which Members have voting rights. It may vary where Members have different rights or, for example, where a Member is not financial.

27.1 Members Entitled to Vote

Each Individual Member present at the Meeting shall be entitled to one (1) 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**.

27.2 Chair May Exercise Casting Vote

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

This template gives the chair a discretionary casting vote. This is optional.

The ASC's Sports Governance Principles recommend that "votes taken at Board or General Meetings should be passed by a majority of Board Member/Members and not be subject to a casting vote. The principle is based on the premise that if a majority cannot agree on an issue then the issued should be forfeited".

27.3 Proxy Voting

Proxy voting has not been provided for in this template. It is optional and does not need to be provided for under the Act. See also section 23(c). Should you choose to allow proxy voting we recommend that you adopt the following clause as 27.3. "A Member shall be entitled to appoint in writing a natural person who is also a Member of the Club to be their proxy, and attend and vote at any General Meeting of the Club."

Proxy voting is not permitted at any General Meeting.

27.4 Postal or Electronic Voting

No motion shall be determined by a postal or electronic ballot unless determined by the Board. If the Board so determines, the postal or electronic ballot shall be conducted under procedures determined by the Board from time to time.

28. GRIEVANCE PROCEDURE ®

- (a) The grievance procedure set out in this clause applies to disputes arising under this Constitution between a Member and:
 - (i) another Member; or
 - (ii) the Club.

It does not, however, apply to any appeal by a Member against a decision made in accordance with the disciplinary proceedings described in **clause 10**.

- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen 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 may refer the dispute to:
 - (i) any independent tribunal established by the SSO in accordance with the procedures determined by the SSO from time to time; or
 - (ii) a community justice centre for mediation under the *Community Justice Centres Act 1983 (NSW)*.
- (d) The Board may prescribe additional grievance procedures in Regulations consistent with this **clause 27.4**.
- (e) If the dispute is not resolved the Board may take whatever steps it considers appropriate in regard to the dispute in the best interests of the Club and the Members concerned.

This template assumes the SSO will establish an independent tribunal which can be used by RSOs and members to resolve a dispute. These procedures can be varied.

29. RECORDS AND ACCOUNTS

29.1 Records

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

29.2 Records Kept in Accordance with the Act

- (a) Proper accounting and other records of the Club including books, minutes, documents and securities shall be kept in accordance with the Act and otherwise shall be kept in the care and control of the secretary.
- (b) Subject to the Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records, accounts, books, securities or other relevant documents of the Club will be open for inspection by the Members.

29.3 Board to Submit Accounts

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

29.4 Accounts Conclusive

The statements of account, when approved or adopted by an annual General Meeting, shall be conclusive except when errors have been discovered within three (3) months after such approval or adoption.

29.5 Accounts to be available to Members

The secretary shall ensure all persons entitled to receive notice of General Meetings under this Constitution, receive or have access to a copy of the statements of account, the Board's report, the auditor's report and every other document required under the Act (if any).

29.6 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 Board Member or in such other manner as the Board determines.

30. AUDITOR

Under the Act, certain incorporated associations are required to undertake an audit. The Act divides large ("Tier 1") and small ("Tier 2") associations and requires Tier 1 organisations to conduct an audit. See Part 3 of the Associations Incorporation Regulations 2010 (NSW). For an association to qualify as a Tier 1 association the prescribed amount:

- (a) in relation to gross annual receipts is \$250,000; and*
- (b) in relation to current assets is \$500,000.*

Whilst there is no obligation for Tier 2 associations to undertake an audit, it is good corporate governance and sound risk and financial management and thus it has been included in this template.

- (a) Where required under the Act, a properly qualified auditor or auditors shall be appointed by the Club in General Meeting. The auditor's duties shall be regulated in accordance with the Act, the *Corporations Act 2001 (Cth.)* and generally accepted principles and/or any applicable code of conduct. The auditor may be removed by the Board.
- (b) If not required under paragraph (a), the Board may appoint a qualified auditor if it determines it to be appropriate, for any particular year.
- (c) The accounts of the Club shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

31. INCOME

- (a) Income and property of the Association shall be:
 - (i) derived from such sources; and
 - (ii) managed in such manner;as the Board determines from time to time subject always to the Act and this Constitution.
- (b) The income and property of the Club shall be applied solely towards the promotion of the Objects.
- (c) Except as prescribed in this Constitution or the Act:
 - (i) 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 or Board; and
 - (ii) 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.
- (d) Nothing in **clauses 31(b)** or **31(c)** shall prevent payment in good faith to any Member for:
 - (i) any services actually rendered to the Club whether as an employee, board or otherwise;
 - (ii) goods supplied to the Club in the ordinary and usual course of operation;
 - (iii) interest on money borrowed from any Member;
 - (iv) rent for premises demised or let by any Member to the Club; or
 - (v) any out-of-pocket expenses incurred by a 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.

32. WINDING UP

- (a) Subject to this Constitution the Club may be wound up or cancelled in accordance with the Act.
- (b) The liability of the Members of the Club is limited.
- (c) Every Individual Member undertakes to contribute to the assets of the Club if it is wound up or cancelled while they are 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 they ceased to be a Member and towards the costs, charges and expenses of winding up or cancelling the registration of the Club, such an amount not exceeding one dollar (\$1.00).

33. DISTRIBUTION OF PROPERTY ON WINDING UP

If upon winding up or cancellation of the Club there remains, after satisfaction of all its debts and liabilities, any assets or property, they shall not be paid to or distributed among the Members. Instead, the assets or property shall be given or transferred to another organisation(s) that has objects similar to those of the Club. Such organisation(s) must prohibit the distribution of its income and property among its members to an extent at least as great as that imposed on the Club by this Constitution. Such organisation(s) will be determined by the Members in a General Meeting at or before the time of winding up or cancellation. If this does not occur, the decision is to be made by a judge of the Supreme Court of New South Wales or other Court as may have or acquire jurisdiction in the matter.

34. ALTERATION OF CONSTITUTION

The Club may insert additional requirements in regard to making and approving changes to this Constitution.

This Constitution shall not be altered except by Special Resolution.

35. REGULATIONS

The Regulations are the key 'delegated legislation' of the Club (sometimes referred to as by-laws). These are key rule and policy documents, which can address a whole range of issues for a Club. These include disciplinary regulations, election procedures, policies including Member protection and anti-doping (subject to SSO and NSO requirements), financial management and particular sporting matters.

35.1 Board to Formulate Regulations

The Board may formulate, issue, adopt, interpret and amend Regulations for the proper advancement, management and administration of the Club, the advancement of the Objects and the Sport in the Local Area. Such Regulations must be consistent with this Constitution and any policy directives of the Board.

35.2 Regulations Binding

All Regulations are binding on the Club and all Members.

35.3 Regulations Deemed Applicable

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

35.4 Changes Binding on Members

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by such means as are determined and approved by the Board from time to time. The Club shall take reasonable steps to distribute such changes to Members. All changes are binding on all Members.

36. STATUS AND COMPLIANCE OF CLUB

This section entrenches and strengthens the relationship between the Club and the RSO/SSO/NSO.

36.1 Recognition of Club

The Club is a Member of the RSO and SSO and is recognised by those bodies as the entity responsible for the delivery of the Sport in the Local area in accordance with the Objects but subject always to compliance with this Constitution and the RSO and SSO's constitutions.

36.2 Constitution of the Club

This Constitution will clearly reflect the objects of the RSO and SSO and will generally conform to the Constitutions of those bodies, subject always to the Act.

36.3 Region and SSO

The Club may not resign, disaffiliate or otherwise seek to withdraw from its RSO and/or SSO without approval by Special Resolution.

37. NOTICE

- (a) Notices may be given by the Club to any person entitled under this Constitution to receive any notice. The notice can be:
 - (i) sent by pre-paid post to the Member's registered address or; or
 - (ii) sent by facsimile transmission or by electronic mail to the Member's facsimile number or electronic mail address; or
 - (iii) prominently posted on the Club's website or
 - (iv) Facebook page.
- (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 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 or by posting on the Club's website or Facebook page, service of the notice shall be deemed to be effected the next business day after it was sent or posted.

38. INDEMNITY

- (a) Every Board and employee of the Club will be indemnified out of the property and assets of the Club against any liability incurred by them in their capacity as Board or employee in defending any proceedings, civil or criminal, in which judgement is given in their favour or in which they are acquitted or connected with any application in relation to any such proceedings in which relief is granted by the Court.

- (b) The Club shall indemnify its Board Member and employees against all damages and losses (including legal costs) for which any such Board 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 Board, performed or made while acting on behalf of and with the authority, express or implied, of the Club; or
 - (ii) in the case of an employee, performed or made in the course of, and within the scope of, their employment by the Club.

LIQUOR AND GAMING LICENSES

Who Can Hold A Licence

Two types of liquor licences are available to sporting organisations in New South Wales.

A 'club licence' can only be held by a 'registered club' under the *Registered Clubs Act 1976*.

A 'limited licence' can generally only be held by not-for profit sporting clubs that are considered non-proprietary associations under the *Liquor Act 2007*.

Club Licence

In relation to preparing a Constitution that satisfies the required criteria, the applicant must show that the rules of the Club meet the requirements specified in section 10(1) of the *Registered Clubs Act 1976*, and otherwise comply with the requirements of that Act, including, but not limited to:

- the club must be a company within the meaning of the Corporations Act 2001;
- the club must be conducted in good faith as a club;
- the club shall be established for social, sporting or athletic purposes, and for the purpose of providing accommodation for its members and guests;
- club membership numbers shall be in accordance with statutorily defined minimum and maximum standards; and
- members of the club cannot derive any profit, benefit or advantage that is not offered equally to all full members;

This template has been prepared for an incorporated association. As a Club Licence requires an organisation to be a company within the meaning of the Corporations Act, this template will not be suitable (as it is a Constitution for an incorporated association) and legal advice should be sought in relation to a Constitution for a company.

There are other factors that may be required to be met. For example, the club must have premises and be the bona fide occupier of these premises for the purpose of the club. These premises must be maintained by way of funds of the club.

These criterion are heavily reliant on satisfying statutory requirements, and as such specific advice may be required.

Limited Licence

In relation to preparing a Constitution that satisfies the required criteria, the applicant must show that its rules allow it to be considered a non-proprietary association under the *Liquor Act 2007*, and provide for:

- the organisation to be an incorporated or unincorporated body or association of people;
- the organisation to apply any profits (if any) or other income to the promotion of its objectives; and
- the organisation to be prohibited from paying dividends, or distributing profits or income to its shareholders, members, local council or public authorities.

This template meets these requirements.

There are other factors that may be required to be met, for example:

- the granting of the licence must not result in the frequent undue disturbance of the quiet and good order of the neighbourhood of the licensed premises; and

if licensing authority is of the opinion that the sale or supply of liquor under a limited licence would more appropriately be provided under another kind of licence, a limited licence will be refused