

MEMORANDUM OF UNDERSTANDING

DATED 5th Day of September 2016

PARTIES

Narrabri RSL Memorial & Citizens Club Limited ACN 001 030 593

Narrabri Golf Club Limited 000 914 723

DATE: This Memorandum of Understanding is made on 5th September 2016.

PARTIES: **NARRABRI RSL MEMORIAL & CITIZENS CLUB LIMITED ACN 001 030 593** of 7-11 Maitland Street, Narrabri, NSW, 2390 ("RSL Club")

AND: **NARRABRI GOLF CLUB LIMITED ACN 000 914 723** of Gibbons Street, Narrabri, NSW, 2390 ("Golf Club")

BACKGROUND

(A) The RSL Club and the Golf Club both operate registered clubs in Narrabri, New South Wales.

(B) The Golf Club has called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of the Golf Club.

(C) The RSL Club is within 50 kilometres of the Golf Club.

(D) The RSL Club submitted an expression of interest to the Golf Club.

(E) The Golf Club has accepted the expression of interest from the RSL Club and, following further negotiation, the RSL Club and the Golf Club have agreed to the terms set out in this Memorandum.

(F) The RSL Club and the Golf Club propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

(G) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding. The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 1 to 25 inclusive below. However there are other matters of importance to the clubs that are included in this Memorandum.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

"Amalgamated Club" means the amalgamated registered club of the RSL Club and the Golf Club the corporate vehicle of which will be the RSL Club;

"Amalgamation" means the amalgamation of the Clubs in accordance with this Memorandum;

"Amalgamation Application" means the provisional application for the transfer of the Golf Club's Liquor Licence to the RSL Club pursuant to Sections 60(6) and (7) of the Liquor Act by the RSL Club's CEO and the Golf Club's CEO;

"Asset" means water licence(s), real property, goodwill, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to the Golf Club at the time of Completion of the Amalgamation;

"Authority" means the Independent Liquor and Gaming Authority;

"Claim" means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature, whether known or unknown;

"Clubs" means both the RSL Club and the Golf Club;

“Completion of the Amalgamation” means the day on which:

- (a) the Final Order is granted and the Golf Club’s Liquor Licence is transferred to the RSL Club; and
- (b) the Assets, Debts and Liabilities of the Golf Club are transferred to the RSL Club, as referred to in clause 14;
- (c) the Golf Club members become members of the RSL Club and all members become members of the Amalgamated Club;
- (d) the Board of the RSL Club and the RSL Club’s CEO take over responsibility and control of the Golf Club Premises.

“Confidential Information” means all information relating to a party, its business, employees or suppliers which is or might reasonably be considered by the other party to be confidential and which is not in the public domain, including all financial data and information relating to a party, business plans, unpublished financial accounts, data and reports, supply lists and information relating to the business of a party’s suppliers;

“Corporations Act” means the *Corporations Act 2001 (Commonwealth)*, and the Regulations made thereunder;

“Debts” means the accumulated debts of the Golf Club at the time of Completion of the Amalgamation;

“GMC” means Golf Match committee.

“Final Order” means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby the Golf Club’s Liquor Licence will be transferred to the RSL Club;

“Gaming Machines Act” means the Gaming Machines 2001 (NSW) and the Regulations made thereunder;

“GST” means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;

“RSL Club Premises” means the RSL Club’s premises at 7-11 Maitland Street, Narrabri New South Wales 2390;

“RSL Club’s CEO” means the individual who fulfils the Secretary or Secretary Manager’s role at the RSL Club;

“Liabilities” means all liabilities, losses, damages, outgoings, costs and expenses of the Golf Club (whatever description) at the time of Final Order;

“Liquor Act” means the Liquor Act 2007 (NSW) and the Regulations made thereunder;

“Liquor Licence” means the licence issued to a registered club under the *Liquor Act*;

“Memorandum” means this Memorandum of Understanding;

“Order” means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;

“Party” means the respective management and Board of Directors of the Golf Club and the RSL Club;

“Records” means all original and copy records, sales brochures and catalogues, lists of clients, documents, books, files, accounts, plans and correspondence belonging to or used by the Golf Club in the conduct of the Golf Club’s business including but not limited to corporate accounting and statutory records;

“Regulations” means the Regulations to the RCA;

“RCA” means the *Registered Clubs Act 1976 (NSW)* and the Regulations made thereunder;

“Golf Club Premises” means the Golf Club’s premises located at Gibbons Street Narrabri, NSW, 2390;

“Golf Club’s CEO” means the individual who fulfils the Secretary or Secretary Manager’s role at the Golf Club.

Water Licences means all water licences held by the Narrabri Golf Club at the time of the amalgamation.

1.2 In this Memorandum unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (e) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (f) a reference to a Party to a document includes that Party's successors, permitted assigns, administrators and substitutes;
- (g) an agreement on the part of 2 or more persons binds them jointly and severally;
- (h) a reference to a notice from, consent or approval of a Party and agreement between the Parties for the purposes of this Deed means a written notice, consent, approval or agreement;
- (i) mentioning anything after 'include', 'includes' or 'including' does not limit what else might be included; and
- (j) a reference to "dollars" or "\$" is to Australian currency.

2. EACH CLUBS POSITION REGARDING THE PROPOSED AMALGAMATION

2.1 The RSL Club and the Golf Club agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

2.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.

2.3 The amalgamation will be effected by the continuation of the RSL Club and the dissolution of the Golf Club.

2.4 The process for the amalgamation will be as follows:

- (a) the members of the Golf Club and the RSL Club will be asked to approve the amalgamation at separate general meetings of the financial members of each club. These meetings will be called and held in the manner referred to in clause 11 below;
- (b) once the approvals in paragraph (a) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 12 below;
- (c) after the Amalgamation Application is granted, the Golf Club's Assets, Debts and Liabilities will be transferred to the RSL Club in the manner referred to in clause 14 below;
- (d) the RSL Club will continue as the body corporate of the Amalgamated Club;
- (e) the Golf Club Premises will become additional licensed premises of the RSL Club and will be available to all members of the Amalgamated Club. The Golf Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below;
- (f) All members of the Golf Club will be, but only for the purposes of Section 17AC (2) of the RCA, identified as a separate class of membership called "Narrabri Golf Members". The class of membership known as Narrabri Golf Members shall exist only for the purposes of sections 17AI, 17AJ, 17AM and 17AN of the RCA.
- (g) all full playing members of the Golf Club will, with their consent, be admitted as members of the RSL Club and will be identified as a separate class of membership called "Golfing Members". All social members of the Golf Club will, with their consent, be admitted as members of the RSL Club as ordinary members. This will occur in accordance with the procedure set out in clause 11.5 below (which will be inserted into the Amalgamated Club's Constitution pursuant to the Special Resolution referred to in that clause);
- (h) after Completion of the Amalgamation, the Golf Club will be wound up or liquidated in the manner referred to in clause 14 below.

2.5 The Golf Club may, at its own expense, undertake a due diligence review of the RSL

Club's financial position. The RSL Club may, at its own expense, undertake a due diligence review of the Golf Club's financial position and operations. Each Club will, if required, provide a list of information (including, but not limited to, details of all their Debts and Liabilities) and assistance to the other Club in order for the other Club to properly carry out and complete the due diligence review.

3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE GOLF CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE GOLF CLUB PREMISES AND FACILITIES

[Regulations – Clause 6(2)(a)]

3.1 The Golf Club premises and facilities will become additional premises of the RSL Club.

3.2 The Amalgamated Club will operate from two (2) premises being:

- (a) the RSL Club Premises; and
- (b) the Golf Club Premises.

3.3 For the purposes of the RCA, the RSL Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and will be responsible for the RSL Club Premises and the Golf Club Premises.

3.4 The Board of the RSL Club will be the Board of the Amalgamated Club.

3.5 The Board of the RSL Club and the RSL Club's CEO will take over responsibility and control of the Golf Club Premises from Completion of the Amalgamation.

3.6 Given that Narrabri RSL Club premises and the Narrabri Golf Club premises are located less than three kilometres apart, Narrabri RSL Club intends that the Narrabri RSL Club CEO will be responsible for the day to day operations of both the RSL Club Premises and the Golf Club Premises.

3.7 The Board of the Amalgamated Club will establish a Golf Match Committee (GMC), and By-Laws pertaining to such committee and golfing activities, in accordance with Sections 83-89 inclusive of the Constitution of the Narrabri RSL Club. The GMC will consist of no more than Five (5) Golfing Members of the Amalgamated Club other than Junior Members. As soon as practicable after the Amalgamation is completed, the Amalgamated Club will call for nominations from the Golfing Members to fill the positions on the GMC.

3.8 The GMC will meet the CEO of the Amalgamated Club or its appointed representative at least once a month to discuss issues relating to the golf course and the game of golf as conducted at the Golf Club Premises.

3.9 The GMC may request a meeting with the Board of the Amalgamated Club to discuss issues relating to the golf course and the game of golf as conducted at the Golf Club Premises. The GMC may make recommendations it considers appropriate in accordance with this clause to the Board of Directors, but does not have any Governance or Management powers in the Amalgamated Club (except as specifically delegated to it by a resolution of the Board of Directors).

3.10 The GMC will be elected biennially, following the election of the Board of Directors of the Amalgamated Club at the Annual General Meeting at which an election is held.

3.11 The Board of the Amalgamated Club will make determinations after consulting the GMC on the following matters:

- (a) The Golf Subscription non affiliation component;
- (b) Green fees;
- (c) The format and running of club competitions, events and fees;
- (d) Record keeping of course records and significant achievements;
- (e) Course/hole rating issues and handicapping issues, if they arise;
- (f) Procedures for the tie breaking and matches not completed on time;
- (g) Junior golf

and the Board's decision will be final and binding on the Amalgamated Club and the GMC.

3.12 A person will cease to be a member of the GMC if he or she:

- (i) Ceases to be a Golfing Member of the Amalgamated club
- (ii) Is removed as a member of the GMC by resolution of the Board of Directors, following an adverse finding against that person in disciplinary proceedings by the Amalgamated club
- (iii) Should it become known to the Board of the amalgamated club that the GMC is in dispute or has become unworkable for any reason, the Board may replace some or all members of that committee. Such replacement shall be selected from Golfing Members.

4. A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB

[Regulations – Clause 6(2)(b)]

4.1 The traditions, amenities, culture, golf facilities and memorabilia of the Golf Club will be maintained by the Amalgamated Club at the Golf Club Premises.

4.2 The Amalgamated Club will continue to support the community that was supported by the Golf Club and will explore opportunities to enhance community support.

4.3 The Amalgamated Club will continue to conduct and support all Golf Competitions which are currently conducted by the Golf Club.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB

[Regulations – Clause 6(2)(c)]

5.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, it is the intention of the RSL Club to operate the Amalgamated Club and the Golf Club Premises in accordance with this clause 5.

Amalgamated Club Premises

5.2 It is the intention of the RSL Club to operate the Amalgamated Club from the RSL Club Premises and Golf Club Premises.

Golf Club Premises

5.3 The Golf Club Premises will be named and promoted as “The Golfie”.

5.4 Subject to clause 8, the RSL Club intends to:

- (a) maintain the Golf Club Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Golf Club Premises with all the facilities and amenities of a registered club;
- (b) maintain the 18 hole golf course at the Golf Club Premises and explore opportunities to obtain grants from governmental and other bodies for the purposes of upgrading the golf course and associated facilities at the Golf Club Premises;
- (c) maintain the Golf Club Premises as a golf and sports activities club; and
- (d) conduct any necessary development as it determines from time to time, provided that the golf facility requirements are taken into consideration.

5.5 The RSL Club intends to renovate the Golf Club Premises, to improve the members’ amenities.

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED

[Regulations – Clause 6(2)(d)]

6.1 As part of the Amalgamation, the Golf Club will be wound up/liquidated. As part of the winding up/liquidation of the Golf Club, the employment of all the Golf Club’s employees by the Golf Club will come to an end.

6.2 Following a strategic analysis of the Golf Club’s operations and staffing levels and prior to Completion of the Amalgamation, the RSL Club will offer employment to the Golf Club employees deemed necessary for the ongoing sustainable operations of the Golf Club premises and Golf Course. The employment will be on the same terms and conditions presently offered by the RSL Club to employees of the RSL Club.

6.3 Any employee of the Golf Club who accepts the offer of employment with the RSL

Club will receive continuity of employment and their entitlements will be honoured by the RSL Club.

6.4 Any employee of the Golf Club who does not accept the offer of employment with the RSL Club will be paid their full entitlements when their employment with the Golf Club comes to an end.

6.5 Subject to the results of the strategic analysis of the Golf Clubs operations, the Amalgamated Club intends to enter into an agreement with a Golf Professional.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE GOLF CLUB:

1. ANY CORE PROPERTY;

2. ANY CASH OR INVESTMENTS;

3. ANY POKER MACHINE ENTITLEMENTS

[Regulations – Clause 6(2)(e)]

Core Property

7.1 For the purposes of the RCA, the Golf Club Premises (including the golf course) are the “core property” of the Golf Club.

7.2 The RSL Club intends to retain the core property of the Golf Club and operate the Amalgamated Club in the manner referred to in clause 5.

Cash and Investments

7.3 The cash and investments (if any) of the Golf Club will be transferred (in accordance with clause 14) to the general reserves of the Amalgamated Club.

Poker Machine Entitlements

7.4 The Golf Club has 12 (twelve) poker machine entitlements.

7.5 The RSL Club intends to conduct a strategic analysis of the Golf Club Premises and its poker machine entitlements. Depending on the outcome of that strategic analysis, the RSL Club may either:

- (a) increase the number of poker machines at the Golf Club Premises; or
- (b) transfer the poker machine entitlements from the Golf Club Premises to the RSL Club Premises

8. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE GOLF CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB

[Regulations – Clause 6(2)(f)]

8.1 The RSL Club does not intend to:

- (a) cease trading from the Golf Club Premises; or
- (b) substantially change the objects of the Golf Club Premises; or
- (c) cease the golf activities conducted at the Golf Club Premises.

8.2 The RSL Club intends to operate the Amalgamated Club in the manner referred to in clause 5.

8.3 However, for the purposes of clause 6(2)(f) of the Regulations, the RSL Club and the Golf Club are required to agree to these matters.

8.4 Therefore, for the purposes of clause 6(2)(f) of the Regulations, the RSL Club and the Golf Club have agreed that the Amalgamated Club would either cease trading from, change the objects of or cease the Golf activities at the Golf Club Premises in the following circumstances:

- (a) if the Golf Club Premises are not profitable or if it is not financially viable for the Amalgamated Club to continue to trade from, continue the objects of or continue the golf activities at the Golf Club Premises;
- (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
- (c) upon the lawful order of any government authority; or
- (d) if the premises were destroyed or partially destroyed by fire, flood, storm etc.

9. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE

TRADING FROM THE GOLF CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB PREMISES

[Regulations – Clause 6(2)(g)]

9.1 The RSL Club does not intend to cease trading from the Golf Club Premises or substantially change the objects of the Golf Club Premises. The RSL Club intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 8.

9.2 However, for the purposes of clause 6(2)(g) of the Regulations, the RSL Club and the Golf Club are required to agree to these matters.

9.3 Therefore, for the purposes of clause 6(2)(g) of the Regulations, the RSL Club and the Golf Club have agreed that the Amalgamated Club will continue:

- (a) to trade from the Golf Club Premises;
- (b) the objects of the Golf Club Premises;
- (c) the golf activities at the Golf Club Premises,

for at least Eight (8) years, except in the circumstances referred to in clause 8.

10. BINDING EFFECT OF MEMORANDUM

10.1 The RSL Club and the Golf Club agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

11. CALLING OF MEETINGS AND ADMISSION OF GOLF CLUB MEMBERS TO MEMBERSHIP OF THE RSL CLUB

11.1 Each of the amalgamating clubs will call a general meeting of its financial members for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB(d) of the RCA.

11.2 The meetings referred to in clause 11.1 must be held as soon as reasonably practicable after the date of this Memorandum.

11.3 In relation to the ordinary resolution referred to in clause 11.1, the Golf Club will, in accordance with Rule 7 of the Golf Club's Constitution, also seek the approval of those members eligible to attend and vote, the transfer of all surplus property and assets of the Golf Club to the RSL Club after the satisfaction of all the Golf Club's debts and liabilities.

11.4 Subject to the Golf Club passing the resolution referred to in clause 11.1, the RSL Club will hold its general meeting of the ordinary members of the RSL Club for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB(d) of the RCA.

11.5 In addition to the resolution referred to in clause 11.4, the RSL Club will, at that meeting, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the RSL Club (with effect from Completion of the Amalgamation) as follows:

- (a) All members of the Golf Club who apply to become members of the RSL Club will, subject to the Amalgamated Club's Constitution, be admitted to membership of the RSL Club.
- (b) All members of the Golf Club will be able to apply for membership of the RSL Club in the manner referred to in paragraphs (c) to (g) inclusive of this clause 11.5.
- (c) A member of the Golf Club will not be required to be proposed or seconded for membership of the RSL Club.
- (d) As soon as practicable after the RSL Club and the Golf Club have passed the resolutions approving in principle the Amalgamation (referred to in clauses 11.1 and 11.4), the RSL Club will forward to each "Social Member" of the Golf Club, who is not already a member of the RSL Club, a written invitation to become a member of the RSL Club for a period of five (5) years and not due for renewal until 30th June 2021.
- (e) Any "Social Member" of the Golf Club who accepts the invitation and agrees in writing to be bound by the Constitution of the RSL Club will, subject to the Amalgamated Club's Constitution, be elected by a resolution of the Board of the RSL

Club to membership of the RSL Club with effect from the date of Completion of the Amalgamation.

(f) As soon as practicable after the RSL Club and the Golf Club have passed the resolutions approving in principle the Amalgamation (referred to in clauses 11.1 and 11.4), the RSL Club will forward to each "Full Golfing Member" of the Golf Club, who is not already a member of the RSL Club, a written invitation to become a member of the RSL Club under a new category of membership called "Golfing Member" and not due for renewal until the 30th June 2017.

(g) Any "Full Golfing Member" of the Golf Club who accepts the invitation and agrees in writing to be bound by the Constitution of the RSL Club will, subject to the Amalgamated Club's Constitution, be elected by a resolution of the Board of the RSL Club to membership of the RSL Club with effect from the date of Completion of the Amalgamation.

(h) The Golf Club "Full Golfing Members" who are admitted to membership of the RSL Club will be identified as a separate class called the "Golfing Members" but may transfer to any other class of membership of the RSL Club for which they are eligible to join. Golf Club Members will have full membership rights.

12. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

12.1 As soon as reasonably practicable after the meetings referred to in clauses 11.1 and 11.3, each Club must forward to the lawyers for the RSL Club the following documents:

- (a) a true copy of the notice of the meeting at which the resolution was passed; and
- (b) a true copy of the minutes of the meeting which will include the number of members present at the meeting and whether or not the resolution was passed.

12.2 The RSL Club and its lawyers will prepare and file the Amalgamation Application. The RSL Club will provide the Golf Club with a copy of the Amalgamation Application.

12.3 The Golf Club will co-operate with the RSL Club and the lawyers for the RSL Club and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the approved Secretary of the Golf Club to sign the Amalgamation Application if required to do so.

13. WARRANTIES AND OPERATIONAL ARRANGEMENTS

13.1 The Golf Club warrants to the RSL Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Golf Club will:

- (a) carry on its business in the usual ordinary course and in a diligent manner and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of \$500.00 plus GST without the prior approval of the RSL Club's CEO or his delegate;
- (b) keep the Assets of the Golf Club insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (c) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of the Assets;
- (d) provide the RSL Club CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of the Golf Club;
- (e) not do anything which may damage the goodwill of its business or that of the RSL Club;
- (f) not without the prior written consent of the RSL Club:
 - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
 - (ii) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;

- (iii) except in the usual and routine conduct of its operations, dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of the Golf Club's Assets;
- (iv) employ any employee (other than a casual employee);
- (v) terminate the employment of any employee (other than a casual employee);
- (vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
- (vii) seek to borrow or borrow money from any third party;
- (viii) increase the level of debt of the Golf Club beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of the Golf Club; or
- (ix) engage in discussions or negotiations with anyone other than the RSL Club concerning the sale of all or any part of the Golf Club's Assets (otherwise than as permitted under (iii) above), and the Golf Club must advise the RSL Club of any solicitation by any third party in respect of any such discussion or negotiation.

13.2 Each of the Golf Club's warranties contained in clause 13.1 remain in full force and effect notwithstanding Completion of the Amalgamation.

13.3 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, the RSL Club may terminate this Memorandum and the amalgamation at any time prior to Completion of the Amalgamation if there is any material breach of any of the Golf Club's warranties set out in clause 13.1.

13.4 The RSL Club's CEO and the Golf Club's CEO will have regular discussions about the management and operations of the Golf Club with the object of:

- (a) providing for an orderly transfer of the management and operations of the Golf Club to the RSL Club on the date of Completion of the Amalgamation;
- (b) achieving efficiencies and cost savings in the Golf Club.

13.5 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):

- (a) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
- (b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
- (c) any Claim of any nature is threatened or asserted by or against the subject Club; or
- (d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,

then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.

13.6 Title to, property in and risk of the Golf Club's Assets remain solely with the Golf Club until such time as they are passed to the Amalgamated Club in accordance with clause 14.

13.7 For the avoidance of doubt it is acknowledged that no liability is accepted or will exist for any breach of a warranty in the absence of actual knowledge by the Golf Club.

14. DISSOLUTION OF THE GOLF CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO THE RSL CLUB

14.1 As soon as practicable after the Order, but subject to the Final Order, the Golf Club must ensure the Assets, Debts and Liabilities of the Golf Club are transferred to the RSL Club (less an amount sufficient for the purposes of any liquidation of the Golf Club in the manner referred to in clause 14.3).

14.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 14.1 to occur on the date of the Final Order.

14.3 For the purposes of clause 14.1, the Golf Club must do all things necessary and execute all documents to cause all of the Assets of the Golf Club to be transferred to or assigned to the RSL Club with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:

- (a) all poker machines and all poker machine entitlements;
- (b) all contract rights including hire purchase agreements;
- (c) all intellectual property rights;
- (d) all physical assets, furniture and fittings and stock in trade, owned or entered into by the Golf Club.
- (e) all real property
- (f) all water licenses

14.4 The transfers and assignments referred to in clause 14.3 must be executed by the Golf Club and held in escrow by the RSL Club pending Completion of the Amalgamation.

14.5 As soon as practicable after Completion of the Amalgamation, the Golf Club must ensure the Golf Club is either voluntarily deregistered or liquidated. If the Golf Club is liquidated then, in order to facilitate the liquidation, the Golf Club must as soon as practicable after Completion of the Amalgamation:

- (a) call a general meeting of its members at which members will consider, and if thought fit, pass all the appropriate resolutions for the liquidation of the Golf Club; and
- (b) thereafter liquidate the Golf Club and after payment of any remaining Debts and Liabilities of the Golf Club resulting from the liquidation, transfer any remaining Assets of the Golf Club to the RSL Club.

14.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 14.

15. ACCESS TO RECORDS

15.1 From the date of this Memorandum, the Golf Club will provide to the RSL Club at all reasonable times access to the Golf Club Premises, its Records and Assets and other information and material reasonably required by the RSL Club. Including for the purpose of any due diligence referred to in clause 2.5.

15.2 From the date of this Memorandum, the RSL Club will provide to the Golf Club at all reasonable times access to the RSL Club Records for the purpose of any due diligence referred to in clause 2.5

16. CONFIDENTIALITY

16.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.

16.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.

16.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.

16.4 This clause 16 survives completion of this Memorandum.

17. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

17.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.

17.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.

17.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as

mediation, expert evaluation or expert determination or other techniques as may be agreed by them.

17.4 If the parties do not within seven (7) days of the receipt of the notice referred to in clause 17.2 or any extended period agreed in writing between the parties as to:

- (a) the dispute resolution technique or procedures to be adopted;
- (b) the timetable for steps in those procedures; and
- (c) the selection and compensation of an independent person required for such dispute resolution technique or procedures, the parties must mediate the dispute in accordance with the mediation rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

17.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 17.2 a party which has complied with the provisions of this clause 17 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.

17.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 17 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

18. COSTS

18.1 Each party shall pay its own costs of and in relation to the preparation, execution and completion of this Memorandum.

19. STAMP DUTY

19.1 The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.

19.2 Despite the exemption from duty referred to in clause 19.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by the RSL Club.

20. GENERAL

20.1 This Memorandum constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.

20.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.

20.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.

20.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.

20.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.

20.6 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.

20.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of

New South Wales and any Court hearing appeals from those Courts.

21. TERMINATION

21.1 The:

(a) RSL Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Golf Club if:

(i) the due diligence review undertaken by it on the Golf Club (as referred to in clause 2.5) is not satisfactory to the Board of the RSL Club. The Board of the RSL Club can waive this requirement at any time.

(ii) the Golf Club breaches any warranty contained in clause 13.

(b) The Golf Club may terminate this Memorandum at any time, without penalty, by giving written notice to the RSL Club if the due diligence review undertaken by it on the RSL Club (as referred to in clause 2.5) is not satisfactory to the Board of the Golf Club. The Board of the Golf Club can waive this requirement at any time.

21.2 If:

(a) the members of the Golf Club have not passed the resolution referred to in clause 11.1 within six (6) months of the date of this Memorandum; or

(b) the members of the RSL Club do not pass the resolutions referred to in clauses 11.3 and 11.5 within six (6) months of the members of the Golf Club passing the resolution referred to in clause 11.1, then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

21.3 The RSL Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Golf Club if the condition precedent referred to in clause 14.5 is not satisfied within such time frame as may be determined by the RSL Club acting reasonably.

21.4 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within eighteen (18) months of the date of this Memorandum, then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

21.5 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 21 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 21.

21.6 If this Memorandum is terminated in accordance with this clause 21 the Amalgamation terminates.

22. NOTICES

22.1 A notice to be given by one club to the other pursuant to this Memorandum must be:

(a) in writing;

(b) directed to the recipients address specified in this Memorandum or as varied by written notice;

(c) left at, or sent by pre-paid registered post, hand delivery or by facsimile to that address.

22.2 A notice given in accordance with subparagraphs (a), (b), (c) of paragraph 22.1 will be deemed to be duly given:

(a) on the day of delivery;

(b) two days after the date of posting by pre-paid post;

(c) if sent by facsimile, when the answer back or message confirmation is received, as the case may be.

23. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

23.1 No variation or waiver of any provision of this Memorandum is of any force or effect unless it is confirmed in writing and signed by both Parties. The variation or waiver is effective only to the extent for which it is made or given.

24. WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT

24.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any

power or right conferred on that Party by this Memorandum operates as a waiver of that power or right. No single or partial exercise of any such power or right will preclude any other or future exercise of it, or the exercise of any other power or right under this Memorandum.

25. NOTES

25.1 This Memorandum is to be:

- (a) Made available to the financial members of the Golf Club and the RSL Club at least 21 days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.
- (b) Made available for inspection on the premises of each club and on the website of each club (if the club has a website) for at least 21 days before any meeting as referred to in paragraph 1 of these Notes is held.
- (c) Lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by the Golf Club to the RSL Club.

Executed by **NARRABRI RSL MEMORIAL & CITIZENS CLUB LTD**
ACN 001 030 593 pursuant to Section 127 of the Corporations Act 2001)))

Director

Barry Stanford

Secretary

Paul Gordon

Executed by **NARRABRI GOLF CLUB LIMITED**
ACN 000 914 723 pursuant to Section 127 of the Corporations Act 2001)))

Director

Gail Richardson

Director

Robyn Spence