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OVER **150** YEARS OF SERVICE

MEMORANDUM OF UNDERSTANDING

DATED 9th August 2018

PARTIES:

DUBBO RSL MEMORIAL CLUB LTD
ABN 18 000 965 355

DUBBO CITY BOWLING CLUB LIMITED
ACN 001 004 520

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Standards Legislation

ABN 82 680 297 642

This Memorandum of Understanding is made on 2018.

BETWEEN:

Dubbo RSL Memorial Club Ltd ABN 18 000 965 355 of 178 Brisbane Street Dubbo New South Wales, 2830 (**"the RSL Club"**).

AND

Dubbo City Bowling Club Limited ACN 001 004 520 of 72 Wingewarra Street, Dubbo, New South Wales 2830, (**"the Bowling Club"**)

BACKGROUND

- (A) The RSL Club and the Bowling Club both operate registered clubs in the Dubbo Regional Council area.
- (B) The Bowling Club has called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of the Bowling Club.
- (C) The RSL Club is within 50 kilometres of the Bowling Club.
- (D) The RSL Club submitted an expression of interest to the Bowling Club.
- (E) Following further negotiations, the RSL Club and the Bowling Club have agreed to the terms set out in this Memorandum.
- (F) The RSL Club and the Bowling 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 Registered Clubs Act, 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 2 to 11 inclusive below. However, there are other matters of importance to the clubs that are included in this Memorandum.

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 Bowling 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 Bowling 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 Bowling Club's Approved Manager.

"Asset" means all of the goodwill, land, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to the Bowling Club.

“Authority” means the Independent Liquor & Gaming Authority.

“Bowling Club Land” means the land being Lot 415 in Deposited Plan 754308 within Certificate of Title Folio Identifier 415/754308 which contains the Bowling Club’s Premises at 72 Wingewarra Street, Dubbo, New South Wales 2830.

“Bowling Club’s Liquor Licence” means the Club Liquor Licence held by the Bowling Club.

“Bowling Club Premises” means the Bowling Club’s premises at 72 Wingewarra Street, Dubbo, New South Wales 2830.

“Bowling Club’s Approved Manager” means the individual who fulfils the Approved Manager’s role at the Bowling Club.

“Bowling Club’s Chairperson” means the director of the Bowling Club who holds the office of Chairperson.

“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 Bowling Club.

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

- (a) The Final Order is granted and the Bowling Club’s Liquor Licence is transferred to the RSL Club;
- (b) The Assets, Debts and Liabilities of the Bowling Club are transferred to the RSL Club, as referred to in clause 14;
- (c) The RSL Club takes over responsibility and control of the Bowling 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 Bowling Club.

“Dubbo Regional Council area” means the area covered by the Dubbo Regional Council

“EBITDARD” means Earnings Before Interest, Taxes, Depreciation, Amortisation, Rent and Donations are deducted;

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

"Gaming Machines Act" means the *Gaming Machines Act 2001 (NSW)* and the Regulations made thereunder.

"GST" means *Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)* and the Regulations made thereunder.

"Liabilities" means all liabilities, losses, damages, outgoing, costs and expenses of the Bowling Club (whatever description).

"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 provisional approval 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 Bowling 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 Bowling Club in the conduct of the Bowling Club's business including but not limited to corporate accounting and statutory records.

"Registered Clubs Act" means the *Registered Clubs Act 1976 (NSW)* and the Regulations made thereunder.

"Regulations" means the Regulations to the *Registered Clubs Act*.

"RSL Club's CEO" means the individual who fulfils the Secretary or General Manager's role at the RSL Club.

"RSL Club Land" means the land owned by the RSL Club upon which the RSL Club's premises are located.

"RSL Club Premises" means the RSL Club's premises at 178 Brisbane Street, Dubbo New South Wales, 2830.

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 Bowling Club agree to amalgamate in accordance with this Memorandum, the Registered Clubs Act, the Regulations, the Liquor Act, and the Corporations Act.
- 2.2 The amalgamation will be effected by the continuation of the RSL Club and the dissolution of the Bowling Club.
- 2.3 The Amalgamation is intended to enhance the facilities and amenities of both Clubs. The Amalgamation is also intended to:
 - (a) in due course, relocate the club and bowling facilities of the Bowling Club (including the transfer of the Bowling Club's liquor licence) to new premises which will be located on land yet to be acquired by the RSL Club (as the Amalgamated Club) within the Dubbo Regional Council area ("**the New Club Premises**"); and
 - (b) facilitate the sale of the Bowling Club Land after the club and bowling facilities of the Bowling Club have been relocated to the New Club Premises.
- 2.4 The process for the amalgamation will be as follows:
 - (a) The clubs entering into this Memorandum.
 - (b) The RSL Club, at its own expense, undertaking a due diligence review of the Bowling Club's financial position and operations.
 - (c) The Bowling Club, at its own expense, undertaking a due diligence review of the RSL Club's financial position and operations.
 - (d) The members of the Bowling Club and the RSL Club will be asked to:
 - (i) approve the amalgamation at separate general meetings of the ordinary members of each club; and
 - (ii) declare the Bowling Club Land as non-core property for the purposes of section 41E of the RCA.

These meetings will be called and held in the manner referred to in clause 13 below.

- (e) The members of the RSL Club will also be asked to approve (by special resolution) amendments to the RSL Club's Constitution in the manner

provided for in clause 13.5 below; and

- (f) After the approvals in paragraphs (d) to (e) inclusive have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 14 below.
- (g) After the Amalgamation Application is granted:
 - (i) The Bowling Club's Assets, Debts and Liabilities will be transferred to the RSL Club in the manner referred to in clause 14 below;
 - (ii) For the purposes of section 17AC (2) of the RCA, a separate class of membership called "Dubbo City Bowling Club members" will be inserted into the RSL Club's Constitution in accordance with the procedure set out in clause 13.5 below; and
 - (iii) Members of the Bowling Club who consent to be admitted as members of the RSL Club shall for administrative purposes be identified as Dubbo City Bowling Club members in the RSL's Constitution;
 - (iv) The RSL Club will make offers of employment only to those employees of the Bowling Club it wishes to employ as provided for in clause 6 below.
- (h) From Final Order, the Bowling Club Premises will become additional licensed premises of the RSL Club and will be available to all members of the Amalgamated Club. The Bowling Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below.
- (i) After Completion of the Amalgamation:
 - (i) The RSL Club will continue as the body corporate of the Amalgamated Club; and
 - (ii) The Bowling Club will be wound up in the manner referred to in clause 14 below.

2.5 Those persons who are Life members of the Bowling Club as at the date of this Memorandum will be so identified in the Amalgamated Club's records in respect of the Bowling Club Premises and the respective bowling sub-club but in relation to the Amalgamated Club will be required to pay such minimum annual subscription as required by the Registered Clubs Act which is currently \$2.

2.6 Completion of this Memorandum will occur on the date on which all of the obligations of each of the parties to this Memorandum are completed (or, if not completed, waived).

2.7 The amalgamation will be subject to the approval of each Club's membership and the Authority.

3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE BOWLING CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE BOWLING CLUB PREMISES AND FACILITIES [REGULATIONS – CLAUSE 7(2) (A)]

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

- 3.2 The Amalgamated Club will initially operate from two (2) premises being the RSL Club Premises and the Bowling Club Premises. However, if the club and bowling facilities of the Bowling Club are relocated to the New Club Premises, the Amalgamated Club will operate from the RSL Club Premises and the New Club Premises.
- 3.3 For the purposes of the Registered Clubs Act, 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 Bowling Club Premises.
- 3.4 The Board of the RSL Club will be the Board of the Amalgamated Club.

Bowling Activities and Bowling Sub-Clubs

- 3.5 Subject to clauses 10 and 11, the Amalgamated Club will maintain the bowling greens and bowling activities at the Bowling Club Premises up to the date the club and bowling facilities of the Bowling Club are relocated to the New Club Premises.
- 3.6 Subject to the general control and supervision of the Board of the Amalgamated Club, the committees of the current bowling sub clubs operating at the Bowling Club premises shall continue to operate and control the sport of bowls at the Bowling Club and at the New Club Premises.
- 3.7 It is intended for:
- (a) Both the Men's Bowling Club and the Women's Bowling Club to have their own constitutions, committees and members;
 - (b) The Men's Bowling Club and the Women's Bowling Club shall continue using their existing names;
 - (c) The Men's Bowling Club and the Women's Bowling Club shall continue to use the insignia of the Bowling Club;
 - (d) The Men's Bowling Club to affiliate with the Royal New South Wales Bowling Association and the Women's Bowling Club to affiliate with the New South Wales Women's Bowling Association;
 - (e) The Men's Bowling Club and Women's Bowling Club (with or independently to the Amalgamated Club) to continue conducting and holding bowls, competitions, tournaments and events.

4. A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB [REGULATIONS – CLAUSE 7(2) (B)]

- 4.1 The traditions, amenities, culture and memorabilia of the Bowling Club will be maintained by the Amalgamated Club at the Bowling Club Premises and at the New Club Premises.
- 4.2 The honour boards of the Bowling Club will remain in place at the Bowling Club Premises and be displayed at the New Club Premises.
- 4.3 The Amalgamated Club will actively support and promote the sport of lawn bowls at the Bowling Club Premises and the New Club Premises.
- 4.4 The Amalgamated Club will continue to support the community to the same extent

provided by the Bowling Club and will explore opportunities to enhance community support.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB [REGULATIONS – CLAUSE 7(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, the Amalgamation is intended to result in:

- (a) the relocation of the club and bowling facilities of the Bowling Club (including the transfer of the Bowling Club's liquor licence) to the New Club Premises; and
- (b) the sale of the Bowling Club Land after the club and bowling facilities of the Bowling Club have been relocated to the New Club Premises.

Amalgamated Club Premises

5.2 The RSL Club will initially operate the Amalgamated Club from the RSL Club Premises and the Bowling Club Premises. However, if the club and bowling facilities of the Bowling Club are relocated to the New Club Premises, the Amalgamated Club will operate from the RSL Club Premises and the New Club Premises.

Bowling Club Premises

5.3 The Bowling Club Premises will continue to be named and promoted as the "Dubbo City Bowling Club".

5.4 The Bowling Club's insignia will be retained. The insignia will be made available to the Men's Bowling Club and Women's Bowling Club referred to in clauses 3.10.

5.5 The RSL Club will, until all the activities of the Bowling Club are transferred to the New Club Premises:

- (a) Carry on the business of a licensed registered club at the Bowling Club Premises with all the facilities and amenities of a registered club; and
- (b) Maintain the bowling greens and bowling activities at the Bowling Club Premises.

Relocation of the Bowling Club to New Club Premises

5.6 It is the intention of both Clubs at a time to be determined by the Board of the Amalgamated Club and subject to the conditions precedent set out in clause 5.7 below being satisfied to relocate the Bowling Club's Liquor Licence and bowling greens to the New Club Premises.

5.7 The conditions precedent to the relocation of the Bowling Club's Liquor Licence and bowling greens to the New Club Premises are as follows:

- (a) the acquisition of land suitable for the New Club Premises (including bowling greens) by the Amalgamated Club; and
- (b) all relevant local council and other consents have been obtained for the construction of licensed club premises and two bowling greens at the New Club Premises;

- (c) an application to remove (relocate) the Bowling Club's Liquor Licence from the Bowling Club premises to the New Club Premises has been granted by the Authority;
- (d) the New Club Premises and bowling greens have been constructed and fitted out and ready to trade;
- (e) the Authority has approved a threshold increase for gaming machines in the New Club Premises equivalent to the gaming machine threshold at the Bowling Club Premises as at the date of the application for the threshold increase and has approved the transfer of all of the gaming machine entitlements at the Bowling Club premises to the New Club Premises.

5.8 After the club and bowling facilities of the Bowling Club have been relocated to the New Club Premises, it is the intention of the Amalgamated Club to sell the Bowling Club Land subject to section 41E of the RCA Act (if applicable).

5.9 The Amalgamated Club proposes to construct two (2) bowling greens at the New Club Premises which will be of a standard suitable for competition bowls. The Board of the Amalgamated Club will, in its absolute discretion, determine whether the greens will be constructed using grass or a synthetic material and the specifications of the greens.

5.10 The New Club Premises will have the usual types of facilities and amenities offered by registered clubs including a bar, restaurant, lounge and gaming and its trading name will be determined by the Board of the Amalgamated Club.

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED [REGULATIONS – CLAUSE 7(2) (D)]

6.1 As part of the Amalgamation, the Bowling Club entity will be wound up/liquidated. As part of the winding up/liquidation of the Bowling Club entity, subject to clauses 6.3 and 6.4, the employment of all the Bowling Club's employees by the Bowling Club will come to an end.

6.2 After the Order and prior to the Final Order, the RSL Club will assess the anticipated ongoing operational staffing requirements of the Amalgamated Club operating from both premises.

6.3 The RSL Club will make offers of employment to only those employees of the Bowling Club it wishes to employ and on the same term as those offered to employees of the RSL Club. Subject to those employees of the Bowling Club accepting the offer of employment made by the RSL Club, the employment with the RSL Club will be regarded as a continuation of employment and the RSL Club will recognise their statutory entitlements accrued during their employment with the Bowling Club.

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

6.5 It is not anticipated that the employment of any of the RSL Club's existing employees would be affected.

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

- 1. ANY CORE PROPERTY;

2. ANY CASH OR INVESTMENTS;
 3. ANY POKER MACHINE ENTITLEMENTS [REGULATIONS – CLAUSE 7(2) (E)]
-

Core Property

- 7.1 As at the date of this Memorandum, the Bowling Club Land is “core property” of the Bowling Club.
- 7.2 If the resolutions referred to in clause 13 are passed:
 - (a) the Bowling Club Land will be “non-core property” of the Bowling Club (and the Amalgamation Club); and
 - (b) the Bowling Club will not have any core property.

Cash and Investments

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

Poker Machine Entitlements

- 7.4 The Bowling Club has seventeen (17) gaming machine entitlements.
- 7.5 The gaming machine entitlements held by the Bowling Club upon amalgamation will become an asset of the Amalgamated Club and will be transferred to the Amalgamated Club.
- 7.6 In relation to gaming machine entitlements, the RSL Club expects and requires:
 - (a) That the Bowling Club is the holder of seventeen (17) transferable gaming machine entitlements at the date of this Memorandum but will still be held by the Bowling Club on Final Order;
 - (b) The Bowling Club will continue to also be the owner or lessee of seventeen (17) gaming machines at Final Order; and
 - (c) That at that date of Completion, the Bowling Club will have a gaming machine threshold of seventeen (17) at Final Order.
- 7.7 The RSL Club intends to retain seventeen (17) gaming machine entitlements at the Bowling Club Premises until the Amalgamated Club ceases trading from the Bowling Club premises.

8. RISKS OF NOT PRESERVING BOWLING CLUB'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED [REGULATIONS – CLAUSE 7(2)(E1)]

- 8.1 As set out in this Memorandum, the Amalgamation is intended to result in:
 - (a) the relocation of the club and bowling facilities of the Bowling Club (including the transfer of the Bowling Club's liquor licence) to the New Club Premises; and
 - (b) the sale of the Bowling Club Land after the club and bowling facilities of the Bowling Club have been relocated to the New Club Premises.

8.2 As at the date of this Memorandum, the Bowling Club Land is "core property" of the Bowling Club.

8.3 If the resolutions referred to in clause 13 are passed, the Bowling Club Land will be "non-core property" of the Bowling Club and the Amalgamation Club. However, subject to clauses 10 or 11 apply, the Amalgamated Club will not be able to sell the Bowling Club Land within three (3) years from the date of Completion.

**9. DISPOSAL OF BOWLING CLUB'S MAJOR ASSETS
[REGULATIONS – CLAUSE 7(2)(E2)]**

9.1 If the resolutions referred to in clause 13 are passed:

- (a) the Bowling Club will not have any core property; and
- (b) the Bowling Club will not have any "major assets";
- (c) the restrictions contained in section 17A1 of the RÇA will not apply.

However, subject to clauses 10 or 11 apply, the Amalgamated Club will not be able to sell the Bowling Club Land within three (3) years from the date of Completion.

**10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE BOWLING CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE BOWLING CLUB
[REGULATIONS – CLAUSE 7(2) (F)]**

10.1 The RSL Club does not intend to:

- (a) Cease trading from the Bowling Club Premises other than for the purposes of transferring the club and bowling facilities of the Bowling Club to the New Club Premises;
- (b) Cease the sporting activities conducted at the Bowling Club Premises other than for the purposes of transferring the club and bowling facilities of the Bowling Club to the New Club Premises.

10.2 The objects of the Amalgamated Club will be the objects of the RSL Club.

10.3 For the purposes of clause 7(2)(f) of the Regulations, the RSL Club and the Bowling Club have agreed that the Amalgamated Club would either cease trading from, change the objects of or cease the sporting activities at the Bowling Club Premises in the following circumstances:

- (a) Upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
- (b) Upon the lawful order of any government authority;
- (c) If the Bowling Club Premises were destroyed or partially destroyed by fire, flood, storm etc., except where appropriate insurance cover is available to reinstate the premises or where it is otherwise economically viable to do so; or
- (d) If it is not financially viable for the Amalgamated Club (as defined in clause 10.4) to continue to trade from or continue the sporting activities at Bowling Club Premises.

- (e) If the club and bowling club facilities of the Bowling Club are transferred to the New Club Premises.

10.4 For the purposes of clause 10.3(d) and 11.2, trading from the Bowling Club Premises will be deemed to be not financially viable if, in any twelve (12) month period (commencing after the three (3) year period referred to in clause 11.2), the EBITDARD for the Bowling Club Premises is less than fifteen per cent (15%).

11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM THE BOWLING CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE BOWLING CLUB PREMISES [REGULATIONS – CLAUSE 7(2) (G)]

11.1 The Amalgamated Club does not intend to cease trading from the Bowling Club Premises other than to relocate the club and bowling facilities of the Bowling Club to the New Club Premises and further the Amalgamated Club intends to operate the Bowling Club Premises in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 10.3.

11.2 For the purposes of clause 6(2)(g) of the Regulations, the Clubs agree that the Amalgamated Club will continue:

- (a) to trade from Bowling Club Premises;
- (b) the sporting activities at the Bowling Club Premises,

for as long as it remains financially viable (pursuant to clause 10.4) but for at least three (3) years (except in the circumstances referred to in clauses 10.3(a), (b), (c) and (e)).

12. BINDING EFFECT OF MEMORANDUM

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

13. CALLING OF MEETINGS AND ADMISSION OF BOWLING CLUB MEMBERS TO MEMBERSHIP OF THE RSL CLUB

13.1 The Bowling Club will call a general meeting of the ordinary members of the Bowling 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.

13.2 In addition to the resolution referred to in clause 13.1, the Bowling Club will, submit to the members at the clause 13.1 meeting a resolution declaring that the Bowling Club Land and Bowling Club Premises to be non-core property of the Bowling Club for the purposes of section 41E of the RCA.

13.3 Subject to the Bowling Club passing the resolutions referred to in clauses 13.1 and 13.2, the RSL Club will call a 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.

13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the meeting referred to in clause 13.1.

13.5 In addition to the resolution referred to in clause 13.3, the RSL Club will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and

vote, an ordinary resolution declaring the Bowling Club Land as non-core property of the Amalgamated Club for the purposes of section 41E of the RCA.

13.6 In addition to the resolution referred to in clause 13.3, the RSL Club will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the RSL Club so that:

- (a) All members of the Bowling Club other than those that are already members of the RSL Club who apply to become members of the RSL Club will be admitted to membership of the RSL Club;
- (b) All members of the Bowling Club will be able to apply for membership of the RSL Club in the manner referred to in paragraphs (c) to (e) inclusive of this clause 13.6;
- (c) A member of the Bowling Club will not be required to be proposed or seconded for membership of the RSL Club;
- (d) As soon as practicable after the Order, the RSL Club will forward to each member of the Bowling Club, who is not already a member of the RSL Club a written invitation to become a member of the RSL Club;
- (e) Any member of the Bowling 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) Bowling Club members who are admitted to membership of the RSL Club will be identified as a separate class called the "Dubbo City Bowling Members" for identification purposes only.

13.7 Notwithstanding anything contained in this Memorandum, any member of the Bowling Club who, at Completion of the Amalgamation, is then:

- (a) Refused admission to or being turned out of the RSL Club Premises; or
- (b) Suspended from the RSL Club;
- (c) Expelled from the RSL Club;

shall only be entitled to attend at and use the facilities at the Bowling Club Premises and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at the RSL Club Premises until such time as:

- (a) The person is again permitted to enter the RSL Club Premises; or
- (b) The period of suspension has been served;
- (c) The Board of the Amalgamated Club has overturned the person's expulsion from the RSL Club or has readmitted the person to membership of the RSL Club.

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

14.1 As soon as reasonably practicable after the meetings referred to in clause 13, the Bowling Club (in relation to the resolutions required by clauses 13.1 and 13.2) and

the RSL Club (in relation to the resolution required by clauses 13.3, 13.5 and 13.6) 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.

14.2 The Bowling Club must forward to the lawyers for the RSL Club a copy of the following documents:

- (a) A true copy of the documents that were sent to Bowling Club members under clause 13.1; and
- (b) A true copy of the results of the resolutions put to the members under clauses 13.1 and 13.2.

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

14.4 The Bowling 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 Bowling Club's Approved Manager to sign the Amalgamation Application if required to do so.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

15.1 The Bowling Club warrants to the RSL Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Bowling 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 Bowling 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) Ensure that the Bowling Club's Chairperson has regular discussions with the RSL Club's CEO regarding the management and operations of the Bowling Club with the object of;

Providing for an orderly transfer of the management and operations of the Bowling Club to the RSL Club on the date of Completion of the Amalgamation; and

Reducing losses, increasing profitability and achieving efficiencies and cost savings at the Bowling Club;

- (e) 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 Bowling Club;
- (f) Not do anything which may damage the goodwill of its business or that of the RSL Club;
- (g) Not without the prior written consent of the RSL Club;
- (h) 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;
- (i) 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;
- (j) Except in the usual and routine conduct of its operations, dispose of, encumber or grant an option over, or grant any interest in any of the Bowling Club's Assets;
- (k) Employ any employee (other than a casual employee);
- (l) Terminate the employment of any employee (other than a casual employee);
- (m) Alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
- (n) Seek to borrow or borrow money from any third party except from the RSL Club;
- (o) Increase the level of debt of the Bowling 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 Bowling Club or as a result of borrowings from the RSL Club; or
- (p) Engage in discussions or negotiations with anyone other than the RSL Club concerning a possible amalgamation and/or the sale of all or any part of the Bowling Club's Assets (otherwise than as permitted under (iii) above), and the Bowling Club must advise the RSL Club of any solicitation by any third party in respect of any such discussion or negotiation.

15.2 Each of the Bowling Club's warranties contained in clause 15.1 remain in full force and effect notwithstanding Completion of the Amalgamation.

15.3 As an inducement to the Bowling Club to enter into this Memorandum, RSL Club represents and warrants as essential conditions that:

- (a) The RSL Club is a company duly incorporated under the provisions of the Corporations Act 2001 Cth in good standing with the Australian Securities and Investment Commission;
- (b) Except as expressly stated in this Memorandum, no other corporate act or proceeding on the part of RSL Club or its members or directors is necessary to authorise this Memorandum or the transactions contemplated;
- (c) Neither the signing of this Memorandum nor the consummation of the proposed Amalgamation will conflict with or constitute a default under any

term or provision of the Constitution of RSL Club or of any agreement, arrangement, commitment, understanding or restriction of any kind to which RSL Club is a party or by which RSL Club is bound nor any law;

- (d) The RSL Club is in a position from its own financial resources to consummate the proposed Amalgamation on the terms set out in this Memorandum.
- 15.4 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 Bowling Club's warranties set out in clause 15.1.
- 15.5 If, before Final Order, 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.
- 15.6 Title to, property in and risk of the Bowling Club's Assets remain solely with the Bowling Club until such time as they are passed to the Amalgamated Club in accordance with clause 14.
- 15.7 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 relevant club.
- 15.8 Subject to the Bowling Club complying with clauses 15.1 and 15.5, the RSL Club warrants to the Bowling Club that from the date the Assets of the Bowling Club are transferred to the RSL Club, the RSL Club will:
- (a) Accept full responsibility for the Bowling Club's Debts and Liabilities; and
 - (b) Indemnify and keep indemnified the directors of the Bowling Club in respect of any Claims made against them by creditors of the Bowling Club.
- 15.9 Subject to clause 15.10 and the Bowling Club complying with its obligations under this Memorandum, the RSL Club warrants to the Bowling Club that, provided the members of the Bowling Club pass the ordinary resolutions referred to in clauses 13.1 and 13.2, and the members of the RSL Club pass the resolutions referred to in clauses 13.3, 13.5 and 13.6, the RSL Club will provide to the Bowling Club such reasonable financial assistance (in accordance with clause 15.10) as is required to assist the Bowling Club to remain solvent until Completion of the Amalgamation or termination of this Memorandum (whichever is the earlier).
- 15.10 Any financial assistance referred to in clause 15.9 will be subject to the following:
- (a) The Clubs entering into appropriate loan and security documents ("Loan

Agreement") on terms and conditions satisfactory to the RSL Club; and

- (b) If this Memorandum is terminated (and the Amalgamation is not completed):
- (i) The monies loaned under the Loan Agreement plus interest will be repaid in accordance with the Loan Agreement; and
 - (ii) Interest will be charged at rates as agreed (or failing agreement 9%) and will be calculated from the date of the Loan Agreement until repayment;
 - (iii) In default thereof, the RSL Club may deal with any security provided by the Bowling Club in accordance with the Loan Agreement.

16. DISSOLUTION OF THE BOWLING CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO RSL CLUB

- 16.1 As soon as practicable after the Order, but subject to the Final Order, the Bowling Club must ensure the Assets, Debts and Liabilities of the Bowling Club are transferred to the RSL Club (less an amount sufficient for the purposes of liquidating the Bowling Club in the manner referred to in clause 16.5).
- 16.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order.
- 16.3 For the purposes of clause 16.1, the Bowling Club must do all things necessary and execute all documents to cause all of the Assets of the Bowling 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 real property;
 - (b) All poker machines and all poker machine entitlements;
 - (c) All contract rights including hire purchase agreements;
 - (d) All intellectual property rights; and
 - (e) All physical assets, furniture and fittings and stock in trade,
- owned or entered into by the Bowling Club.
- 16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Bowling Club and held in escrow by the RSL Club pending Completion of the Amalgamation.

17. ACCESS TO RECORDS

- 17.1 From the date of this Memorandum:
- (a) For the purpose of any due diligence referred to in clause 2.4(b), the Bowling Club will, if required, provide information (including but not limited to, details of all their Assets, Debts and Liabilities) and assistance to the RSL Club in order for the RSL Club to properly carry out and complete the due diligence review.
 - (b) For the purposes of the due diligence referred to in clause 2.4(c), the RSL Club will, if required, provide information (including, but not limited to, details

of all their Assets, Debts and Liabilities) and assistance to the Bowling Club in order for the Bowling Club to properly carry out and complete the due diligence review.

- (c) The Bowling Club will provide to the RSL Club at all reasonable times access to the Bowling Club's Premises, Records and other information and material reasonably required by the RSL Club.

18. CONFIDENTIALITY

- 18.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 18.2 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.
- 18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 18.4 This clause 18 survives completion of this Memorandum.

19. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- 19.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 19.2 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.
- 19.3 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.
- 19.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 19.2 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.

- 19.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 19.2 a party which has complied with the provisions of this clause 19 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.

19.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 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.

20. COSTS

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

21. STAMP DUTY

21.1 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.

21.2 Despite the exemption from duty referred to in clause 21.1 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.

22. GENERAL

22.1 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.

22.2 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.

22.3 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.

22.4 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.

22.5 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.

22.6 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.

22.7 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.

23. TERMINATION

23.1 The RSL Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Bowling Club if:

- (a) The due diligence review undertaken by it on the Bowling Club (as referred to in clause 2.4(b)) is not satisfactory to the Board of the RSL Club. The Board of the RSL Club can waive this requirement at any time;
 - (b) The Bowling Club breaches any warranty contained in clause 15; or
 - (c) The circumstances in clause 15.4 exist in relation to the Bowling Club.
- 23.2 The Bowling Club may terminate this Memorandum at any time, without penalty, by giving written notice to the RSL Club if:
- (a) The due diligence review undertaken by it on the RSL Club (as referred to in clause 2.4(c)) is not satisfactory to the Board of the Bowling Club. The Board of the Bowling Club can waive this requirement at any time; or
 - (b) The circumstances in clause 15.5 exist in relation to the RSL Club.
- 23.3 If:
- (a) The members of the Bowling Club have not passed the resolutions referred to in clauses 13.1 and 13.2 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 13.3, 13.5 and 13.6 within six (6) months of the members of the Bowling Club passing the resolutions referred to in clause 13.1 and 13.2,
- then either party by giving written notice to the other may, without penalty, terminate this Memorandum.
- 23.4 Notwithstanding anything contained in this Memorandum, if Final Order has not occurred within twelve (12) months of the date of this Memorandum or such other later date agreed by the parties, then either party by giving written notice to the other may, without penalty, terminate this Memorandum.
- 23.5 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 23 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 23.
- 23.6 If this Memorandum is terminated in accordance with this clause 23 the Amalgamation terminates.

24. NOTICES

- 24.1 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; and
 - (c) Left at, or sent by pre-paid registered post, hand delivery or by facsimile to that address.
- 24.2 A notice given in accordance with subparagraphs (a), (b), (c) of paragraph 24.1 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; or
- (c) If sent by facsimile, when the answer back or message confirmation is received, as the case may be.

25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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.

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

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.

27. NOTES

This Memorandum is to be:

- (a) Made available to the ordinary members of the Bowling 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 (a) 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 Bowling Club to the RSL Club.


Executed by **Dubbo RSL Memorial)
Club Ltd ABN 18 000 965 355)**
pursuant to Section 127 of the)
Corporations Act 2001



Director / Secretary

JOHN MILLAR

Name of Director/Secretary
(print name)



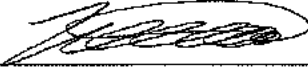
Director / Secretary

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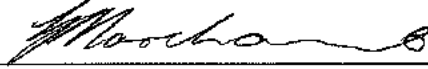
Name of Director/Secretary
(print name)

9th AUGUST 2018

Executed by Dubbo City Bowling)
Club Limited ACN 001 004 520)
pursuant to Section 127 of the)
Corporations Act 2001



Director / ~~Secretary~~



Director / ~~Secretary~~

TERENCE A. O'DEA

Name of Director/Secretary
(print name)

LAARNIME A MARCHANT

Name of Director/Secretary
(print name)

9th AUGUST 2018