

# PIGOTTSTINSON

LAWYERS SINCE 1863

## MEMORANDUM OF UNDERSTANDING

DATED 23<sup>rd</sup> APRIL 2018

### PARTIES:

**PENRITH GOLF & RECREATION CLUB LIMITED**  
ABN 54 000 377 499

**SEVEN HILLS- TOONGABBIE RSL CLUB LIMITED**  
ABN 65 000 862 680

#### PIGOTT STINSON

**Tel** +61 2 8251 7777  
**Fax** +61 2 9262 4288  
**Email** partners@pigott.com.au  
**Web** www.pigott.com.au

#### SYDNEY OFFICE

Level 3, 10 Barrack St GPO Box 3380  
Sydney NSW 2000 Sydney NSW 2001  
(DX 125 Sydney)

#### NEWCASTLE OFFICE

Suite 5, 142 Union St  
The Junction NSW 2291

Liability limited by a scheme  
approved under Professional  
Standards Legislation

ABN 82 680 297 642

Associated Firm - Melbourne McKean Park

**BETWEEN:**

**Penrith Golf & Recreation Club Limited ABN 54 000 377 499** of 1939 The Northern Road Penrith New South Wales, 2750 ("**the Golf Club**")

**AND**

**Seven Hills - Toongabbie RSL Club Limited ABN 65 000 862 680** of Corner Best Road and William Street Seven Hills, New South Wales, 2147 ("**the RSL Club**").

**BACKGROUND**

- (A) The RSL Club and the Golf Club are both companies limited by guarantee under the Corporations Act and both operate separate licensed registered clubs.
- (B) The RSL Club is located in the Blacktown City Council Local Government Area.
- (C) The Golf Club is located in the Penrith City Council Local Government Area.
- (D) The Golf Club has called for expressions of interest in amalgamation from clubs within a radius of fifty (50) kilometres of the Golf Club.
- (E) The RSL Club is within fifty (50) kilometres of the Golf Club.
- (F) The RSL Club submitted an expression of interest in pursuing an amalgamation with the Golf Club.
- (G) Following further negotiations, the RSL Club and the Golf Club have agreed to the terms set out in this Memorandum.
- (H) The RSL Club and the Golf Club propose to amalgamate the two clubs (subject to the approval of the members of both Clubs and 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.
- (I) 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 9 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.

**"Amalgamated Club's General Manager"** means the individual who holds the position of General Manager at the Amalgamated 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 General Manager and the Golf Club’s General 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 Golf Club.

**“Authority”** means the Independent Liquor and Gaming Authority.

**“Award”** means the Registered and Licensed Clubs Award 2010.

**“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;
- (b) the Assets, Debts and Liabilities of the Golf Club are transferred to the RSL Club, as referred to in clause 15; and
- (c) the RSL Club takes 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.

**“CPI”** means the Consumer Price Index (All Groups) Sydney or if that index is discontinued such index published which reflects annual fluctuations in the cost of living in Sydney.

**“Debts”** means the accumulated debts of the Golf Club.

**“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 Act 2001 (NSW)* and the Regulations made thereunder.

**“Golf Club Premises”** means the Golf Club’s premises (including the Clubhouse, Golf Course and maintenance facilities) at The Northern Road, Penrith, New South Wales 2750.

**“Golf Course”** means the Golf Club’s golf course.

**“Golf Club’s General Manager”** means the individual who holds the position of General Manager at the Golf Club.

**“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, outgoings, costs and expenses of the Golf Club (whatever description).

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

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

**“Memorandum”** means this Memorandum of Understanding.

**“National Employment Standards”** means the minimum standards that apply to the employment of employees as required by the *Fair Work Act 2009 (Cth)*.

**“Non-Core Land”** means the 2.18 hectare portion in the South East Corner of the Golf Course which has been declared by the ordinary members of the Golf Club to be non-core property of the Golf Club for the purposes of sections 17A1 and 41J of the RCA.

**“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”** mean the Regulations to the RCA.

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

**“RSL Club Premises”** means the RSL Club’s premises located at the Corner of Best Road and William Streets Seven Hills, New South Wales, 2147.

**“RSL Club’s General Manager”** means the individual who holds the position of General Manager at the RSL Club.

**“Seven Hills-Toongabbie RSL Club Employees Enterprise Agreement”** means the enterprise agreement dated 28 July 2010.

**“Strategic/Business Plan”** means the plan to be developed by the Board and management of both Clubs and which is to include a pathway for the future of the Golf Club with a focus on facilities and playing members and a course and clubhouse master plan.

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 will be effected by the continuation of the RSL Club and the dissolution of the Golf Club.
- 2.3 The Amalgamation is intended to:
  - (a) preserve and enhance the existing facilities and amenities of both Clubs; and
  - (b) preserve the social facilities of the Golf Club in the manner set out in this Memorandum;
  - (c) preserve, maintain and improve the Golf Course. and
  - (d) enable the Golf Club Premises to be upgraded and renovated in the manner

set out in this Memorandum.

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 Golf Club's financial position and operations.
- (c) The Golf Club, at its own expense, undertaking a due diligence review of the RSL Club's financial position.
- (d) The members of the Golf Club and the RSL Club will be asked to approve the Amalgamation at separate general meetings of the ordinary members of each club. These meetings will be called and held in the manner referred to in clause 12 below.
- (e) The members of the RSL Club will be asked to approve (by special resolution) amendments to the RSL Club's Constitution in the manner provided for in clause 12.5 below.
- (f) In the event the approvals in paragraphs (d) and (e) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 13 below.
- (g) Following the Order:
  - (i) all 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 "Penrith Golf Club members". This will occur in accordance with the procedure set out in clause 12.5 below (which will be inserted into the RSL Club's Constitution pursuant to the Special Resolution referred to in that clause); and
  - (ii) all employees of the Golf Club will be offered employment on similar terms and conditions (although subject to such variation of their duties as determined necessary by the RSL Club in its absolute discretion) with the RSL Club under the Seven Hills RSL Club Employees Enterprise Agreement and subject to the National Employment Standards, and if they accept, will be employed by the RSL Club. This will occur in accordance with the procedure set out in clause 6 below.
- (h) On the date of Final Order:
  - (i) the Golf Club's Assets, Debts and Liabilities will be transferred to the RSL Club in the manner referred to in clause 15 below;
  - (ii) the Golf Club's licensed premises will become additional licensed premises of the RSL Club and 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; and
  - (iii) all employees of the Golf Club who have accepted employment with the RSL Club, will become employees of the RSL Club.

- (i) After Completion of the Amalgamation:
  - (i) the RSL Club will continue as the body corporate of the Amalgamated Club; and
  - (ii) the Golf Club will be liquidated in the manner referred to in clause 15 below.

2.5 Completion of this Memorandum will occur on the date on which all of the steps in clause 2.4 are completed (or, if not completed, waived).

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 7(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 five (5) premises being:
  - (a) the RSL Club Premises;
  - (b) the Golf Club Premises;
  - (c) the RSL Club's Pennant Hills premises;
  - (d) the RSL Club's Blacktown premises; and
  - (e) the RSL Club's Fox Hills premises.
- 3.3 For the purposes of the RCA and the Liquor Act, the RSL Club's General Manager 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 Amalgamated Club shall appoint a manager to the Golf Club premises pursuant to section 66 of the Liquor Act ("**the venue manager**").
- 3.6 The day to day operations at the Golf Club premises following Completion of the Amalgamation will be undertaken by the Amalgamated Club's General Manager in conjunction with the venue manager.

**Advisory Committee and the existing Men's and Women's Golf sub clubs**

- 3.7 (a) An Advisory Committee shall be formed at the Golf Club's premises;
- (b) The Advisory Committee will be established under By Laws of the Amalgamated Club. The members of the first Advisory Committee will consist of five (5) of the Directors of the Golf Club as at Completion of the Amalgamation as selected by the nine (9) Directors of the Golf Club in office as at Completion of the Amalgamation.

- (c) The Advisory Committee will be elected by ballot every two (2) years.
- (d) Only former members of the Golf Club who are admitted to membership of the Amalgamated Club for the purposes of this Amalgamation or who join the Amalgamated Club through the Golf Club Premises) shall be eligible to be elected to the Advisory Committee.
- (e) The Advisory Committee shall not have any decision making authority or powers of management but will be able to provide feedback from the membership at the Golf Club to the venue manager or the Amalgamated Club's General Manager.
- (f) The Amalgamated Club will ensure that the existing Men's and Women's Golf sub clubs ("**the existing Golf sub clubs**") shall continue to operate after Completion of the Amalgamation in the same manner and fashion as they operate at the date of this Memorandum. The committees of these sub existing Golf sub clubs shall report to the Amalgamated Club General Manager through the Advisory Committee.
- (g) The existing Golf sub club's constitutions shall continue in force and effect after Completion of the Amalgamation. The constitutions may be varied from time to time by the eligible voting members of either sub club provided that any proposed variation must be first approved by the Board of the Amalgamated Club, such approval shall not be unreasonably withheld.
- (h) The existing RSL Club will ensure that golfing members remain affiliated with the controlling body of golf in New South Wales on such terms and conditions (not inconsistent with the Constitution of the Amalgamated Club or the RCA) as such controlling body may from time to time require.
- (i) Subject to the fees associated with each members affiliation with the controlling body of golf referred to in clause 12.5(h), the fees and subscriptions payable by members to play golf and be members of the existing Golf sub clubs shall:
  - (i) be determined by the Board of the Amalgamated Club;
  - (ii) be similar to the golfing membership fee structure of the Golf Club as at the date of this Memorandum; and
  - (iii) not be increased by more than the annual increase in the CPI each year during the first three (3) years after the Completion of the Amalgamation.
- (j) An annual budget will be determined by the Board of the Amalgamated Club. For the avoidance of doubt, the annual budget will cover:
  - (i) all relevant insurances applicable to the existing Golf sub club and their activities;
  - (ii) all relevant fees payable to relevant authorities in respect of the existing Golf sub club's activities;
  - (iii) all relevant trophies, prizes and prize money for golf competitions and events and the recoupment of competition fees;



- (iv) all relevant costs for junior and other golf tuition;
  - (v) all relevant costs for the maintenance and upgrade of the Golf Course including green keeping wages, machinery running costs, chemicals and fertilisers.
- (k) Each existing Golf sub club shall within three (3) months after the end of each financial year of the Amalgamated Club provide to the Board of the Amalgamated Club an audited annual financial report on the existing Golf sub club's operating activities.

### **Other Sub-Clubs**

3.8 There are no other sub-clubs operating at the Golf Club. If any other sub-club is to be established at the Golf Club Premises it will require the approval of the Board of the Amalgamated Club.

### **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 Subject to the continued operation of a registered club facility at the Golf Club Premises the Amalgamated Club will:

- (a) continue and maintain the traditions and ethos of the Golf Club;
- (b) maintain the amenities and the golf facilities at the Golf Club;
- (c) subject to an annual review and approval by the Board of the Amalgamated Club, allow the existing member golf competitions to continue;
- (d) subject to an annual review and approval by the Board of the Amalgamated Club, promote activities to maintain, and where possible, to increase patronage of members and their guests at the Golf Club Premises;
- (e) preserve all the memorabilia, historical items and information and honour boards in a manner deemed appropriate by the Board of the Amalgamated Club acting reasonably; and
- (f) subject to an annual review and approval by the Board of the Amalgamated Club, maintain the annual golf presentation evenings.

### **Golf Competitions and Events**

4.2 Subject to an annual review and approval by the Board of the Amalgamated Club, the Amalgamated Club will hold the following major golf competitions and events which are currently conducted by the Golf Club:

- (a) Club Championships;
- (b) Top Gun Knock Out event;
- (c) Annual Pro-Am;

- (d) Pennants; and
- (e) such other recurring events which are part of the annual golf programme are held.

## 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, it is the intention of the RSL Club to operate the Amalgamated Club and the Golf Club Premises in accordance with this clause 5 including:
- (a) to promote and develop the Golf Club facilities and amenities;
  - (b) to improve the trading of the Golf Club Premises so that the premises are financially viable without subsidy or financial support from the Amalgamated Club;
  - (c) to refurbish the Golf Club Premises; and
  - (d) to maintain an 18 hole golf course at the Golf Club Premises and to improve the Golf Course.

#### **Amalgamated Club Premises**

- 5.2 The RSL Club will operate the Amalgamated Club from the RSL Club Premises, the RSL Club's Pennant Hills Premises, the RSL Club's Blacktown Premises, the RSL Club's Fox Hills Premises and the Golf Club Premises.

#### **Golf Club Premises**

- 5.3 The Golf Club Premises will be named and promoted as the "Penrith Golf Club". Should the Board of the Amalgamated Club consider in the future that this name needs to be amended for market related purposes or otherwise then the Board of the Amalgamated Club will seek input from the Advisory Committee and the committees of the existing Golf Sub-Clubs. Any proposed name for the Golf Club Premises will incorporate the activities of the Golf Club.

#### **Golf Club Insignia**

- 5.4 The Golf Club's insignia will be retained and incorporated into the RSL Club's current logo for use by the existing Golf sub-clubs as referred to below.
- 5.5 The RSL Club will:
- (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; and
  - (b) engage a qualified greenkeeper to supervise the maintenance of the Golf Course; and

- (c) develop, in conjunction with the Board of the Golf Club, an initial Strategic/Business Plan and budget for the golf course at the Golf Club Premises before Completion of the Amalgamation.

## **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 corporate entity of the Golf Club will be wound up/liquidated. The legal effect of the winding up/liquidation of the Golf Club corporate entity will be that the employment of all the Golf Club's employees by the Golf Club will come to an end.
- 6.2 Before Completion of the Amalgamation, the RSL Club, in consultation with the Golf Club, will establish within the management structure of the RSL Club a management and employment structure for the Golf Club Premises, which will take effect on Completion of the Amalgamation.
- 6.3 Prior to Completion of the Amalgamation, the RSL Club will offer employment upon similar terms and conditions (although subject to such variation of their duties as determined necessary by the RSL Club in its absolute discretion) to all of the Golf Club's employees (which will be subject to Completion of the Amalgamation).
- 6.4 The remuneration offered to each employee by the RSL Club must be no less than the employee's level of remuneration at the Golf Club as at the date of this Memorandum and all employees' terms and conditions of employment shall be governed by the Seven Hills-Toongabbie RSL Club Employees Enterprise Agreement and be subject to the National Employment Standards.
- 6.5 The RSL Club expects that all employees of the Golf Club who accept the offer of employment referred to in clause 6.3 will continue to work at the Golf Club Premises. However, the Parties agree that:
  - (a) further employment levels at the Golf Club Premises will be determined by the operational needs of the RSL Club and the satisfactory work performance of employees in accordance with the Amalgamated Club's policies and procedures.
  - (b) current employees of the Golf Club may after the Completion of the Amalgamation be required to work at one of the RSL Club's other Premises and vice versa.
- 6.6 If an employee does not wish to remain in employment with the Amalgamated Club then either party will give the appropriate notice of termination of employment to the other and that employee will be paid out all entitlements including those accrued during his/her employment with the Golf Club.
- 6.7 In relation to each of the employees of the Golf Club who continue in employment with the Amalgamated Club, the Golf Club must deliver to the RSL Club on Completion of the Amalgamation a statement setting out full details of any accrued entitlements of those employees up to Completion of the Amalgamation which the Golf Club warrants to the RSL Club as being true and correct in all material particulars.

- 6.8 The Amalgamated Club must treat those employees of the Golf Club who continue employment with the Amalgamated Club, and deal with all of their entitlements, as if the entitlements accrued during employment with the Golf Club had been accrued whilst in the employment of the Amalgamated Club.
- 6.9 The Clubs acknowledge that, for the purposes of section 66 of the Liquor Act, the RSL Club will have to appoint a manager approved by the Authority for the Golf Club Premises.
- 6.10 The RSL Club will appoint the Golf Club's General Manager as the venue manager of the Golf Club Premises after Completion of the Amalgamation if he accepts that appointment.
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 7(2) (e)]**

**Core Property**

- 7.1 For the purposes of the RCA, the Golf Club Premises and the Golf Course are the "core property" of the Golf Club excluding the Non-Core Land.
- 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 15) to the general reserves of the Amalgamated Club.

**Poker Machine Entitlements**

- 7.4 The Golf Club has forty (40) poker machine entitlements.
- 7.5 Ownership of the poker machine entitlements and the poker machines held by the Golf Club will be transferred to the Amalgamated Club with effect from Completion of the Amalgamation. The Amalgamated Club will ensure that at least forty (40) poker machines and poker machine entitlements are retained at the Golf Club Premises for at least three (3) years after Completion of the Amalgamation to meet demand from members and guests and the financial needs of those premises consistent with the terms of this Memorandum.

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 7(2) (f)]**

- 8.1 The RSL Club does not intend to:
- (a) cease trading from the Golf Club Premises;

- (b) substantially change the objects of the Golf Club Premises; or
  - (c) cease the golfing 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 7(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 7(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 golfing activities at the Golf 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 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 8.5) to continue to trade from, continue the objects of or continue the golfing activities at the Golf Club Premises; and
  - (e) if there was any significant change in legislation that adversely impacted on the viability of the Amalgamated Club.
- 8.5 For the purposes of clause 8.4(d) and 9.3, the Golf Club Premises will be deemed not to be financially viable if the premises do not maintain an EBITDARD of at least ten per cent (10%) during a rolling twelve (12) month average basis after the first three (3) years.
- 8.6 "EBITDARD" in clause 8.5 means Earnings before Interest, Taxes, Depreciation, Amortisation, Rent and Donations are deducted.
9. **AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM THE GOLF CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB PREMISES**

**[Regulations – Clause 7(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 7(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 7(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; and
- (c) the golfing activities at the Golf Club Premises,

for as long as the Golf Club Premises remain financially viable (as provided for in clause 8.5) but in any event for at least three (3) years from the date of Completion of the Amalgamation (except in the circumstances referred to in clauses 8.4(a),(b), (c) and (e) in which case trading can cease). This time limit is not an indication that the RSL Club believes that the Golf Club Premises will not be financially viable and the RSL Club confirms that it is committed to using all reasonable efforts to make the Golf Club Premises financially viable.

9.4 Notwithstanding anything else contained in this Memorandum the RSL Club guarantees that the Golf Club Premises will continue to trade for a minimum of three (3) years after Completion of the Amalgamation.

## **10. PROPOSED SUB DIVISION OF GOLF CLUB'S NON-CORE LAND**

---

10.1 The RSL Club acknowledges and is aware that:

- (a) The Golf Club has entered into an agreement (**Call Option Agreement**) with Sunshine Properties Investments Pty Ltd ABN 53 167 983 128 (**Sunshine**) for the Non-Core Land.
- (b) In accordance with the Call Option Agreement, Sunshine (with the consent of the Golf Club) has lodged a Development Application with Penrith City Council seeking approval to subdivide the Non-Core Land (**Sub Division**) for the purpose of Over 55's Accommodation.
- (c) The Call Option Agreement also provides that:
  - (i) Sunshine will be responsible for all of its costs in seeking and obtaining Development Approval for the Sub Division; and
  - (ii) If the Development Approval is granted for the Sub Division, Sunshine will purchase the Non-Core Land from the RSL Club for a price of \$6 million dollars (\$6,000,000) inclusive of GST less the amount of the option fee which has already been paid by Sunshine to the Golf Club (**Net Proceeds**).
- (d) Depending on when the sale of the Non-Core Land takes place, the Net Proceeds will be transferred to the general reserves of either the Golf Club or the Amalgamated Club;
- (e) The Sub Division for the Over 55's Accommodation will result in layout changes to the Golf Course and the relocation of the course maintenance shed.
- (f) The Golf Club intends for the Net Proceeds to be used to effect the required changes to the layout of the golf course and the relocation of the Greens Shed and any residual amount of the Net Proceeds is to be used for renovations and refurbishments of the Golf Club's Premises.

- 10.2 The RSL Club agrees that it will accept assignment of the Call Option Agreement from the Golf Club as part of the assignment of contract rights referred to in clause 15.3.
- 10.3 If the Non-Core Land is sold in accordance with the Call Option Agreement, the RSL Club must, subject to the quantum of the Net Proceeds, use some or all of the Net Proceeds to:
- (a) construct a new course maintenance shed on the Golf Course; and
  - (b) undertake some, if not all, of the works required to change the layout of the Golf Course as the Net Proceeds will allow, in accordance with the requirements of this clause 10.
- (together the Golf Course Works).
- 10.4 The Golf Course Works that are required to be undertaken at the Golf Course will be prepared by the Advisory Committee for approval of the Board of the Amalgamated Club.

## **11. BINDING EFFECT OF MEMORANDUM**

---

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

## **12. CALLING OF MEETINGS AND ADMISSION OF GOLF CLUB MEMBERS TO MEMBERSHIP OF THE RSL CLUB**

---

- 12.1 The Golf Club will call a general meeting of the ordinary members of the Golf Club for the purposes of considering and if thought fit passing a resolution to approve in principle the amalgamation in accordance with section 17AEB (d) of the RCA.
- 12.2 The meeting referred to in clause 12.1 must be held as soon as reasonably practicable, but no later than sixty (60) days, after the date of this Memorandum.
- 12.3 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 resolutions to approve in principle the amalgamation in accordance with section 17AEB(d) of the RCA.
- 12.4 The meeting referred to in clause 12.3 will be held as soon as reasonably practicable, but no later than sixty (60) days, after the Golf Club passes the resolution referred to in clause 12.1 (or at such prior time as may be determined by the RSL Club in its absolute discretion).
- 12.5 In addition to the resolutions referred to in clause 12.3 , the RSL Club will, at the meeting referred to in clause 12.3, 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 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 (e) inclusive of this clause 12.5.

- (c) A member of the Golf Club will not be required to be proposed or seconded for membership of the RSL Club.
- (d) Prior to the Completion of the Amalgamation, the RSL Club will forward to each 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.
- (e) Any 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 name of that person being displayed on the noticeboard of the RSL Club for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by the RSL Club) 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) The Golf Club members who are admitted to membership of the RSL Club will be identified as a separate class called "Penrith Golf Club Members" but may transfer to any other class of membership of the RSL Club for which they are eligible to join. "Penrith Golf Club Members" will have the same rights as "Fox Hill members" under the Constitution of the RSL Club.
- (g) The RSL Club must create sub-categories of "Penrith Golf Club Membership" (by way of amending the RSL Club's Constitution or by passing a by-law) and when doing so, the RSL Club must ensure that:
  - (i) the sub-categories reflect the existing categories of membership at the Golf Club; and
  - (ii) the members in each of these sub categories will, at a minimum, have the same rights as Fox Hills members under the RSL Club's Constitution.
- (h) All elected Life members (seven (7) in total) and all paid in advance permanent Life members (five (5) in total) of the Golf Club as at the date of this Memorandum shall continue to be recognised in these capacities in respect of the Golf Club premises only and shall as and from Completion of the Amalgamation be transferred to a sub-category or sub-categories of "Penrith Golf Club Membership" under the Amalgamated Club's Constitution, which must not require these members to pay any fees or subscriptions other than competition fees.

### **13. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY**

---

- 13.1 As soon as reasonably practicable after the meetings referred to in clauses 12.1 and 12.3, each Club must forward to the lawyers for the RSL Club the following:
- (a) a true copy of the notice of the meeting at which the resolution was passed;
  - (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;
  - (c) a true copy of the directors disclosure register;



- (d) confirmation that the MOU was made available at least 21 days before the general meeting referred to in clauses 12.1 and 12.3 and the date it was made available; and
  - (e) confirmation that the MOU was made available for inspection on the premises of each club and on each Club's website (if any) for at least 21 days before the general meeting referred to in clauses 12.1 and 12.3 and the date it was made available.
- 13.2 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.
- 13.3 The Golf Club will co-operate with the RSL Club and the lawyers for the RSL Club and will, in addition to the documents required under clause 13.1, provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the Golf Club President to sign the Amalgamation Application if required to do so.

#### **14. WARRANTIES AND OPERATIONAL ARRANGEMENTS**

---

- 14.1 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 \$5,000.00 plus GST without the prior approval of the RSL Club's General Manager 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) Ensure that the Golf Club's General Manager has regular discussions with the RSL Club's General Manager regarding the management and operations of the Golf Club with the object of 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.
- 14.2 Each of the Golf Club's warranties contained in clause 14.1 remains in full force and effect notwithstanding Completion of the Amalgamation.
- 14.3 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club) 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 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.
- 14.4 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 15.
- 14.5 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.
- 14.6 Subject to the Golf Club complying with clauses 14.1 and 14.3, the RSL Club

warrants to the Golf Club that from the date the Assets of the Golf Club are transferred to the RSL Club, the RSL Club will:

- (a) accept full responsibility for the Golf Club's Debts and Liabilities; and
- (b) indemnify and keep indemnified the directors of the Golf Club in respect of any Claims made against them by creditors of the Golf Club.

14.7 Subject to clause 14.8 and the Golf Club complying with clause 14.1 and 14.3, the RSL Club warrants to the Golf Club that, provided the members of the Golf Club pass the ordinary resolution referred to in clause 12.1 and the members of the RSL Club pass the resolutions referred to in clauses 12.3 and 12.5, the RSL Club will provide to the Golf Club such reasonable financial assistance (in accordance with clause 14.8) as is required to assist the Golf Club to remain solvent until Completion of the Amalgamation or termination of this Memorandum (whichever is the earlier).

14.8 Any financial assistance referred to in clause 14.7 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 8%) and will be calculated from the date of the Loan Agreement until repayment.

## 15. **DISSOLUTION OF THE GOLF CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO RSL CLUB**

---

15.1 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 liquidating the Golf Club in the manner referred to in clause 15.5).

15.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 15.1 to occur on the date of the Final Order.

15.3 For the purposes of clause 15.1, 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 real property; and
- (b) all poker machines and all poker machine entitlements;
- (c) all contract rights;
- (d) all intellectual property rights;
- (e) all physical assets, furniture and fittings and stock in trade,

owned or entered into by the Golf Club.

- 15.4 The transfers and assignments referred to in clause 15.3 must be executed by the Golf Club and held in escrow by the RSL Club's solicitors pending Completion of the Amalgamation.
- 15.5 As soon as practicable after Completion of the Amalgamation, the Golf Club must ensure the Golf Club is liquidated. In order to facilitate the liquidation, as soon as practicable after Completion of the Amalgamation, the Golf Club must:
- (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, including the appointment of a Liquidator approved by the RSL 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.
- 15.6 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 15.

## **16. ACCESS TO RECORDS**

---

- 16.1 From the date of this Memorandum:
- (a) For the purpose of any due diligence referred to in clause 2.4(b), the Golf 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 Golf Club in order for the Golf Club to properly carry out and complete the due diligence review.
  - (c) The Golf Club will provide to the RSL Club at all reasonable times access to the Golf Club's Premises, Records and other information and material reasonably required by the RSL Club.

## **17. CONFIDENTIALITY**

---

- 17.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 17.2 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.
- 17.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.

17.4 This clause 17 survives completion of this Memorandum.

## **18. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM**

---

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

18.2 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.

18.3 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.

18.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 18.2 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.

18.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 18.2 a party which has complied with the provisions of this clause 18 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.

18.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 18 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.

## **19. COSTS**

---

19.1 Each party shall pay its own costs in relation to the preparation, execution and completion of this Memorandum and in relation to the steps up until Completion of the Amalgamation.

19.2 The RSL Club shall pay the costs in relation to the winding up/Liquidation of the Golf Club corporate entity after Completion of the Amalgamation.

## **20. STAMP DUTY**

---

20.1 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.

- 20.2 Despite the exemption from duty referred to in clause 20.1 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.

## **21. GENERAL**

---

- 21.1 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.
- 21.2 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.
- 21.3 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.
- 21.4 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.
- 21.5 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.
- 21.6 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.
- 21.7 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.

## **22. TERMINATION**

---

- 22.1 The RSL Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Golf Club if:
- (a) the due diligence review undertaken by it on the Golf 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 Golf Club materially breaches any warranty provided for in clause 14; or
  - (c) the circumstances in clause 14.2 exist in relation to the Golf Club.
- 22.2 The Golf 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 Golf Club. The Board of the Golf Club can waive this requirement at any time; or

(b) the circumstances in clause 14.2 exist in relation to the RSL Club.

22.3 If:

(a) the members of the Golf Club have not passed the resolution referred to in clause 12.1 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 12.3 and 12.5 within six (6) months of the members of the Golf Club passing the resolution referred to in clause 12.1,

then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

22.4 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within twelve (12) months of the date of this Memorandum then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

22.5 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 22 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 22.

22.6 If this Memorandum is terminated in accordance with this clause 22 the Amalgamation terminates.

## **23. NOTICES**

---

23.1 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.

23.2 A notice given in accordance with subparagraphs 23.1(a), 23.1(b), 23.1(c) of paragraph 23.1 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.

## **24. PROCESS FOR THE VARIATION OF THIS MEMORANDUM**

---

24.1 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.

**25. WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT**

---

25.1 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.


**26. NOTES**

---


26.1 This Memorandum is to be:

- (a) Made available to the ordinary 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 (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 Golf Club to the RSL Club.

Executed by **Penrith Golf &** )  
**Recreation Club Limited ACN 54 000** )  
**377 499** pursuant to Section 127 of the )  
Corporations Act 2001

  
\_\_\_\_\_  
Director / Secretary

**ROBERT JENSEN**  
\_\_\_\_\_  
Name of Director/Secretary  
(print name)


  
\_\_\_\_\_  
Director / Secretary

**Brendon Kop**  
\_\_\_\_\_  
Name of Director/Secretary  
(print name)

Executed by **Seven Hills -** )  
**Toongabbie RSL Club Limited ABN** )  
**65 000 862 680** pursuant to Section )  
127 of the Corporations Act 2001

  
\_\_\_\_\_  
Director / ~~Secretary~~

*B. Wilson*  
\_\_\_\_\_  
Name of Director/~~Secretary~~  
(print name)

  
\_\_\_\_\_  
Director / ~~Secretary~~

*G. Black*  
\_\_\_\_\_  
Name of Director/~~Secretary~~  
(print name)