

PIGOTTSTINSON

LAWYERS SINCE 1863

OVER **150** YEARS OF SERVICE

MEMORANDUM OF UNDERSTANDING

DATED 18 October 2023

PARTIES

ARMIDALE EX-SERVICES MEMORIAL CLUB LTD
ABN 61 000 979 377

AND

URALLA GOLF CLUB
ABN 58 000 939 604

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ABN 82 680 297 642

Associated Firm - Melbourne McKean Park

Date 18 October 2023

Parties

Name	Armidale Ex-Services Memorial Club Ltd
ABN	61 000 979 377
Short form name	Ex Servies Club
Notice details	Scott Sullivan Chief Executive Officer 137 Dumaresq Street, Armidale NSW 2350 Email: ceo@armidaleservies.com.au

Name	Uralla Golf Club
ABN	58 000 939 604
Short form name	Golf Club
Notice details	Darrell Carson 33 Plane Avenue, Uralla NSW 2358 Email: dcarson@bigpond.net.au

together "the Parties" or separately "a Party"

RECITALS

- (A) The Golf Club and the Ex-Servies Club both operate registered clubs in NSW pursuant to Club Licences.
- (B) The Ex-Servies Premises is located within fifty (50) kilometres of the Golf Club Premises.
- (C) The Ex-Servies Club called for expressions of interest (**EOI**) from other registered clubs interested in amalgamation on the basis of the Ex-Servies Club being the surviving club in any such amalgamation.
- (D) The Golf Club lodged an EOI.
- (E) The parties have had discussion and negotiations on a possible amalgamation.
- (F) The parties now propose to amalgamate the two Clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act

OPERATIVE SECTION

1 INTERPRETATION

1.1 In this Memorandum, unless the context otherwise requires:

Amalgamated Club	means the amalgamated registered club from the amalgamation of the Ex Servies Club and the Golf Club.
Amalgamation	means an amalgamation between the Golf Club and the Ex-Servies Club pursuant to the Registered Clubs Act and the Liquor Act.
Amalgamation Application	means the provisional application for the transfer of the Golf Club's Liquor Licence to the Ex-Servies Club pursuant to sections 60(6) and (7) of the Liquor Act to be made by the Clubs
Assets	means all of the goodwill, land, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines and all other property, tangible or intangible belonging to the Golf Club at the time of Completion of the Amalgamation.
Authority	means the Independent Liquor and Gaming Authority.
Authorisation	includes any consent, authorisation, registration, lodgement, agreement, notarisation, certificate, licence, approval or exemption prescribed by law or regulation or required by any Government Agency.
Business Day	means any day (other than a Saturday, Sunday or public holiday) on which banks are open for general business in Sydney, New South Wales
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 the Ex Servies Club and the Golf Club.
Completion of the Amalgamation	means the day on which: <ul style="list-style-type: none">(i) the Final Order is granted and the Golf Club's Liquor Licence is transferred to the Ex Servies Club;(ii) the Assets, Debts and Liabilities of the Golf Club are transferred to the Ex Services Club, as referred to in clause 16.1;(iii) the Golf Club's members become members of the Ex Servies Club; and

- (iv) the Amalgamated Club takes over responsibility for the management and control of the Golf Club Premises and the Ex Servies 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 but not limited to all correspondence by letter and/or electronic mail, compact discs, digital video discs, universal serial bus sticks, all financial data and information relating to a party, business plans, unpublished financial accounts, data and reports, supply lists and information relating to the business of a party's suppliers.
Corporations Act	means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder.
Debts	means the accumulated debts of the Golf Club at the time of Completion of the Amalgamation
Ex Servies CEO	means the individual who fulfills the role of secretary and chief executive officer at the Ex Services Club.
Ex Servies Premises	Means the premises of the Ex Servies Club located at 137 Dumaresq Street, Armidale NSW 2350.
Ex-Servies Club's Property	means all property brought on to the Golf Club Land which is owned by the Ex-Servies 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 Ex Services Club.
Gaming Machines Act	means the Gaming Machines 2001 (NSW) and the Regulations made thereunder.
Golf Club's Land	means the land owned by Golf Club.
Golf Club's Premises	means the property owned by Golf Club and which is situated on and in Golf Club's Land.
Golf Committee	means the committee referred to in clause 5.5
Liabilities	means all liabilities, losses, damages, outgoings, costs and expenses of the Golf Club (whatever description) at the time of Final Order.
Liquor Act	means Liquor Act NSW 2007.
Liquor Licence	means the Club Licence held by Golf Club pursuant to the Liquor Act 2007.
MOU	means this MOU.

Order	means the conditional grant of the Amalgamation Application by the Authority pursuant to section 60(7) of the Liquor Act.
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 its 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.

1.2 In this Memorandum, including the Recitals, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a person includes a natural person, body corporate, firm, partnership, joint venture, association, unincorporated body, authority, trust, state or government;
- (c) a reference to any gender includes all genders;
- (d) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this Agreement;
- (e) a schedule or annexure forms part of this Agreement;
- (f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of or any legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision
- (h) a reference to any party to this Agreement or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (i) the words 'includes' and 'including' are not words of limitation;
- (j) headings are for convenience only and do not affect interpretation;
- (k) a reference to dollars or \$ is to Australian currency;
- (l) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing;
- (m) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;

- (n) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparing of this Deed or that provision.
- (o) if the day on or by which something is required to be done or may be done is not a Business Day, that thing must be done on or by the next Business Day.

2. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION

- 2.1 The Ex Servies Club and the Golf Club agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.
- 2.3 The Amalgamation will be effected by the continuation of the Ex Servies Club and the dissolution of the Golf Club.

Process for Amalgamation

- 2.4 The process for the Amalgamation will be as follows:
 - (a) The Clubs enter into this Memorandum.
 - (b) The members of the Ex Servies Club and the Golf 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 13 below.
 - (c) The members of the Ex Servies Club will be asked to approve (by special resolution) amendments to the Constitution at the general meeting held to approve the Amalgamation in the manner provided for in clause 13.5 below.
 - (d) Once the approvals in clauses 2.4 (b) and (c) have been obtained, the Amalgamation Application will then be made to the Authority in the manner referred to in clause 14 below.
 - (e) After the Amalgamation Application is granted and on the date of the Final Order:
 - (i) the Assets, Debts and Liabilities will be transferred to the Ex Servies in the manner referred to in clause 16 below;
 - (ii) all members of the Golf Club will, with their consent, be admitted as members of the Ex Servies Club and will be identified as a separate class of ordinary membership called "Uralla Golf Club members" and in separate categories (including sub-categories) of golfing membership in accordance with the procedure set out in clause 13.5 below (such that, the categories of membership will be inserted into the Ex Servies Club Constitution pursuant to the Special Resolution(s) referred to in that clause); and
 - (iii) all employees of the Golf Club will be offered similar employment with the Ex Servies Club, and if they accept, will be employed by the Ex Servies Club. This will occur in accordance with the procedure set out in clause 6 below.

- (f) After Completion of the Amalgamation, the Ex Servies Club will continue as the body corporate of the Amalgamated Club.
- (g) From Completion of the Amalgamation, the Golf Club Premises will become additional licensed premises of the Ex Servies Club and will be available to all members of the Amalgamated Club.
- (h) The Golf Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below.
- (i) After Completion of the Amalgamation, the Golf Club will be liquidated in the manner referred to in clause 16 below.

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 premises of the Ex Servies Club as the surviving club in the Amalgamation.
- 3.2 The Amalgamated Club will operate and trade from the Ex Servies Club Premises and the Golf Club Premises.
- 3.3 For the purposes of the RCA, the Ex Servies Club CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- 3.4 The Board of the Ex Servies Club will be the Board of the Amalgamated Club.
- 3.5 The Amalgamated Club will take over responsibility and control of the Ex Servies Club and the Golf Club Premises with effect from Completion of the Amalgamation.

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 Golf Club will be maintained by the Amalgamated Club at the Golf Club Premises.
- 4.2 The Amalgamated Club will continue to support the community that was supported by the Golf Club (as at the date of this Memorandum) and it will explore opportunities to expand 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 Amalgamated Club will operate the Golf Club Premises in accordance with this clause 5.

Amalgamated Club Premises

- 5.2 The Amalgamated Club will operate and trade from the Ex Servies Club Premises

and the Golf Club Premises.

Golf Club Premises

5.3 The Golf Club Premises will be named and promoted as "Uralla Golf Club".

5.4 Subject to clauses 9, 10 and 11, the Amalgamated Club intends to:

- (a) maintain the Golf Club Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Golf Premises, with facilities and amenities of a registered club.
- (b) operate the golf course as a successful and well supported course.
- (c) promote the golf course and golf facilities at the Golf Club Premises and the licensed premises/clubhouse at the Golf Club Premises.
- (d) seek to enhance the social facilities, amenities and activities at the Golf Club Premises.
- (e) maintain and where possible enhance, the existing facilities and activities at the Golf Club Premises.
- (f) make improvements to the clubhouse and surrounds of the Golf Club Premises in order to provide superior facilities and food offerings.

Golf Committee

5.5 The Board of the Amalgamated Club will create the Golf Committee in respect of the Golf Club Premises and the following shall apply in respect of the Golf Committee:

- (a) The Golf Committee will comprise
 - (i) a President;
 - (ii) a Captain;
 - (iii) three other member who will be elected as set out in this clause; and
 - (iv) the Ex Servies Club CEO, or their nominee, who may attend meetings but will have no right to vote.

5.6 The first Golf Committee will comprise the Golf Club members who are the President and Captain at the time of Completion of the Amalgamation and three other Full Golf Club members who shall be elected to the Committee as soon as practicable after Completion of the Amalgamation (**First Golf Committee**).

- (a) The First Golf Committee shall hold office until the first election of the Golf Committee.
- (b) The first election of the Golf Committee will be held on a date determined by the Board of the Amalgamated Club such date being as soon as practicable after each Annual General Meeting of the Amalgamated Club.

- (c) Each subsequent election of the Golf Committee will be held at a meeting called by the Board of Ex Servies Club and held at the Golf Club Premises.
- (d) Only Golf Club members, and members who join the Amalgamated Club in a category (including any sub-category) of golfing membership referred to in clause 13 after Completion of the Amalgamation, will be eligible to:
 - (i) vote in the election of the Golf Committee; or
 - (ii) stand for election to the Golf Committee.
- (e) The Golf Committee will meet at such intervals as may be determined by the Golf Committee from time to time.
- (f) The Golf Committee may make recommendations to the Board and/or management of the Amalgamated Club regarding the following matters:
 - (i) Golfing matters (for example, rules of golf) and competitions.
 - (ii) Promotion of golf generally at the Golf Club Premises.
 - (iii) An annual golf program of events and competitions.
 - (iv) Membership subscriptions, green fees, competition fees and other amounts relating to the playing of golf.
- (g) The Golf Committee:
 - (i) will not have any governance or management powers in the Amalgamated Club (except if specifically delegated to it by resolution of the Board) and it shall be subject to the overall control and direction of the Board and management of the Amalgamated Club; and
 - (ii) will be required to provide reports to 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 Golf Club will be wound up/liquidated. As part of the winding up/liquidation of the Golf Club, the employment of all the Golf Club's employees would, if not for this clause 6, come to an end.
- 6.2 Prior to Completion of the Amalgamation,:
 - (a) the Ex Servies Club will offer employment to all of the Golf Club's employees.
 - (b) The offers of employment will be effective from the Completion of the Amalgamation and will be on the same terms and conditions presently offered by the Ex Servies Club to employees of the Ex Servies Club provided that it does not result in any employee of the Golf Club receiving lesser benefits than they presently receive from the Golf Club.

- (c) Any employee of the Golf Club who accepts the offer of employment with the Ex Services Club will receive continuity of employment and their accrued entitlements will be honoured by the Ex Services Club.
- (d) Any employee of the Golf Club who does not accept the offer of employment with the Ex Services Club will be paid their full entitlements (funded by the Ex Services Club when their employment with the Golf Club comes to an end).

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

- 1. ANY CORE PROPERTY;**
- 2. ANY CASH OR INVESTMENTS;**
- 3. ANY GAMING MACHINE ENTITLEMENTS**

[Regulations – Clause 7(2) (e)]

Core Property

- 7.1 For the purposes of the RCA, the Golf Club Premises is the “core property” of the Golf Club.
- 7.2 Subject to other provisions of this Memorandum, the Amalgamated Club will retain the core property of the Golf Club and operate the Amalgamated Club in the manner referred to in clause 5 for a period of at least 10 years from Completion of the Amalgamation.
- 7.3 If the Amalgamated Club wishes to dispose of any core property or make a significant change or changes to the Golf Club Premises within 10 years from Completion of the Amalgamation, it can only do so if, in addition to obtaining all other required approvals, a resolution on which Golf Club members can vote, is passed approving the proposed disposal or change.

Cash and Investments

- 7.4 The cash and investments (if any) of the Golf Club and the Ex Services Club will be transferred (in accordance with clause 16) to the general reserves of the Amalgamated Club.

Gaming Machine Entitlements

- 7.5 As at the date of this Memorandum, the Golf Club has 7 gaming machine entitlements issued to the Golf Club Premises.
- 7.6 the Board of the Amalgamated Club will retain a minimum of 7 gaming machine entitlements as currently issued to the Golf Club Premises and have a minimum of 7 gaming machines operating at the Golf Club Premises while the Golf Club Premises is trading.

8. RISKS OF NOT PRESERVING THE GOLF CLUB’S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED

[Regulations – Clause 7(2) (e1)]

- 8.1 Subject to clauses 9, 10 and 11, the Amalgamated Club will not dispose of the core property of the Golf Club during the first 10 years after Completion of the Amalgamation.
- 8.2 The risks of the Amalgamated Club not meeting the intentions of the parties in

preserving the core property of the Golf Club are those set out in clause 10.4.

- 8.3 If the risks (or any of them) in clause 10.4 are realised during the first 10 years after the Completion of the Amalgamation, clause 7.3 provides that a disposal could only occur if, in addition to obtaining all other required approvals, a resolution approving the proposed disposal, and on which only Golf Club members and members of the Amalgamated Club who join a golfing category of membership can vote, is passed by at least a 75% majority of votes cast on the resolution.
- 8.4 If the risks (or any of them) in clause 10.4 are realised after the first 10 years after Completion of the Amalgamation, the Amalgamated Club will use its reasonable endeavours to find ways to address those risks so that the disposal of the Golf Club core property will be considered only after all other ways have been exhausted and provided the disposal is in accordance with the RCA.

9. DISPOSAL OF THE GOLF CLUB MAJOR ASSETS
[Regulations – Clause 7(2) (e2)]

- 9.1 For the purposes of the RCA, the Golf Club Premises are the “core property” of the Golf Club.
- 9.2 Subject to clauses 10 and 11 of this Memorandum, the Amalgamated Club will not dispose of the major assets of the Golf Club during the first 10 years after Completion of the Amalgamation.

10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING IN THE PREMISES OF THE GOLF CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB
[Regulations – Clause 7(2) (f)]

- 10.1 The Amalgamated Club does not intend to:
- (a) cease trading from the Golf Club Premises; or
 - (b) substantially change the objects of the Golf Club.
- 10.2 The Amalgamated Club intends to operate in the manner referred to in clause 5.
- 10.3 However, for the purposes of clause 7(2)(f) of the Regulations, the Ex Servies Club and the Golf Club are required to agree to the matters set out in clause 10.4.
- 10.4 For the purposes of clause 7(2)(f) of the Regulations, the Ex Servies Club and the Golf Club have agreed that the Amalgamated Club would not cease trading from nor change the objects of the Golf Club Premises except in any of the following circumstances:
- (a) After 10 years from the Completion of the Amalgamation;
 - (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs, provided that the order has not been sought by the Amalgamated Club;
 - (c) upon the lawful order of any government authority, provided that the order has not been sought by the Amalgamated Club.

10.5 For the purposes of clause 7(2)(f) of the Regulations, the Ex Servies Club and the Golf Club have agreed that the Amalgamated Club could cease to trade from the Golf Club licensed premises/clubhouse in either of the following circumstances:

- (a) if the Golf Club licensed premises/clubhouse is destroyed or partially destroyed by fire, floods, storms etc such that it is not lawful for a licensed premises/clubhouse to be operated at that site and any resulting insurance claim is not sufficient to re-instate or re-build licensed premises/clubhouse at that site;
- (b) upon the lawful order of any government authority, provided that the order has not been sought by the Amalgamated Club,

and provided that the parties acknowledge and agree that this clause 10.5 relates only to the Golf Club licensed premises/clubhouse only and not the remainder of the Golf Club Premises.

10.6 The Amalgamated Club will only cease operating the golf course or undertake a significant change to the design or layout of the golf course within 10 years from Completion of the Amalgamation with the approval of Uralla Golf members given by a resolution passed by a general meeting of such members.

11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE GOLF CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE GOLF CLUB
[Regulations – Clause 7(2) (g)]

11.1 The Amalgamated Club does not intend to cease trading from the Golf Club Premises. The Amalgamated Club intends to operate the Golf Club Premises in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clauses , 9 and 10.

11.2 The objects of the Amalgamated Club will be the objects of the Golf Club and the Ex Servies Club with effect from Completion of the Amalgamation, as amended in accordance with clause 13.5.

11.3 However, for the purposes of clause 7(2)(g) of the Regulations, the Ex Servies Club and the Golf Club are required to agree to the matters set out in clause 11.4.

11.4 For the purposes of clause 7(2)(g) of the Regulations, the Ex Servies Club and the Golf Club have agreed that the Amalgamated Club will continue to trade from the Golf Club Premises for at least 10 years from Completion of the Amalgamation.

12. BINDING EFFECT OF MEMORANDUM

The Ex Servies Club and the Golf 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 THE GOLF CLUB MEMBERS TO MEMBERSHIP OF THE EX SERVIES CLUB

13.1 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 approving in principle the Amalgamation in accordance with section 17AEB (d) of the RCA.

- 13.2 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 13.3 If the resolution referred to in clause 13.1 is passed, the Ex Servies Club will call a general meeting of the ordinary members of the Ex Servies 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 general meeting referred to in clause 13.1 is held.
- 13.5 In addition to the resolution referred to in clause 13.3, the Ex Servies Club will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, one or more Special Resolutions to amend the Constitution of the Ex Servies Club as follows:
- (a) A new object will be inserted into the Ex Servies Club constitution to refer to the promotion of golf as an object of the Amalgamated Club.
 - (b) All members of the Golf Club who apply to become members of the Ex Servies Club will be admitted to membership of the Ex Servies Club.
 - (c) All members of the Golf Club will be able to apply for membership of the Ex Servies Club in the manner referred to in this clause 13.5.
 - (d) As soon as practicable after the Order, the Ex Servies Club will forward to each member of the Golf Club, who is not already a member of the Ex Servies Club, a written invitation to become a member of the Ex Servies Club.
 - (e) Any member of the Golf Club who accepts the invitation and agrees in writing to be bound by the Constitution of the Ex Servies Club will (subject to the name of that person being displayed on the noticeboard of the Ex Servies Club for not less than 7 days and a period of not less than 14 days elapsing after the receipt of the acceptance by the Ex Servies Club) be elected by a resolution of the Board of the Ex Servies Club to membership of the Ex Servies Club with effect from the date of Completion of the Amalgamation.
 - (f) the Golf Club's members who are admitted to membership of the Ex Servies Club will be identified as a separate class of ordinary membership called the "the Uralla Golf Club Members" but may transfer to any other class of membership of the Ex Servies Club for which they are eligible to join.
 - (g) Subject to clause 13.7(h), a new Category of Category III of membership will be inserted into the Servies Club Constitution with the following sub-categories of membership will be created in the Ex :
 - (i) Full Golfing member
 - (ii) Social Golfing member
 - (iii) Junior Golfing member
 - (iv) Cadet Golfing member
 - (v) Full Student Golfing member

(vi) Country Golfing member.

- (h) Any person who, at Completion of the Amalgamation, is a Life member of the Golf Club is to be admitted to Life membership of the Ex Servies Club, with the Ex Servies Club's Constitution to be amended for Life members to be admitted under this paragraph.

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

- (a) refused admission to or being turned out of the Ex Servies Club Premises; or
- (b) suspended from the Ex Servies Club pursuant to the Ex Servies Club's Constitution; or
- (c) expelled from the Ex Servies Club pursuant to the Ex Servies Club's Constitution;

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

- (d) the person is again permitted to enter the Ex Servies Club Premises; or
- (e) the period of suspension has been served; or
- (f) the Board of the Amalgamated Club has overturned the person's expulsion from the Ex Servies Club.

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 14.1 the Ex Servies Club and its lawyers will prepare and file the Amalgamation Application.
- 14.2 the Golf Club will co-operate with the Ex Servies Club and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

15.1 The Golf Club warrants to the Ex Servies Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Golf Club will subject to clause 15.2:

- (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 Ex Servies Club's CEO or the CEO's delegate;
- (b) maintain the Assets of the Golf Club in the same state of repair as they are at the date of this Memorandum, subject to reasonable wear and tear, and keep the Assets of the Golf Club insured in amounts representing their full replacement or reinstatement value against fire and other risks normally

insured;

- (c) carry on its operations with normal and prudent practice using reasonable endeavours to reduce losses and increase profitability and use reasonable endeavours to maintain and increase the value of the Assets;
- (d) provide the Ex Servies Club's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of the Golf Club;
- (e) not do anything which may damage the goodwill of its business or that of the Ex Servies Club;
- (f) not without the prior written consent of the Ex Servies Club's CEO or the CEO's delegate:
 - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
 - (ii) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;
 - (iii) dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of the Golf Club's Assets;
 - (iv) employ any employee (other than a casual employee);
 - (v) terminate the employment of any employee (other than a casual employee);
 - (vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
 - (vii) seek to borrow or borrow money from any third party;
 - (viii) increase the level of debt of the Golf Club beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of the Golf Club; or
 - (ix) engage in discussions or negotiations with anyone other than the Ex Servies Club concerning the sale of all or any part of the Golf Club's Assets (otherwise than as permitted under (iii) above), and the Golf Club must advise the Ex Servies Club of any solicitation by any third party in respect of any such discussion or negotiation.

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

15.3 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, either 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 warranties given by the other club as set out in clause 15.1.

- 15.4 The Ex Servies Club's CEO and the Golf Club's President will have regular discussions about the management and operations of the Amalgamated Club with the object of:
- (a) providing for an orderly transfer of the management and operations of the Golf Club to the Ex Servies Club on the date of Completion of the Amalgamation; and
 - (b) achieving efficiencies and cost savings in at both the Ex Servies Club and the Golf Club; and
 - (c) implementing operational changes in preparation for Completion of the Amalgamation.
- 15.5 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
- (a) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
 - (b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given, to the other Club untrue or misleading;
 - (c) any Claim of any nature is threatened or asserted by or against the subject Club; or
 - (d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,
- then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.
- 15.6 Title to, property in and risk of the Golf Club's Assets will remain solely with the Golf Club until such time as the Golf Club's Assets are transferred to the Amalgamated Club in accordance with clause 16.
- 15.7 For the avoidance of doubt it is acknowledged that no liability by the Golf Club is accepted or will exist for any breach of a warranty in the absence of actual knowledge by the Golf Club.

16. DISSOLUTION OF THE GOLF CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO THE EX SERVIES CLUB

- 16.1 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 Ex Servies Club (less an amount sufficient for the purposes of any liquidation of the Golf Club).
- 16.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities (if required) 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 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 Ex Servies Club with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:
- (a) all gaming machines and all gaming machine entitlements;
 - (b) all contract rights including hire purchase agreements;
 - (c) all intellectual property rights;
 - (d) all physical assets, furniture and fittings and stock in trade, owned or entered into by the Golf Club.
- 16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Golf Club and held in escrow by the Ex Servies Club pending Completion of the Amalgamation.
- 16.5 As soon as practicable after Completion of the Amalgamation, the Golf Club must ensure the Golf Club is either voluntarily deregistered or liquidated.
- 16.6 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 16.

17. ACCESS TO RECORDS

- 17.1 From the date of this Memorandum, the Golf Club will provide to the Ex Servies Club at all reasonable times, access to the Golf Club Premises Records and other information and material reasonably required by the Ex Servies Club for the purposes of the Amalgamation.
- 17.2 From the date of this Memorandum, the Ex Servies Club will provide to the Golf Club at all reasonable times, access to the Ex Servies Club Records and other information and material reasonably required by the Golf Club for the purposes of the Amalgamation.

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 within 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 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

Each party shall pay its own costs arising out of and incidental 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 Revenue NSW 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 Ex Servies 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.

23. TERMINATION

- 23.1 The Ex Servies Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Golf Club if the Golf Club breaches any warranty contained in clause 15.1.

23.2 If:

- (a) the members of the Golf Club have not passed the resolution referred to in clause 13.1 within 6 months of the date of this Memorandum; or
- (b) the members of the Ex Servies Club have not passed the resolutions referred to in clauses 13.3 and 13.5 within 6 months of the members of the Golf Club passing the resolution referred to in clause 13.1; or
- (c) either club breaches clause 15.1,

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

- 23.3 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within 18 months of the date of this Memorandum (or such later date agreed in writing by the parties), then either party by giving written notice to the other may, without penalty, terminate this Memorandum.
- 23.4 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.
- 23.5 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 recipient's 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 email to that address.
- 24.2 A notice given in accordance with clause 24.1 will be deemed to be duly given:
- (a) two days after the date of posting by pre-paid registered post;
 - (b) on the day of hand delivery;
 - (c) if sent by email, the day after the email was sent,
- 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

27.1 This Memorandum is to be:

- (a) made available to the ordinary members of the Golf Club and the Ex Servies 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 for at least 21 days before any meeting as referred to in paragraph (a) of these Notes is held; and
- (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 Ex Servies Club.

EXECUTED as a Deed

Executed by **ARMIDALE EX**)
SERVICES CLUB LIMITED (ABN)
61 000 979 377) pursuant to Section)
127 of the Corporations Act 2001)



Director / Secretary

BRIAN GLENISTER

Name of Director/Secretary
(print name)

Executed by **URALLA GOLF CLUB**)
(ABN 58 000 939 604) pursuant to)
Section 127 of the Corporations Act)
2001)



Director / ~~Secretary~~

Darrell Carson

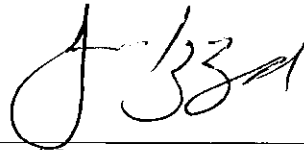
Name of Director/~~Secretary~~
(print name)



Director / Secretary

Mark Bullen

Name of Director/~~Secretary~~
(print name)



Director / Secretary

Jon Izzard

Name of Director/~~Secretary~~
(print name)