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MEMORANDUM OF UNDERSTANDING

DATED 18 April 2024

PARTIES

TOONGABBIE SPORTS AND BOWLING CLUB LIMITED
ACN 001 050 371

AND

COLLARENEBRI CLUB LIMITED
ACN 001 061 605

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ABN 82 680 297 642

This Memorandum of Understanding is made on 18 April 2024

BETWEEN

TOONGABBIE SPORTS AND BOWLING CLUB LIMITED (ACN 001 050 371) of 12 Station Street Toongabbie NSW 2146 (**Toongabbie Sports Club**).

and

COLLARENEBRI CLUB LIMITED (ACN 001 061 605) of 304 Walgett Road Collarenebri NSW 2833 (**Collarenebri Club**).

BACKGROUND

- (A) Toongabbie Sports Club and Collarenebri Club both operate registered clubs in New South Wales.
- (B) Collarenebri Club called for expressions of interest in amalgamation from other registered clubs.
- (C) Toongabbie Sports Club submitted an expression of interest to the Collarenebri Club.
- (D) The Collarenebri Club has accepted the expression of interest from Toongabbie Sports Club and, following further negotiation, Toongabbie Sports Club and Collarenebri Club have agreed to the terms set out in this Memorandum.
- (E) Toongabbie Sports Club and the Collarenebri Club propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- (F) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

- (a) **“Advisory Committee”** means the Advisory Committee referred to in clause 5.5.
- (b) **“Amalgamated Club”** mean the amalgamated registered club of Toongabbie Sports Club and the Collarenebri Club, the corporate vehicle of which will be Toongabbie Sports Club;
- (c) **“Amalgamation”** means the amalgamation of the Clubs in accordance with this Memorandum;
- (d) **“Amalgamation Application”** means the provisional application for the transfer of the Collarenebri Club’s Liquor Licence to Toongabbie Sports Club pursuant to Sections 60(6) and (7) of the Liquor Act by Toongabbie Sports Club and Collarenebri Club;
- (e) **“Assets”** means all of the goodwill, land (including the Land), Water Access

Licence, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines and all other property, tangible or intangible belonging to the Collarenebri Club at the time of Completion of the Amalgamation;

- (f) **“Authority”** means the Independent Liquor and Gaming Authority;
- (g) **“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;
- (h) **“ClubGRANTS”** means the ClubGRANTS scheme established under the Gaming Machine Tax Act 2001 for the granting of a rebate of gaming machine tax levied on registered clubs for expenditure on community development and support.
- (i) **“Clubs”** means both Toongabbie Sports Club and the Collarenebri Club;
- (j) **“Collarenebri Club Premises”** means Collarenebri Club’s premises located at 304 Walgett Road Collarenebri NSW 2833;
- (k) **“Collarenebri Club’s Secretary Manager”** means the individual who fulfils the Secretary or Secretary Manager’s role at the Collarenebri Club;
- (l) **“Completion of the Amalgamation”** means the day on which:
 - (i) the Final Order is granted and Collarenebri Club’s Liquor Licence is transferred to Toongabbie Sports Club; and
 - (ii) the Assets (including the Land and Water Access Licence), Debts and Liabilities of the Collarenebri Club are transferred to Toongabbie Sports Club, as referred to in clause 15.1;
 - (iii) Collarenebri Club’s members become members of Toongabbie Sports Club and all members of the Collarenebri Club and Toongabbie Sports Club become members of the Amalgamated Club;
 - (iv) Toongabbie Sports Club takes over responsibility for the management and control of the Collarenebri Club Premises.
- (m) **“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;
- (n) **“Corporations Act”** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder;
- (o) **“Debts”** means the accumulated debts of the Collarenebri Club at the time of Completion of the Amalgamation;
- (p) **“Final Order”** means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby Collarenebri Club’s Liquor Licence will be transferred

to Toongabbie Sports Club;

- (q) **“Gaming Machines Act”** means the Gaming Machines 2001 (NSW) and the Regulations made thereunder;
- (r) **“GST”** means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (s) **“Land”** means all of the land owned by the Collarenebri Club, including without limitation the land located at 26-36 Walgett Street Collarenebri NSW 2833 (Folio Identifiers 1/133141, 4/1/1758262, 1/662505 and Auto Consol 6991-235);
- (t) **“Liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of Collarenebri Club (whatever description) at the time of Final Order;
- (u) **“Liquor Act”** means the Liquor Act 2007 (NSW) and the Regulations made thereunder;
- (v) **“Liquor Licence”** means the club licence issued to a registered club under the *Liquor Act*;
- (w) **“Memorandum”** means this Memorandum of Understanding;
- (x) **“Order”** means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (y) **“Party”** means the respective management and Board of Directors of the Collarenebri Club and Toongabbie Sports Club;
- (z) **“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 Collarenebri Club in the conduct of Collarenebri Club business including but not limited to corporate, accounting and statutory records;
- (aa) **“Regulations”** mean the Regulations to the RCA;
- (bb) **“RCA”** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder;
- (cc) **“Toongabbie Sports Club’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at Toongabbie Sports Club;
- (dd) **“Toongabbie Sports Club Premises”** means Toongabbie Sports Club’s premises located at 12 Station Street Toongabbie NSW 2146;
- (ee) **“Water Access Licence”** means the water access licence held by the Collarenebri Club in respect of the Collarenebri Club Premises (Folio Identifier WAL37517).
- (ff) **“Year”** means a period of twelve (12) months commencing on the anniversary of the date of the Final Order and concluding on the day immediately before the next anniversary date of the Final Order.

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

2. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION

- 2.1 Toongabbie Sports Club and the Collarenebri 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 Toongabbie Sports Club and the dissolution of the Collarenebri Club.

Process for Amalgamation

- 2.4 The process for the amalgamation will be as follows:
- (a) The Clubs will enter into this Memorandum.
 - (b) The members of the Collarenebri Club and Toongabbie Sports 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 Toongabbie Sports Club will be asked to approve (by special

resolution) amendments to Toongabbie Sports Club's Constitution in the manner provided for in clause 13.5 below.

- (d) Once the approvals in paragraphs (b) to (c) inclusive have been obtained, the Amalgamation Application will then be made to the Authority. The Amalgamation Application will be made 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 (including the Land and Water Access Licence), Debts and Liabilities of the Collarenebri Club will be transferred to Toongabbie Sports Club in the manner referred to in clause 16 below;
 - (ii) all eligible members of the Collarenebri Club will, with their consent, be admitted as members of Toongabbie Sports Club and will be identified as a separate class of ordinary membership called "Collarenebri Club members." This will occur in accordance with the procedure set out in clause 13.5 below (that is, the category of membership will be inserted into Toongabbie Sports Club's Constitution pursuant to the special resolution referred to in that clause);
 - (iii) employees of the Collarenebri Club who have accepted an offer of employment from Toongabbie Sports Club will become employees of the Amalgamated Club.
- (f) After Completion of the Amalgamation, Toongabbie Sports Club will continue as the body corporate of the Amalgamated Club.
- (g) From Completion of the Amalgamation, the Collarenebri Club Premises will become additional licensed premises of Toongabbie Sports Club and will be available to all members of the Amalgamated Club. The Collarenebri Club Premises will be operated in the manner set out in clause 3, clause 4 and clause 5 below.
- (h) After Completion of the Amalgamation, the Collarenebri Club will be wound up in the manner referred to in clause 16 below.

Due Diligence

- 2.5 The Collarenebri Club may, at its own expense, undertake a due diligence review of Toongabbie Sports Club's financial position and operations.
- 2.6 Toongabbie Sports Club may, at its own expense, undertake a due diligence review of the Collarenebri Club's financial position and operations.
- 2.7 Each Club will, if required by the other, provide a list of information (including, but not limited to, details of its Assets, Debts and Liabilities) and assistance to the other Club in order for the other Club to properly carry out and complete the due diligence review.

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

[Regulations – Clause 7(2)(a)]

- 3.1 The Collarenebri Club Premises will become additional premises of Toongabbie Sports Club.
- 3.2 The Amalgamated Club will operate and trade from the Toongabbie Sports Club Premises and the Collarenebri Club Premises.
- 3.3 Toongabbie Sports Club will take over responsibility and control of the Collarenebri Club Premises with effect from Completion of the Amalgamation.
- 3.4 The Board of Toongabbie Sports Club will be the Board of the Amalgamated Club.
- 3.5 Toongabbie Sports Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- 3.6 The Amalgamated Club will appoint an approved manager for the Collarenebri Club Premises following the Final Order.

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, bowling facilities, bowling amenities and memorabilia of the Collarenebri Club will be maintained by the Amalgamated Club at the Collarenebri Club Premises. For the avoidance of doubt, the honour boards at the Collarenebri Club Premises may be displayed in their present form or electronically (or a combination of both).
- 4.2 The Amalgamated Club will continue to support the community organisations that were supported by the Collarenebri 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, Toongabbie Sports Club will operate the Amalgamated Club and the Collarenebri Club Premises in accordance with this clause 5.

Amalgamated Club Premises

- 5.2 The Amalgamated Club will operate and trade from the Toongabbie Sports Club Premises and the Collarenebri Club Premises.

Collarenebri Club Premises

- 5.3 The Collarenebri Club Premises will be named and trade as “Collarenebri Sports Club”.
- 5.4 Subject to clauses 10 and 10.9, Toongabbie Sports Club:
- (a) will maintain the Collarenebri Club Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Collarenebri Club Premises with the usual facilities and amenities of a registered club;
 - (b) intends to operate the Collarenebri Club Premises as a successful and well supported local based social, sporting and community club;
 - (c) will undertake improvements or provide working capital to the value of at least \$80,000.00 to the Collarenebri Club Premises and facilities as and when deemed necessary by the Board of the Amalgamated Club in its absolute discretion within 12 months of the Final Order. Otherwise the timeframe, nature and budget for those improvements will be determined by the Board of the Amalgamated Club in its absolute discretion;
 - (d) intends to improve trading at the Collarenebri Club Premises; and
 - (e) will maintain and where possible enhance, the social and bowling facilities, services, amenities and activities at the Collarenebri Club Premises.

Advisory Committee

- 5.5 The management of the Amalgamated Club will create the Advisory Committee in respect of the Collarenebri Club Premises and the following shall apply in respect of the Advisory Committee:
- (a) The Advisory Committee will not have any governance or management powers in the Amalgamated Club and it shall be subject to the overall control and direction of the Board and Management of the Amalgamated Club at all times.
 - (b) The Advisory Committee will initially be made up of Toongabbie Sports Club’s CEO or his delegate and two (2) existing directors of the Collarenebri Club or any alternative two (2) members of the Collarenebri Club as the directors of the Collarenebri Club may select, who consent in writing to becoming members of the Advisory Committee.
 - (c) If a casual vacancy arises on the Advisory Committee, the remaining members of the Advisory Committee can fill the casual vacancy by appointing another Collarenebri Club member of the Amalgamated Club provided the Board of the Amalgamated Club has first approved the person who is proposed to be appointed to fill the casual vacancy.
 - (d) The Advisory Committee will have its own set of rules governing the roles, responsibilities and operations of the Advisory Committee provided such rules are approved by the Board of the Amalgamated Club in its absolute discretion;
 - (e) The Advisory Committee will meet at such intervals as may be determined by the Advisory Committee from time to time.
 - (f) The Advisory Committee may make recommendations to the Board and

Management of the Amalgamated Club regarding the following matters:

- (i) the operations of the Collarenbri Club Premises; and
 - (ii) ClubGRANTS to be made by the Amalgamated Club that are attributable to the Collarenbri Club Premises;
 - (iii) membership matters at the Collarenbri Club Premises;
 - (iv) the operation of the bowling greens and conduct of bowling activities at the Collarenbri Club.
- (g) The Advisory Committee may be required to provide reports to the Board of the Amalgamated Club.
- (h) The Advisory Committee shall be in force and effect for at least the first two (2) years after Completion of the Amalgamation.

Bowling Activities and Bowling Sub-Club

5.6 The Amalgamated Club will create a bowling sub-club to conduct and administer bowling at the Collarenebri Club Premises on behalf of the Amalgamated Club.

5.7 It is intended that the bowling sub-club will:

- (a) have its own rules, committees and members; and
- (b) be authorised to operate a bank account;
- (c) continue using its existing name and insignia;
- (d) elect its own committees;
- (e) be eligible to affiliate with such bodies controlling bowls in New South Wales on such terms and conditions (not inconsistent with the Constitution of Toongabbie Sports Club or the RCA) as such controlling bodies may from time to time require;
- (f) be created with the persons referred to in clause 13.5(h) recognised as life members of the sub-club.

Other Sub Clubs

5.8 If, at the date of this Memorandum, there are any sub-clubs at Collarenebri Club (other than the bowls sub-club referred to above), the Board of the Amalgamated Club will allow those sub-clubs to continue to exist provided all members of those sub clubs become members of the Amalgamated Club.

Subscriptions

5.9 Toongabbie Sports Club will treat any annual subscriptions which have been paid to Collarenebri Club for the subscription period current as at the date of the Completion of the Amalgamation as being annual subscriptions which have been paid to 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 Collarenebri Club will be wound up/liquidated. As part of the winding up/liquidation of the Collarenebri Club, the employment of all of the Collarenebri Club's employees with the Collarenebri Club will come to an end.
- 6.2 As soon as reasonably practicable after the Order but prior to the Completion of the Amalgamation, Toongabbie Sports Club will undertake a review of the staffing requirements at the Collarenebri Premises and it will only make offers of employment to those employees of the Collarenebri Club that are requisite to the needs of the Amalgamated Club after Completion of the Amalgamation.
- 6.3 The offers of employment:
- (a) will be made as soon as reasonably practicable after the Order; and
 - (b) will be conditional upon and be effective from the Completion of the Amalgamation;
 - (c) will be on the same terms and conditions presently offered by Toongabbie Sports Club to employees of Toongabbie Sports Club in similar roles provided that it does not result in any employee of the Collarenebri Club receiving lesser benefits than they presently receive from the Collarenebri Club.
- 6.4 Any employee of the Collarenebri Club who receives and accepts an offer of employment with Toongabbie Sports Club will receive continuity of employment and their accrued entitlements will be honoured by Toongabbie Sports Club.
- 6.5 Any employee of the Collarenebri Club who does not receive an offer of employment from Toongabbie Sports Club or who receives but does not accept an offer of employment with Toongabbie Sports Club will be paid their full entitlements when their employment with the Collarenebri Club comes to an end.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE COLLARENEBRI 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 Collarenebri Club Premises is the "core property" of the Collarenebri Club.
- 7.2 Subject to this Memorandum, Toongabbie Sports Club will retain the core property of the Collarenebri 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 Collarenebri Club will be transferred (in accordance with clause 16) to the general reserves of the Amalgamated Club.

Gaming Machine Entitlements

- 7.4 The Collarenebri Club has twelve (12) gaming machine entitlements at the Collarenebri Club Premises and ownership of those entitlements will be transferred to Toongabbie Sports Club with effect from the Completion of the Amalgamation.
- 7.5 The Amalgamated Club will retain the twelve (12) gaming machine entitlements at the Collarenebri Club Premises for as long as it trades from those premises.

8. RISKS OF NOT PRESERVING THE COLLARENEBRI 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 10.9 and the RCA, the Amalgamated Club will not dispose of the core property of the Collarenebri Club during the first three (3) 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 Collarenebri Club are those set out in clause 10.5.
- 8.3 If the risks (or any of them) in clause 10.5 are realised during the first three (3) years after the Completion of the Amalgamation, clause 8.1 and section 17A1 of the RCA will prevent the Amalgamated Club from disposing the core property.
- 8.4 If the risks (or any of them) in clause 10.5 are realised after the first five (5) years after Completion of the Amalgamation, the Amalgamated Club will use its best endeavours to find ways to address those risks so that the disposal of core property will be considered only after all reasonable alternatives have been exhausted and provided the disposal is in accordance with the RCA.

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

- 9.1 For the purposes of the RCA, the Collarenebri Club Premises is the “core property” and “major assets” of the Collarenebri Club.
- 9.2 Subject to clauses 9, 10 and 10.9 of this Memorandum, the Amalgamated Club will not dispose of the major assets of the Collarenebri Club during the first three (3) years after Completion of the Amalgamation.

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

[Regulations – Clause 7(2)(F)]

- 10.1 Toongabbie Sports Club does not intend to cease trading from the Collarenebri Club Premises.
- 10.2 However, the objects of the Collarenebri Club will, with effect from Completion of the

Amalgamation, be subsumed by and will become objects of Toongabbie Sports Club.

- 10.3 Toongabbie Sports Club intends to operate the Amalgamated Club in the manner referred to in clause 5.
- 10.4 However, for the purposes of clause 7(2)(f) of the Regulations, Toongabbie Sports Club and the Collarenebri Club are required to agree to the matters set out in clause 10.5.
- 10.5 For the purposes of clause 7(2)(f) of the Regulations, Toongabbie Sports Club and the Collarenebri Club have agreed that the Amalgamated Club would either cease trading from the Collarenebri Club Premises in the following circumstances:
 - (a) if, after the first two (2) years after Completion of the Amalgamation, it is not financially viable for the Amalgamated Club to continue to trade from the Collarenebri Club Premises, which shall be determined in accordance with clause 10.6; or
 - (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs which orders the permanent closure of the Collarenebri Club Premises;
 - (c) upon the lawful order of any government authority to permanently cease trading from the Collarenebri Club Premises, or revoking any licence, approval or consent necessary for the Amalgamated Club to continue trading from the Collarenebri Club Premises and it is not reasonably possible for the relevant licences, approvals or consents to be re-instated or new/replacement licences, approvals or consents to be obtained;
 - (d) if the premises were destroyed or partially destroyed by fire, floods, storms or Force Majeure event, except where appropriate insurance cover is available to reinstate the Collarenebri Club Premises or where it is otherwise economically viable to do so.
- 10.6 For the purposes of clause 10.5(a), the Collarenebri Club Premises will not be financially viable if, at any time after the first anniversary of the Completion of the Amalgamation, the Collarenebri Club Premises does not make a trading profit of twenty-five thousand dollars (\$25,000) before depreciation and amortisation of expenses in any rolling twelve (12) month period.
- 10.7 For the purposes of clause 10.5(d), the Amalgamated Club must take out and maintain appropriate building insurance for the Collarenebri Club Premises which is sufficient to cover reinstatement of the Collarenebri Club Premises to the same or better standard that they were in as at Completion of the Amalgamation.
- 10.8 If the Amalgamated Club wishes to cease trading from the Collarenebri Club Premises for the reasons set out in clause 10.5(a), the following shall apply:
 - (a) The Amalgamated Club must call for expressions of interests from other registered clubs for an amalgamation with the Collarenebri Club Premises, with such amalgamation being subject to a successful de-amalgamation between the Amalgamated Club and the Collarenebri Club Premises (**simultaneous de-amalgamation and amalgamation**); and
 - (b) The simultaneous de-amalgamation and amalgamation must be effected on

terms which are acceptable to the Amalgamated Club but, amongst other things, it must involve:

- (i) the Amalgamated Club successfully de-amalgamating from the Collarenebri Club Premises; and
 - (ii) the Collarenebri Club Premises successfully amalgamating with another registered club (**Amalgamation Partner**);
 - (iii) the Amalgamated Club transferring the Club Licence for the Collarenebri Club Premises, the Land and twelve (12) gaming machine entitlements to the Collarenebri Club Premises as part of the de-amalgamation;
 - (iv) the Collarenebri Club (using funds from the Amalgamation Partner) making an acceptable payment to the Amalgamated Club, with the amount of such payment to be determined by the Amalgamated Club in its absolute discretion.
- (c) If the Amalgamated Club issues the expression of interest referred to in clause 10.8(a) and one of the following events occurs afterwards, then the Amalgamated Club may immediately cease trading from the Collarenebri Club Premises and dispose of the Collarenebri Club Premises:
- (v) no registered club formally responds to the expression of interest referred to in clause 10.8(a) within two (2) months of the expression of interest being issued; and
 - (vi) the Amalgamated Club and the Collarenebri Club Premises do not enter into an agreement for the de-amalgamation on terms acceptable to the Amalgamated Club within three (3) months of the expression of interest being issued;
 - (vii) the Collarenebri Club Premises and the Amalgamation Partner do not enter into an agreement for the amalgamation (in the form of a memorandum of understanding) within three (3) months of the expression of interest being issued;
 - (viii) the members of the Amalgamated Club do not approve the de-amalgamation within six (6) months of the expression of interest being issued;
 - (ix) the members of the Collarenebri Club Premises do not approve the de-amalgamation and/or amalgamation within six (6) months of the expression of interest being issued;
 - (x) the members of the Amalgamation Partner do not approve the amalgamation within six (6) months of the expression of interest being issued;
 - (xi) The Authority does not approve the de-amalgamation and/or amalgamation within twelve (12) months of the date of the expression of interest being issued;

- (xii) the de-amalgamation and/or amalgamation are not completed within eighteen (18) months of the date of the expression of interest being issued.

10.9 For the avoidance of doubt, the Amalgamated Club may immediately cease trading from the Collarenebri Club Premises without complying with the requirements of clause 10.8 if any of the circumstances in clauses 10.5(b) to 10.5(d) apply.

11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE COLLARENEBRI CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE COLLARENEBRI CLUB PREMISES

[Regulations – Clause 7(2)(G)]

11.1 Toongabbie Sports Club does not intend to cease trading from the Collarenebri Club Premises, and 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 10.

11.2 The objects of Toongabbie Sports Club will become the objects of the Collarenebri Club with effect from Completion of the Amalgamation.

11.3 However, for the purposes of clause 7(2)(g) of the Regulations, Toongabbie Sports Club and the Collarenebri 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, Toongabbie Sports Club and the Collarenebri Club have agreed that the Amalgamated Club will continue to trade from the Collarenebri Club Premises for at least two (2) years, (except in the circumstances referred to in clauses 10.5(b) to (d) inclusive).

12. BINDING EFFECT OF MEMORANDUM

12.1 Toongabbie Sports Club and the Collarenebri 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 COLLARENEBRI CLUB MEMBERS TO MEMBERSHIP OF TOONGABBIE SPORTS CLUB

13.1 The Collarenebri Club will call a general meeting of the ordinary members of the Collarenebri 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 but in any event within three (3) months of the date.

13.3 Toongabbie Sports Club will call a general meeting of the ordinary members of Toongabbie Sports 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 scheduled at Toongabbie Sports Club's discretion after the date of the meeting referred to in clause 13.1 provided that the resolution approving in principle the Amalgamation in accordance with section

17AEB(d) of the RCA is approved at that meeting.

13.5 In addition to the resolution referred to in clause 13.4, Toongabbie Sports Club will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote on a special resolution to amend the Constitution of Toongabbie Sports Club to give effect to the following:

(a) Any member of the Collarenebri Club who, at Completion of the Amalgamation, has been:

- (i) refused admission to or been turned out of Collarenebri Club; or
- (ii) suspended from Toongabbie Sports Club;
- (iii) expelled from Toongabbie Sports Club,

shall not be eligible to apply for and/or be admitted to membership of Toongabbie Sports Club.

(b) All eligible members of the Collarenebri Club who apply to become members of Toongabbie Sports Club will, subject to the Amalgamated Club's Constitution, be admitted to membership of Toongabbie Sports Club.

(c) All eligible members of the Collarenebri Club will be able to apply for membership of Toongabbie Sports Club in the manner referred to in paragraphs (d) to (h) inclusive of this clause 13.5.

(d) A member of the Collarenebri Club will not be required to be proposed or seconded for membership of Toongabbie Sports Club.

(e) As soon as practicable after the Order, Toongabbie Sports Club will forward to each member of the Collarenebri Club, who is not already a member of Toongabbie Sports Club, a written invitation to become a member of Toongabbie Sports Club.

(f) Any member of the Collarenebri Club who accepts the invitation and agrees in writing to be bound by the Constitution of Toongabbie Sports Club will, subject to the Amalgamated Club's Constitution and the requirements of the RCA being satisfied, be elected by a resolution of the Board of Toongabbie Sports Club to membership of Toongabbie Sports Club with effect from the date of Completion of the Amalgamation.

(g) The Collarenebri Club's members who are admitted to membership of Toongabbie Sports Club will be identified as a separate class called the "Collarenebri Club Members" but may transfer to any other class of membership of Toongabbie Sports Club for which they are eligible to join. For the avoidance of doubt, Collarenebri Club members will be subject to any qualifying periods contained in Toongabbie Sports Club's Constitution and restrictions set out in clause 13.5(i).

(h) Any person who, at Completion of the Amalgamation, is a Life member of the Collarenebri Club will:

- (i) not become a Life member of the Amalgamated Club; and

- (ii) continue to be recognised as a Life member of the Collarenebri Club but only in respect of the Collarenebri Club Premises;
 - (iii) not be required to pay an annual subscription to the Amalgamated Club (unless the RCA requires such a subscription to be paid).
- (i) Notwithstanding anything else contained in the Constitution of Toongabbie Sports Club, any member of the Collarenebri Club who is admitted to membership of Toongabbie Sports Club pursuant to the Amalgamation will not be entitled to:
- (i) hold office on the Board of the Amalgamated Club for at least five (5) years after Completion of the Amalgamation; and
 - (ii) attend and vote at general meetings (including Annual General Meetings) of the Amalgamated Club for at least five (5) years after Completion of the Amalgamation;
 - (iii) vote on special resolutions to amend the Constitution of Toongabbie Sports Club for at least five (5) years after Completion of the Amalgamation;
 - (iv) vote in the election of the Board of the Amalgamated Club for at least five (5) years after Completion of the Amalgamation,

provided that this restriction will not apply to any member of the Collarenebri Club who was already a member of Toongabbie Sports Club as at the date of this Memorandum.

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 14.1 Toongabbie Sports Club and its lawyers will prepare and file the Amalgamation Application.
- 14.2 The Collarenebri Club will co-operate with Toongabbie Sports Club and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application, including the notices of meeting and the minutes of the meetings referred to in clause 13.1.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 15.1 The Collarenebri Club warrants to Toongabbie Sports Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Collarenebri Club will:
- (a) carry on its business in the usual ordinary course and in a diligent manner and unless incurred in the usual and ordinary course of business, will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of two thousand dollars (\$2,000.00) plus GST without the prior approval of Toongabbie Sports Club's CEO or his delegate;
 - (b) attend to the payment of any existing debts and liabilities using its cash reserves (provided that it will not be in breach of this warranty if its cash reserves are insufficient to pay out all of its existing debts and liabilities);

- (c) maintain the Assets in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (d) carry on its operations with normal and prudent practice using best endeavours to reduce losses, increase profitability, and endeavour to maintain and increase the value of the Assets;
- (e) provide Toongabbie Sports 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 Collarenebri Club;
- (f) not do anything which may damage the goodwill of its business or that of Toongabbie Sports Club;
- (g) notify Toongabbie Sports Club of any of the circumstances referred to clause 15.4 within a reasonable time of becoming aware of the relevant circumstances;
- (h) not without the prior written consent of Toongabbie Sports Club:
 - (i) enter into, terminate or alter any term of any 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 Assets (including without limitation any gaming machine entitlements);
 - (iv) employ any person;
 - (v) terminate the employment of any 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 Collarenebri 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 Collarenebri Club; or
 - (ix) engage in discussions or negotiations with anyone other than Toongabbie Sports Club concerning an amalgamation or the sale or disposal of all or any part of the Assets,
- (i) must advise Toongabbie Sports Club of any solicitation by any third party to participate in any such discussion or negotiation concerning an amalgamation or the sale or disposal of all or any part of the Assets.

15.2 Each of the Collarenebri Club's warranties contained in clause 15.1 remains in full force

and effect notwithstanding Completion of the Amalgamation.

- 15.3 Toongabbie Sports Club's CEO and the Collarenebri Club's CEO will have regular discussions about the management and operations of the Collarenebri Club with the object of:
- (a) providing for an orderly transfer of the management and operations of the Collarenebri Club to Toongabbie Sports Club on the date of Completion of the Amalgamation; and
 - (b) achieving efficiencies and cost savings in the Collarenebri Club;
 - (c) implementing operational changes in preparation for Completion of the Amalgamation.
- 15.4 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.

- 15.5 Title to, property in and risk of the Collarenebri Club's Assets remain solely with the Collarenebri Club until such time as they are passed to the Amalgamated Club in accordance with clause 16.
- 15.6 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 Collarenebri Club.

16. DISSOLUTION OF THE COLLARENEBRI CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO TOONGABBIE SPORTS CLUB

- 16.1 Prior to the Completion of the Amalgamation, the Collarenebri Club must do all things necessary to enable Toongabbie Sports Club to be the bona fide occupier of the Collarenebri Club Premises on Completion of Amalgamation.
- 16.2 As soon as practicable after the Order, but subject to the Final Order, the Collarenebri Club must ensure the Assets, Debts and Liabilities of the Collarenebri Club are transferred to Toongabbie Sports Club (less an amount sufficient for the purposes of the winding up of the Collarenebri Club in the manner referred to in clause 16.5 and for directors' and officers' liability insurance pending deregistration). The parties acknowledge that it is proposed for the transfer of the Assets, Debts and Liabilities referred to in clause 16.1 to occur on the date of the Final Order wherever possible.

- 16.3 For the purposes of clause 16.2, the Collarenebri Club must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to Toongabbie Sports Club with effect from the date of Final Order wherever possible. Such transfers and assignments will without limitation be in respect of:
- (a) the Land and all other real property of the Collarenebri Club; and
 - (b) the Water Access Licence;
 - (c) all contract rights including without limitation hire purchase agreements and existing service agreements in respect of the Collarenebri Club Premises;
 - (d) all intellectual property rights (including business names);
 - (e) all physical assets, furniture and fittings and stock in trade,
- owned or entered into by the Collarenebri Club.
- 16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Collarenebri Club before Completion of the Amalgamation and be given to and be held in escrow by Toongabbie Sports Club pending Completion of the Amalgamation.
- 16.5 The Collarenebri Club must ensure that the Assets are transferred to Toongabbie Sports Club free of charges, security interests and encumbrances of any other nature (other than as approved by Toongabbie Sports Club in its absolute discretion) to enable Toongabbie Sports Club to become the absolute and beneficial owner of those Assets with effect from Completion of the Amalgamation. For the purposes of this clause, Toongabbie Sports Club will be deemed to have unencumbered title and ownership of an Asset if the Collarenebri Club has obtained a written undertaking from the relevant secured party on or before Completion of the Amalgamation which meets with the approval of Toongabbie Sports Club and states that the relevant secured party will release their interest in the Asset after Completion of the Amalgamation.
- 16.6 After Toongabbie Sports Club has advised the Collarenebri Club that it is satisfied that all matters related to the Amalgamation have been completed, the Collarenebri Club must, as soon as reasonably practicable, ensure the Collarenebri Club is voluntarily wound up and any surplus Assets (if any) are transferred to Toongabbie Sports Club.
- 16.7 Each of the parties warrants 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 at the cost of Toongabbie Sports Club.

17. ACCESS TO RECORDS

- 17.1 From the date of this Memorandum, the Collarenebri Club will provide to Toongabbie Sports Club at all reasonable times access to the Collarenebri Club Premises, Records and other information and material reasonably required by Toongabbie Sports Club (including for the purpose of any due diligence referred to in clause 2.6).
- 17.2 From the date of this Memorandum, Toongabbie Sports Club will provide to the Collarenebri Club at all reasonable times access to Records and other information and material reasonably required by the Collarenebri Club for the purposes of the due diligence referred to in clause 2.5).

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 seven (7) days of the receipt of the notice referred to in clause 19.2 or any extended period agreed in writing between the parties as to:
- (a) the dispute resolution technique or procedures to be adopted;
 - (b) the timetable for steps in those procedures; and
 - (c) the selection and compensation of an independent person required for such dispute resolution technique or procedures,

The parties must mediate the dispute in accordance with the mediation rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

- 19.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 19.2 a party which has complied with the provisions of this clause 19 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.
- 19.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

20. COSTS

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

21. STAMP DUTY

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

21.2 Despite the exemption from duty referred to in clause 21.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by Toongabbie Sports 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 Toongabbie Sports Club may, without penalty or liability, terminate this Memorandum at any time by giving written notice to the Collarenebri Club if:

- (a) the Collarenebri Club breaches any warranty contained in clause 15.1; or
- (b) the members of the Collarenebri Club have not passed the resolution referred to in clause 13.1 within three (3) months of the date of this Memorandum or such other later date agreed by the parties in writing.
- (c) the due diligence review undertaken by it on the Collarenebri Club (as referred

to in clause 2.6) is not satisfactory to the Board of Toongabbie Sports Club.

- 23.2 The Collarenebri Club may terminate this Memorandum without penalty or liability by giving written notice to Toongabbie Sports Club if the members of Toongabbie Sports Club have not passed the resolutions referred to in clauses 13.3 and 13.5 within twelve (12) months of the members of the Collarenebri Club passing the resolution referred to in clause 13.1 or such other later date agreed by the parties.
- 23.3 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within twenty four (24) months of the date of this Memorandum (or such later date agreed 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, approval, consent or other communication to a person relating to this Memorandum must be in writing and executed by duly authorised persons.
- 24.2 If the notice is to Toongabbie Sports Club, then it must be addressed as follows:
- (a) **Name:** Toongabbie Sports and Bowling Club Limited
 - (b) **Attention:** Andrew Lauridsen
 - (c) **Address:** 12 Station Street Toongabbie NSW 2146
 - (d) **Email:** andrew.lauridsen@toongabbiesportsclub.com.au
- 24.3 If the notice is to the Collarenebri Club, then it must be addressed as follows:
- (a) **Name:** Collarenebri Club Limited
 - (b) **Attention:** Geoff Knight
 - (c) **Address:** 304 Walgett Road Collarenebri NSW 2833
 - (d) **Email:** collielclub@bigpond.com
- 24.4 Notice is sent by the sender and received by the receiver:
- (a) if the notice is hand delivered, upon delivery to the receiving party; or
 - (b) if the notice is sent by email, upon the successful completion of the relevant transmission;
 - (c) if the notice is sent by post, one (1) day after the notice is posted.

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 Before this Memorandum was executed, the Clubs each displayed notices to members which are required under section 17AE of the RCA and clause 4(5) of the Regulations.

27.2 This Memorandum is to be:

- (a) made available to the ordinary members of the Collarenebri Club and Toongabbie Sports Club at least twenty-one (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 twenty-one (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 Collarenebri Club to Toongabbie Sports Club.

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SIGNING PAGE

Executed by **TOONGABBIE SPORTS)
AND BOWLING CLUB LIMITED ACN)
001 050 371** pursuant to Section 127 of
the Corporations Act 2001

DocuSigned by:

Duane Gorry

Director

Duane Gorry

Name of Director

DocuSigned by:

Andrew Lauridsen

Director

Andrew Lauridsen

Name of Director

Executed by **COLLARENEBRI CLUB)
LIMITED ACN 001 061 605** pursuant to)
Section 127 of the Corporations Act)
2001

DocuSigned by:

Geoffrey James Knight

Director/Secretary

Geoffrey James Knight

Name of Director/Secretary

DocuSigned by:

Margaret Moore

Director/Secretary

Margaret Moore

Name of Director/Secretary