

Our Ref: DSK:1902573
Your Ref: Michael McCluskey

**COLIN
BIGGERS
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LAWYERS



Amalgamation Deed between Proposed Amalgamating Clubs

Mingara Recreation Club Limited ABN 81 001 662 648 (Mingara)

**The Entrance Bowling Club Limited ABN 29 000 956 052 trading as The Greens
The Entrance (The Greens)**

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Details

Date 31st May 2019

Parties

Name	Mingara Recreation Club Limited	
ABN	81 001 662 648	
Description	Mingara	
Notice details	Address	Mingara Drive, Tumbi Umbi NSW 2261
	Attention	Chief Executive Officer cc David.Kennedy@cbp.com.au
Name	The Entrance Bowling Club Limited trading as The Greens The Entrance	
ABN	29 000 956 052	
Description	The Greens	
Notice details	Address	Corner Park Road and Warrigal Street, The Entrance NSW 2261
	Attention	The Secretary

Background

- A. Mingara and The Greens are both non-proprietary members' clubs and both registered clubs under the Act, each holding a club liquor licence under the *Liquor Act*.

Memorandum of Understanding

- B. Mingara and The Greens have entered into the MOU to state each Club's position regarding the proposed amalgamation between them, as required by clause 7 of the Regulation.

Amalgamation Deed

- C. This document sets out the additional agreements between Mingara and The Greens for the implementation of the proposed Amalgamation.
- D. Mingara and The Greens enter into the Amalgamation Deed pursuant to the authorisations and powers to do so conferred by the Act and the Amalgamation Powers.
- E. Other details of the proposed Amalgamation are tabulated in the Other Details section that forms part of this document.
- F. The proposed Amalgamation conforms with the requirements of legislation, including as tabulated in the certified compliance record that is Attachment 2 to this document.

Other Details

Amalgamated Club	Mingara
Amalgamated Club's Balance Date	30 June 2018
Amalgamated Club Name	Mingara Recreation Club Limited
Amalgamated Club's Premises (Section 94 Liquor Act)	The Amalgamated Club's Premises at Mingara Drive, Tumbi Umbi NSW 2261
Amalgamation Application Details	<p>(a) Transfer of the Dissolving Club's club liquor licence to the Amalgamated Club, to take effect from the date that the Clubs complete the proposed Amalgamation and conditional on the Amalgamated Club duly notifying completion to the Authority.</p> <p>(b) To be lodged by the Amalgamated Club by its Secretary with the assistance of its Advisers.</p> <p>(c) In the form prescribed by the Authority, endorsed with the requisite consent on behalf of each of the Clubs.</p> <p>(d) Lodged and prosecuted with the Authority by the Amalgamated Club through its Advisers, with the cooperation of the Dissolving Club.</p>
Amalgamation Powers	The provisions of the respective Clubs' Constitutions, referenced in Sections I and J of the Background in the MOU.
Business Names	The Greens The Entrance
Completion	completion of the Amalgamation
Completion Conditions Precedent	<p>(a) For the benefit of both Clubs:</p> <p>(i) Each of the Amalgamated Club and the Dissolving Club immediately prior to Completion being solvent within the meaning of section 95A of the Corporations Act.</p> <p>(ii) The obtaining of Approval.</p> <p>(iii) Admission of the Dissolving Club's members to membership of the Amalgamated Club on Completion in conformity with the MOU.</p> <p>(iv) The required resolutions of the members of each of the respective Clubs approving in principle of the Amalgamation.</p> <p>(b) For the benefit of the Amalgamated Club:</p> <p>(i) The Amalgamated Club in its discretion not giving notice to the Dissolving Club prior to 5pm on Friday 28 June 2019, that the Amalgamated Club has not completed its initial due diligence enquiries concerning the Dissolving Club and the Assets, to the satisfaction of the Amalgamated Club.</p> <p>(ii) The Approval not imposing conditions on the Amalgamated Club that in any substantial or</p>

	<p>material way differ to those currently imposed by the Amalgamated Club's existing club liquor licence and without limiting those general words, without the imposition of any new condition that in the reasonable opinion of the Amalgamated Club is onerous or financially adverse to the Amalgamated Club.</p> <p>(iii) The Amalgamated Club being able to verify to its reasonable satisfaction, the Dissolving Club's absolute title to the Assets free of any security interest or other encumbrance (subject to clause 11.3).</p> <p>(iv) The Amalgamated Club obtaining to its reasonable satisfaction, all consents to assignments or novations reasonably required for Completion.</p> <p>(v) The Dissolving Club owning (or holding under lease or rental) 75 gaming machines and owning 75 transferrable gaming machine entitlements.</p> <p>(vi) Completion occurring no later than 4pm on Friday 20 December 2019.</p> <p>(vii) The Amalgamated Club being able to verify to its reasonable satisfaction each of the Dissolving Club's total Liabilities.</p>
<p>Completion Conditions Precedent Sunset Date</p>	<p>4pm on Friday 20 December 2019 or such later date as the Clubs agree in writing for this purpose.</p>
<p>Completion Obligations</p>	<p>Provision of the following by the Dissolving Club to the Amalgamated Club (where the context permits, duly signed and effective and provided to the extent and in such form as the Amalgamated Club reasonably requires):</p> <p>(a) all certificates of title and other documents evidencing title to all of the Assets</p> <p>(b) transfers and assignments to the Amalgamated Club of all Assets and where the Amalgamated Club requires in the form of deeds</p> <p>(c) in respect of any contract to which the Dissolving Club is a party, that the Amalgamated Club elects to have assigned or novated to the Amalgamated Club as an alternative to being brought to an end - consents from the other parties to those contracts, to the assignment or novation of those contracts to the Amalgamated Club, to the extent available to the Dissolving Club using its best endeavours</p> <p>(d) directions and authorities to third parties who hold any of the Assets as reasonably required by the Amalgamated Club, to assist to prove or perfect the title of the Amalgamated Club to those particular Assets</p> <p>(e) subject to clause 11.3, discharges and releases of all security interests in or other encumbrances over or in respect of any of the Assets, in such form and containing such provisions as the Amalgamated Club reasonably</p>

	<p>requires including in relation to any perfected security interest an undertaking from the secured party to lodge a financing change statement to record final release and satisfaction of the relevant security interest</p> <p>(f) notices of assignment of the various Assets to the Amalgamated Club to go to third parties, as the Amalgamated Club reasonably requires</p> <p>(g) written introductions of the Amalgamated Club, from the Dissolving Club to parties with whom the Dissolving Club deals in connection with its operations and undertaking</p> <p>(h) such other documentation as the Amalgamated Club reasonably requires (if any) in order to effect, prove or perfect the transfer of the title to the Assets to the Amalgamated Club.</p>
Constitutional Consent Resolution	A resolution to amend the Amalgamated Club's Constitution that is anticipated by section 10(b) of the MOU.
Dissolving Club	The Greens
Dissolving Club's Core Property	(Up to Completion) - all of The Greens' real estate.
Dissolving Club's Premises (Section 94 Liquor Act)	The Greens' club premises at Corner Park Road and Warrigal Street, The Entrance NSW 2261.
Domain Names	www.thegreenstheentrance.com
Equipment Leases	All leasing arrangements to which the Dissolving Club is a party as at Completion.
Material Contracts	All of the contract to which the Dissolving Club is a party as at Completion, that cannot be terminated without penalty by not more than one month's notice.
MOU	The Memorandum of Understanding dated 21 May 2019 between Mingara and The Greens, a copy of which is Attachment 1 to this document.
Post-Completion Obligations	<p>(a) The Dissolving Club must promptly use its best endeavours to procure that the Dissolving Club is liquidated pursuant to Part 5.5 Division 4 of the <i>Corporations Act</i>, including authorisation for the liquidator to leave all of the Dissolving Club's Statutory Records with the Amalgamated Club.</p> <p>(b) The Amalgamated Club must honour the commitments stated in the MOU, subject to the other provisions of the MOU and the provisions of this document.</p>
Pre-Completion Obligations	<p>The Amalgamated Club must comply with clause 3.3, including its pre-completion obligations under the MOU.</p> <p>The Dissolving Club's pre-completion obligations are specified in clauses 3.1 and 3.2 and the Dissolving Club also must comply with its pre-completion obligations under the MOU and cooperate with the Amalgamated Club in that regard.</p>
Securities	The securities or encumbrances of any nature existing at Completion, over or in relation to the Dissolving Club or any of the Assets.

Specific Warranties	<p>(a) Specific warranties by the Dissolving Club:</p> <p>(i) The copy of the Dissolving Club's Constitution given to the Amalgamated Club prior to the date of this document, is true and complete.</p> <p>(b) Specific warranties by the Amalgamated Club:</p> <p>(i) The copy of the Amalgamated Club's Constitution provided by the Amalgamated Club to the Dissolving Club prior to the date of this document, is true and complete.</p>	
Subsidiaries	Nil.	
Trade Marks	Nil.	
Transfer Categories	Members of the Dissolving Club in this category	Are to become members of the Amalgamated Club in this category
	Financial Bowling Members, and also Life Members who were formally Bowling Members	Ordinary Members
	Financial Social Members and any remaining Life Members	Ordinary Members (to the better advantage of those members and contrary of the MOU which originally anticipated Mingara Social membership)
	Junior	Junior

Deed

1. Agreement to amalgamate

- (a) The Clubs agree to pursue Amalgamation and to proceed to Completion, in accordance with and subject to this document and the MOU.
- (b) In the interpretation of the MOU allowance must be made for the subsequent agreement and signing of this document. In the case of any inconsistency between the MOU and this Amalgamation Deed the provisions of this Amalgamation Deed prevail to the extent of the inconsistency.

2. Warranties

2.1 Threshold warranties

Each of the Clubs represents and warrants that:

- (a) it is duly incorporated in accordance with the laws applicable in New South Wales, validly exists under those laws and has capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted
- (b) it has capacity unconditionally to sign and deliver and comply with its obligations under this document
- (c) it has taken all necessary action to authorise the unconditional signing and delivery of and compliance with its obligations under this document
- (d) this document is enforceable against it in accordance with its terms and is not void or voidable
- (e) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers, threatened which, if adversely decided, could have a material adverse effect on it
- (f) it is not insolvent
- (g) any information that it has given to another party in connection with this document is true and accurate in all material respects and not misleading in any material respect (including by omission) as at the date of this document or, if given later, when given
- (h) neither this document nor Completion of the Amalgamation, conflicts or will conflict with or result in a breach of or default under any provision of the Club's Constitution or any material term or provision of any agreement or any writ, order or injunction, judgment, law, rule or regulation to which the Club is a party or subject or by which the Club is bound, and
- (i) in the case of the Dissolving Club, the Dissolving Club is not a party to any contract, that is not both:
 - (i) in the normal and ordinary course of the registered club operations of the Dissolving Club and
 - (ii) capable of being lawfully and completely terminated by not more than one month's notice by the Dissolving Club without any additional payment (for

compensation or lack of further notice or otherwise) or obligation being incurred by the Dissolving Club as a result of termination.

2.2 Specific Warranties

Each of the Clubs respectively further represents and warrants to the other, in accordance with the Specific Warranties.

2.3 Reliance on warranties

- (a) Each of the Clubs acknowledges that the other Club has entered into this document in reliance upon the representations and warranties in this clause 2.
- (b) The interpretation of a representation or warranty is not to be restricted by reference to or inference from any other statement contained in any other representation or warranty.

3. Pre-Completion Obligations

3.1 Dissolving Club

- (a) Without limiting clause 10 or any other formally documented agreement between the parties, except for things expressly required by this document the Dissolving Club must:
 - (i) inform the Amalgamated Club of the names of persons who have applied for full membership of the Dissolving Club at the same time as the names of those persons are displayed on the notice board of the Dissolving Club for the purposes of section 30(2)(1) of the Clubs Act;
 - (ii) not admit any new member prior to the EGM of the Dissolving Club anticipated by the MOU;
 - (iii) comply with, perform and observe its Pre-Completion Obligations;
 - (iv) conduct the undertaking and operations of the Dissolving Club up to Completion, with due care and in accordance with routine, ordinary, normal and prudent practice and so as to comply with all applicable laws including:
 - (A) using its best endeavours to maintain the profitability and value of that undertaking,
 - (B) ensuring that each of its Assets is protected and maintained;
 - (v) not without the consent of the Amalgamated Club:
 - (A) enter into any contract that cannot be cancelled without liability as to future commitments by not more than one month's notice or any other material agreement or material commitment (otherwise than in the normal course of acquiring trading stock),
 - (B) except in the normal, ordinary and usual conduct of that undertaking (otherwise than in the normal course of acquiring trading stock), incur any liability in aggregate in excess of \$5,000,

- (C) except in the normal, ordinary and usual conduct of that undertaking, dispose of, agree to dispose of, encumber or grant any option over, or grant any interest in, any of its Assets, or
- (D) hire any new permanent employee, terminate the employment of any permanent employee or alter the terms of employment (including the terms of superannuation or any other benefit), of any permanent employee (and without limitation, for this purpose a permanent employee includes any fixed-term employee);
- (vi) use its best endeavours to minimise losses and increase profitability and to maintain and increase the value of its Assets;
- (vii) not engage in discussions or negotiations with anyone other than the Amalgamated Club, concerning a possible amalgamation or the sale of all or any of its Assets (otherwise than as permitted above) and promptly advise the Amalgamated Club of any solicitation by any third party in respect of any such discussion or negotiation;
- (viii) not request the approval of its members for any new or increased honorarium for any of its directors or any of the members of any of its committees; and
- (ix) act in conformity with the MOU.
- (b) The Amalgamated Club must comply with the requirements of the *Privacy Act 1988* (Cth) regarding provision of any personal information provided to it under clause 3.1(a).

3.2 Unprofitable trading

- (a) Nothing in this document limits the right of the Dissolving Club to cease trading if trading is unprofitable.
- (b) Where the Dissolving Club proposes to cease trading on account of unprofitability, the Dissolving Club must give seven days' notice to that effect (or, in an emergency, such lesser notice as can reasonably be given) in writing to the Amalgamated Club.
- (c) If the Dissolving Club duly gives notice under the previous provision and the Dissolving Club ceases trading then the Amalgamated Club has the right at any time thereafter prior to Completion of the Amalgamation, to terminate this document and the proposals for an Amalgamation, by notice in writing to the Dissolving Club. Neither Club is entitled to claim any compensation from the other as a consequence of such termination but the provisions of clause 15.5 otherwise apply.
- (d) **Unprofitability** in this clause 3.2 means a circumstance where a trading loss has been incurred or is reasonably anticipated, where the loss and accrued losses in the bona fide opinion of the Dissolving Club may not be adequately covered by past trading surpluses and cash on hand of the Dissolving Club including funds otherwise readily available to the Dissolving Club and any funds if any that the Amalgamated Club in its absolute discretion may advance to the Dissolving Club on some basis that might be agreed between the Amalgamated Club and the Dissolving Club.

- (e) For the avoidance of doubt but without limiting any other formally documented agreement between the parties, nothing in this provision requires the Amalgamated Club to make or the Dissolving Club to accept any advance to the Dissolving Club. If the Amalgamated Club makes any advance to the Dissolving Club then the consequences for this document are as agreed between the Amalgamated Club and the Dissolving Club and set out in the loan documentation

3.3 Amalgamated Club

Except for things expressly required by this document, the Amalgamated Club must:

- (a) comply with, perform and observe those of the Pre-Completion Obligations which relate to the Amalgamated Club
- (b) act in conformity with the MOU.

4. Advisers

Each Club must appoint and continue to instruct Advisers to act for the Club in relation to the proposed Amalgamation and the Amalgamation Application.

5. Access and cooperation

5.1 Access

Each Club must allow the other Club and the other Club's authorised representatives including accountants and Advisers, access to their premises, Records and Assets and provide the other Club with all information and materials reasonably required by the other Club relevant to the assessment of the merits of the proposed Amalgamation or implementation of the Amalgamation.

5.2 Input

- (a) The Dissolving Club must use its best endeavours to consult with the Amalgamated Club in relation to the ongoing management and conduct of the Dissolving Club's undertaking and operations, at all times up to Completion but subject always to the requirements of the Clubs Act and the Corporations Act.
- (b) For the avoidance of doubt, the parties agree that up until Completion:
 - (i) The Greens will continue to exercise all functions in relation to the management of the business and affairs of The Greens and its venue;
 - (ii) the Amalgamated Club will not exercise any functions in relation to the management of the business and affairs of The Greens and its venue;
 - (iii) The Greens is not legally required to implement any recommendation made by the Amalgamated Club; and
 - (iv) the arrangements set out in this document do not constitute a management contract for the purposes of the Regulation.

6. Amalgamation Application

The Dissolving Club agrees to cooperate with Amalgamated Club and to lodge such submissions with the Authority as Amalgamated Club may reasonably require, in support of the Application for Approval including to better make out the grounds on which the

Clubs submit that the Authority may allow the Amalgamation in accordance with section 17AH of the Clubs Act.

6.1 Preparation and lodgment

The Amalgamated Club at its expense must prepare, lodge and prosecute the Amalgamation Application as soon as reasonably possible after the members of the Clubs have passed the requisite resolutions of approval in principle of the Amalgamation.

6.2 Cooperation

Each of the Clubs must use its reasonable endeavours, including doing everything reasonably required by the other Club or the Authority, to support and prosecute the Amalgamation Application with a view to obtaining the Approval, including providing the Authority if required by the Authority with a copy of this document and any other document or information concerning either of the Clubs.

6.3 Evidence

Without limiting the previous provisions, each of the Clubs must use its best endeavours to provide all evidence reasonably required by the other Club or the Authority in support of or in relation to the Amalgamation Application, including a statutory declaration or statutory declarations from its Secretary verifying the Background details set out in this document to the best of the Secretary's knowledge and belief.

7. Employees

The provisions of clause 3 of the MOU apply and the Amalgamated Club must act according to its intentions stated there in relation to each of the Employees; and the provisions of that clause apply.

8. Announcements

8.1 Permission

Each of the Clubs is free to make such announcements in relation to the Amalgamation and this document as they see fit, subject to the following.

8.2 Restrictions

- (a) A Club making any statement or representation in connection with the Amalgamation or this document, must ensure that the statement or representation is neither misleading nor deceptive nor likely to mislead or deceive.
- (b) Without limiting those general words, each Club must ensure that nothing is said or done by it or on its behalf that might wrongly imply that there are no conditions precedent to this document or Completion or that misrepresents the progress that has been made towards meeting any of those conditions or the likelihood of those conditions being met. Also, this clause and clause 8.1 are subject to the agreements set out elsewhere in this document in relation to confidentiality and Confidential Information.
- (c) Also without limiting those general words, in particular the Dissolving Club must ensure that nothing is said or done by it or on its behalf that might wrongly imply that there are not still financial hurdles to be satisfied in order for Completion to occur.

- (d) For the avoidance of doubt, it is noted that each Club is free to allow members to inspect and take a copy of this document (but not of any related document containing Confidential Information).

9. Confidentiality

A Club must not, without the prior written approval of the other Club, disclose any of the other Club's Confidential Information. However, this provision does not limit disclosure in confidence to a Club's Advisers or accountants or to the Authority.

10. Conditions precedent to Completion

10.1 Obligation to Complete not binding until conditions precedent satisfied

The obligations of the parties to proceed to Completion do not become binding until each of the Completion Conditions Precedent is satisfied or waived.

10.2 Waiver of condition precedent

- (a) If a condition precedent referred to above is expressed to be for the benefit of a party, then the condition can only be waived by that party in writing.
- (b) In any other case, a condition precedent is only waived if all the parties agree in writing.

10.3 Obligation to satisfy conditions precedent

The parties must:

- (a) use reasonable endeavours (other than waiver) to ensure that each condition precedent referred to above is satisfied on or before the earlier of the Completion Conditions Precedent Sunset Date and any date specified in relation to the particular condition precedent, and
- (b) keep each other informed of any circumstance which could result in any condition precedent not being satisfied.

10.4 Result of non-satisfaction of any Completion Condition Precedent

If any condition precedent referred to in this clause is not satisfied or waived on or before the earlier of the Completion Conditions Precedent Sunset Date and any date specified in relation to the particular condition precedent then all rights and obligations under this document other than rights that accrue before that date terminate on that date.

11. Completion

11.1 Obligation to Complete

Subject to clause 10, the Clubs must Complete the Amalgamation promptly after the Approval is granted and in any event before the end of any period specified in the Approval.

11.2 Time and place of Completion

Completion is to occur at the Sydney office of the Amalgamated Club's lawyers or at any other place agreed in writing by the Clubs.

11.3 General obligation at Completion - Dissolving Club

- (a) Subject to the following paragraphs of this clause 11.3, the Dissolving Club must give the Amalgamated Club unencumbered title to, and ownership of all of the Dissolving Club's Assets and place the Amalgamated Club in effective possession and control of the Dissolving Club's Assets.
- (b) Prior to Completion and no later than seven days after Approval, the Amalgamated Club must give notice to the Dissolving Club of the only personal property securities which must be discharged by the relevant secured parties (in addition to any such securities of which Mingara is not aware at the time of the issue of its notice – which additional personal property securities if any must be discharged on or prior to Completion except to the extent that Mingara waives discharge) in order for the Dissolving Club to comply with the requirements of paragraph (a) of this clause to the extent relating to personal property securities.
- (c) For the purposes of this clause, the parties agree that it will be a sufficient discharge of a personal property security if the Dissolving Club has obtained a written undertaking in the usual or common deed form to the reasonable satisfaction of the Amalgamated Club from the relevant secured party on or before Completion which unconditionally undertakes that the relevant secured party will promptly take all necessary steps to release their security interest in all relevant collateral after Completion.

11.4 Completion Obligations

At Completion, each of the Clubs must comply with, perform and observe their respective Completion Obligations.

11.5 Title and risk

Title to, property in and risk of the Dissolving Club's Assets until Completion remain solely with the Dissolving Club and then on Completion pass to the Amalgamated Club by virtue of Completion.

12. Post-Completion Obligations

12.1 Commitment

After Completion each of the Clubs must duly and promptly comply with and observe their respective Post-Completion Obligations.

13. Liabilities of the Dissolving Club

13.1 Amalgamated Club's responsibilities

At all times after but with effect from Completion, the Amalgamated Club must subject to the limits specified below:

- (a) discharge, pay, bear or assume all of the Dissolving Club's Liabilities
- (b) indemnify the Dissolving Club from and against all of those liabilities
- (c) indemnify and keep indemnified, the Dissolving Club's directors and former directors from and against Claims, to the extent to which the directors and former directors respectively are or, but for the Amalgamation or the dissolution of the

Dissolving Club would have been, entitled to indemnification by the Dissolving Club under its Constitution or otherwise but subject always to the Corporations Act.

13.2 Limits

- (a) The obligations of the Amalgamated Club in meeting or discharging those liabilities is strictly subject to the provisions of the MOU.
- (b) The Amalgamated Club in meeting or discharging those liabilities, is not obliged to discharge, pay, bear or assume, as the case requires or permits, any amount, before the due date for performance or payment in the normal course.
- (c) The Amalgamated Club's obligations in relation to those liabilities does not affect, restrict or limit the Dissolving Club's warranties or obligations under this document or either Club's rights in relation to any breach of this document.
- (d) The Amalgamated Club's obligations after Completion to discharge, pay, bear or assume the Dissolving Club's Liabilities and to indemnify the Dissolving Club and the Dissolving Club's directors and former directors, are limited in aggregate to an amount equal to the net open market readily realisable value on Completion on a liquidation basis of the tangible Assets (which without limiting those general words, excludes goodwill and other intangibles), that are put into the Amalgamated Club's ownership and possession at Completion as a consequence of the Amalgamation, less the aggregate amount of any of the Dissolving Club's Liabilities that are discharged, paid, borne or assumed by the Amalgamated Club prior to or at Completion; or, if that calculation results in a negative amount then nil.

14. Stamp duty

- (a) The Clubs acknowledge that section 65(3) of the *Duties Act 1997* provides that no duty is chargeable on a transfer of dutiable property to give effect to the amalgamation of two registered clubs as referred to in Division 1A of Part 2 of the Clubs Act if such information and documents as the Chief Commissioner requires are provided.
- (b) The Clubs will if either reasonably requires, seek an exemption from stamp duty in relation to this document and documents associated with Completion, pursuant to that provision and if necessary apply to the Treasurer for an ex gratia exemption.
- (c) If despite the above there is any duty payable by either of the Clubs in relation to this document or any document in connection with Completion, then the Amalgamated Club must pay that duty.

15. Termination

15.1 Breach of warranty or frustration of condition precedent

A Club may terminate this document at any time prior to Completion if:

- (a) any of the Completion Conditions Precedent has become incapable of satisfaction otherwise than due to the default of that Club
- (b) due to any change in the law applicable to the Club, as interpreted by the Courts, it becomes unlawful for the Club in its capacity as a registered club to be a party to or to continue to be a party to this document, or

- (c) there is a material breach of any of the other Club's warranties under this document: a **material breach** is a breach which, when taken with any other breach of warranty by the same Club, is likely to sound in damages in an amount or an aggregate amount in excess of \$50,000.

15.2 Termination for breach

Without limiting or limitation by clauses 15.1 or 15.3, if a Club gives the other Club a written notice specifying a breach of any provision of this document and requiring the other Club to remedy the breach within 10 Business Days (or such longer period specified in the notice), then this provision applies. If the second club then continues to be in breach of that provision after the end of the specified period or, where the breach is capable of remedy if the other Club has not remedied the breach before the end of the specified period, then the first Club may terminate this document by written notice to the other Club that takes effect immediately.

15.3 Renunciation

Without limiting or limitation by clauses 15.1 or 15.2, a Club may immediately terminate this document by written notice to the other Club that takes effect immediately if the other Club by its conduct (whether by act or omission or both) gives the indication that the other Club no longer intends to honour its obligations under this document including behaving in a way that is fundamentally inconsistent with this document or a fundamental obligation under this document.

15.4 Exclusive remedies

Subject to clauses 15.1, 15.2 and 15.3 and without limiting clause 10, neither Club may unilaterally terminate this document.

15.5 Consequences of termination

- (a) Termination of this document does not release a Club from any claim by the other Club in relation to any breach of duty or obligation arising prior to the effective date of termination or consequent to the termination.
- (b) A Club is entitled to claim damages from the other Club where the Club terminates this document because of the other Club's default or renunciation.

15.6 Relationship with MOU

The parties acknowledge and agree that:

- (a) if this Deed is terminated, the MOU shall automatically terminate; and
- (b) if the MOU is terminated, the Deed shall automatically terminate.

16. Dispute resolution

16.1 Restrictions

A Club may not commence any court or arbitration proceedings relating to a dispute arising under or in connection with this document unless it complies with this clause.

16.2 Notice of dispute

A Club claiming a dispute has arisen under or in connection with this document must give written notice to the other Club specifying the nature of the dispute.

16.3 Good faith

The Clubs in that case must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them. Without limiting those general words, each of the Clubs must cause their respective Secretaries to promptly cooperate with and arrange to meet together with a view to attempting to resolve the dispute.

16.4 Mediation

If the Clubs do not agree within 7 days of receipt of the notice referred to above, or any further period agreed in writing by them, as to a dispute resolution technique and procedures with a timetable and arrangements for the selection and compensation of the relevant independent person required, then the Clubs must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales. Either Club may request the President of that Society or the President's nominee, to select the mediator and determine the mediator's remuneration.

16.5 Termination of dispute resolution

If the dispute is not resolved within 21 days after notice of the dispute was given, then a Club which has complied with the above provisions may in writing terminate any dispute resolution process and refer the dispute to arbitration or commence Court proceedings in relation to the dispute.

16.6 Negotiations

Any exchange of information or documents, the making of any offer of settlement, and any discussion, in relation to such a notified dispute is an attempt to settle the dispute. Neither Club may use any information or documents obtained through that process or any dispute resolution process undertaken pursuant to this clause 16 for any purpose other than in an attempt pursuant to this clause 16 to settle the dispute.

17. General

17.1 Amendments

This document may only be amended, supplemented, replaced or novated by another document signed by each of the parties, whether in one or more counterparts.

17.2 Attorneys

Where this document is signed on behalf of a party by an attorney, the attorney by signing declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney signs this document on behalf of that party.

17.3 Blanks and errors

The Amalgamated Club may complete any blanks, and correct any obvious errors, in this document or any counterpart of this document that remain after signing by the Dissolving Club, including dating all counterparts with a date not earlier than the date on which a signed counterpart from the Dissolving Club is delivered to the Amalgamated Club.

17.4 Consents

A party may give, delay or withhold any consent or approval requested from that party for the purposes of this document, or may give any such consent or approval subject to conditions to be met or observed by the requesting party if the consent or approval is acted or relied upon by the requesting party, as the party whose consent or approval is sought sees fit in its absolute discretion acting in its own interests, except where this document states otherwise.

17.5 Costs and stamp duty

Subject to the other express provisions of this document, each party must bear its own costs including legal costs in connection with the preparation and signing of this document.

17.6 Counterparts

This document may be signed in any number of counterparts and each of those counterparts taken together constitute one and the same document. A party may rely on an electronically produced copy of this document or a counterpart, and the signatures and other marks in it, as though it is an original. This document is binding on each signatory despite any other signatory not having signed it.

17.7 Entire agreement

This document and the MOU and the Loan Facility Deed between the parties, contain the entire agreement between the parties about its subject matter and supersedes all prior discussions, representations, agreements (other than the MOU) and understandings between the parties in connection with the subject matter.

17.8 Force Majeure

If a party by reason of Force Majeure is unable to perform or carry out any obligation under this document, then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure. This clause does not apply to any obligation to make a payment. In that case, the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be unable to perform or carry out or will be delayed in performing or carrying out its obligations. A party is not liable for any failure or delay in the performance of any of its obligations under this document to the extent that the failure or delay is attributable to Force Majeure, regardless of the length of time for which the Force Majeure continues. For the avoidance of doubt, it is noted that a party to this document may still suffer damage which that party may seek to recover from a third party, due to a failure or delay in the performance of an obligation under this document by a party to this document, attributable to circumstances amounting to Force Majeure which involve the third party.

17.9 Further steps

Each party agrees to do all things and sign all agreements, instruments, transfers and other documents necessary or desirable to give full effect to the provisions of this document and any transactions contemplated by it.

17.10 Negative promises

Where a party has promised in this document that it will not do a particular thing, then that party also promises that neither it nor any of its officers or employees will procure or

assist in the doing of that thing by anyone else nor have any direct or indirect interest in any other business which involves doing that thing.

17.11 Notices

Any notice given under this document:

- (a) must be in writing, addressed to the intended recipient at the address for notices shown in this document, or if the intended recipient has previously given the sender notice of a change of address for the purpose of notices then the notice must be addressed to the intended recipient at the address last duly notified by the intended recipient to the sender
- (b) must be signed by a person duly authorised by the sender (or in the case of a body corporate, by any of its directors or solicitors), and
- (c) is taken to be received:
 - (i) in the case of a delivery in person, when delivered, and
 - (ii) in the case of a posted letter, on the third Business Day.

17.12 Other rights

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

17.13 Waiver

No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with this document, operates as a waiver of that right, power, privilege or remedy nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy. A waiver is not valid or binding on the party granting that waiver unless in writing and duly signed on behalf of that party.

18. Definitions and interpretation

18.1 Definitions

In this document, unless the context otherwise requires:

Accounts in respect of a Club, means the audited financial accounts of the Club as at the Dissolving Club's Balance Date and the Amalgamated Club's Balance Date respectively;

Admission means the admission of the Dissolving Club's members to membership of the Amalgamated Club in accordance with the Constitution (other than the Dissolving Club's temporary, provisional and honorary members; and also excluding Dissolving Club members who signify that they do not consent to be members of the Amalgamated Club and Dissolving Club members who would normally be refused membership of the Amalgamated Club under the normal practices and policies of the Amalgamated Club; and also excluding members who are already members of the Amalgamated Club), consequent upon appropriate membership offers from the Amalgamated Club to those members and acceptance in each case by the respective member, in recognition of the Amalgamation and their membership of the Dissolving Club and pursuant to the Clubs Act

without payment to the Amalgamated Club of any entrance fee or initial annual subscription;

Advisers in relation to a Club means the lawyer or firm of lawyers retained by that Club in relation to the Amalgamation from time to time;

Amalgamated Club at all times whether before or after Completion means Mingara;

Amalgamation means an amalgamation within the meaning of section 17AB of the Clubs Act, consequent upon an Approval and in conformity with the MOU and this document;

Amalgamation Application means an application for Approval under section 60 of the Liquor Act in conformity with the specified Amalgamation Application Details;

Approval means approval of the transfer of the Dissolving Club's club liquor licence for the Dissolving Club's Premises to the Amalgamated Club pursuant to the proposed Amalgamation Application including where the context permits, such an approval that takes effect from the date that the Clubs complete the proposed Amalgamation and which is provisional or conditional on the Amalgamated Club notifying Completion to the Authority within a period specified by the Authority;

Claim includes any right, action, application, arbitration, cause of action, complaint, cost including legal costs, damage, debt due, demand, determination, enquiry, judgment or verdict, or liability:

- (a) at law;
- (b) in equity;
- (c) arising under any statute or statutory duty; or
- (d) arising under any Award or enterprise agreement or other instrument made or approved under any law

including for breach of contract; breach of statutory condition, warranty, representation or guarantee; breach of fiduciary or other duty, statutory or otherwise; or for any misleading or deceptive conduct (including contrary to section 18 of the *Australian Consumer Law*); or in tort including negligence or negligent misstatement; or for any remedy under or in connection with the *Trade Marks Act 1995 Cth* or the *Consumer and Competition Act 2010 Cth*;

Clubs means the Amalgamated Club and the Dissolving Club;

Clubs Act means the *Registered Clubs Act 1976*;

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

Corporations Act means the *Corporations Act 2001*;

Dissolving Club whether before or after Completion means The Greens;

Employees means each of the Dissolving Club's employees as at the date of this document, in respect of which the names, rates of remuneration, superannuation details, classification and dates of commencement of employment have been provided by that Club to the Amalgamated Club in writing prior to the date of this document and, where the context permits but without limiting the other provisions of this document, any other employee of the Dissolving Club at Completion;

Force Majeure means any event or circumstance not within the control of the party claiming Force Majeure, and which, by exercise of reasonable diligence, that party was and is not reasonably able to prevent or overcome, including:

- (a) an act of God
- (b) a transport interruption
- (c) a strike, lock out or other industrial disturbance
- (d) an act of an enemy or terrorist, including war, blockade or insurrection
- (e) an act of any third party, including any accidental or malicious act, or vandalism
- (f) a riot or civil disturbance, or
- (g) an authority's delay in giving any necessary approval;

Gaming machine entitlements means gaming machine entitlements as defined in the *Gaming Machines Act 2001*;

Lease means the expired lease from the local council under which the Dissolving Club is holding over in respect of part of the Dissolving Club's Premises;

Liabilities in relation to a Club at a particular time, means the total liabilities of that Club, current and non-current, and where relevant, including provisions and calculated in accordance with the accounting standards generally applied in NSW including those in force under the Corporations Act; and including in the case of The Greens, the burden of any holding over or other continuing obligations arising under or in connection with the Lease;

Liquor Act means the *Liquor Act 2007*;

Records in relation to a Club means all of that Club's records whether originals or copies including marketing materials, lists of members and suppliers, documents, books, files, accounts, plans, correspondence, diaries and registers and including corporate accounting and statutory records and including all such records whether in documentary or electronic form;

Regulations means the *Registered Clubs Regulation 2015*;

Secretary in relation to a Club means the secretary of that Club currently approved for the purposes of the Clubs Act;

and a word or expression listed in the Other Details sections at the start of this document, has the meaning or imports the details stated there, as the case requires;

and a word or expression defined in the MOU has the meaning or imports the details stated there, as the case requires.

18.2 Interpretation

In the interpretation and application of this document, unless the context otherwise requires:

- (a) any reference to the background, or any schedule, attachment or exhibit, is a reference to that thing which is part of this document
- (b) in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period
- (c) where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings
- (d) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply
- (e) a reference to this document or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them
- (f) where an expression is defined anywhere in this document, it has the same meaning throughout
- (g) a reference to any gender includes all genders
- (h) headings are for convenience of reference only and do not affect interpretation
- (i) a mention of anything after include, includes or including, does not limit what else might be included
- (j) if an example is given of anything, including an example of a right, obligation or concept, the example does not limit the scope of that thing
- (k) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision
- (l) a reference to dollars or \$ is to an amount in Australian currency
- (m) the singular includes the plural and vice versa
- (n) a reference to any party to this document or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns
- (o) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, state, government, or government or quasi-government body
- (p) a reference to anything (including any amount) is a reference to the whole or any part of it (except that nothing in this provision excuses a party from performing the whole of an obligation just because they have performed part of the obligation), and

- (q) an agreement, undertaking, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually.

Signing page

Signed sealed and delivered by each party as a deed

Mingara

Signed by **Mingara Recreation Club Limited**



sign

DIRECTOR

office (director or secretary)

PHILIP A. WALKER

full name



sign

CEO SECRETARY

office (director or secretary)

PAUL BARRETT

full name

The Greens

Signed by **The Entrance Bowling Club Limited** under s.127(1) of the *Corporations Act 2001*

N.M. Williams.

sign

DIRECTOR / SECRETARY.

office (director)

NEIL MACLEAY WILLIAMS.

full name



sign

DIRECTOR

office (director or secretary)

JOHN FRANCIS EDWARDS

full name

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Attachment 1 Memorandum of Understanding

Attachment 2 Compliance record

With the intention that this certification will be considered and relied upon by the Independent Liquor & Gaming Authority in considering whether to grant Approval, each of the parties certifies that to the best of its knowledge and belief, the attached record of the compliance of the proposed Amalgamation with the various requirements of legislation, is current, true, correct and not misleading.

Penalty (DIRECTOR)

For Mingara Recreation Club Limited

N.M. Williams (SEC)

For The Entrance Bowling
Club Limited

Compliance record

Clubs Act:	
17AC(2)	The Constitution of the Amalgamated Club already contains provisions that will establish the members of the Dissolving Club as a separate class of members of the Amalgamated Club.
17AE(2) and Reg 5	Each of the Clubs has duly notified its members of the proposed Amalgamation by means of a notice: (a) displayed on a notice board in the club's premises, and (b) published on the club's website.
17AEB(a)	The Amalgamated Club will meet the requirements set out in section 10(1) of the Clubs Act.
17AEB(b)	The Amalgamated Club will be financially viable, to the best of the knowledge and belief of the Clubs based on current financial projections.
17AEB(c)	The Clubs after due investigation and consideration believe that the proposed Amalgamation is in the interests of the members of each of the Clubs.
17AEB(d)	Member approval in principle of the proposed Amalgamation, by the members of each of the Clubs, is a condition precedent to Completion.
17AF	The Amalgamated Club has not amalgamated with more than 9 other registered clubs over any period of time.
17AI and Reg 7	The "major assets" of the Dissolving Club, that will be subject to the restrictions under the Clubs Act during the period of 3 years following Completion, are - The Greens' real estate interests.
Parent Club requirements:	
(Clubs Act:) 10(1)(a)	The Amalgamated Club is conducted in good faith as a club and understood to be in good standing with the Authority.
10(1)(b)	The Amalgamated Club is a company.
10(1)(d)	The Amalgamated Club at the date of this document has approximately [...] members, well more than the minimum number of members required.
12	See immediately above.
10(1)(e)	The Amalgamated Club's Constitution states that its leading objects are to be a non-proprietary, not-for-profit members' club conducted in good faith as a club for the benefit of members and their guests, to provide for members and their guests a social and sporting club and for the purposes of providing accommodation for its members and guests - Rule 4.1(a) and (b).
10(1)(e1)	There is no relevant regulation prescribing any required object for the Amalgamated Club.
10(1)(f)	The Amalgamated Club already has several approved premises of which it is a bona fide occupier for the purposes of the club and maintained from the funds of the club, for which club liquor licences are held.

10(1)(g)	The Amalgamated Club's approved premises contain accommodation appropriate for the purposes of the club, as apparent from the relevant approved plans.
10(1)(h)	Each of the Amalgamated Club's approved premises contain at least one properly constructed bar, as shown in and evidenced by the relevant approved plans.
10(1)(i)	The Amalgamated Club does not allow its members to derive directly or indirectly any profit, benefit or advantage that is not offered equally to every full member - within the meaning of the prohibition.
10(1)(j)	The Amalgamated Club is conducted such that only the club and its members are entitled to derive, directly or indirectly, any profit, benefit or advantage etc - within the meaning of this provision.
10(1)(k)	The Amalgamated Club is conducted so that no person receives or is entitled to receive any payments by reference to quantity of liquor purchased or the keeping or operation of gaming machines.
10(1)(k1)	The Amalgamated Club's Constitution specifies that its governing body being its Board of Directors comprises six directors (Rule 19) with the possibility of the appointment of additional persons pursuant to the Clubs Act, but no so that the total number of directors on the Board can exceed the prescribed number of nine - Rule 25.5: and presently the Amalgamated Club's Board comprises only six directors.
10(1)(n)	The registered club businesses conducted on the various approved premises of the Amalgamated Club are not managed or controlled by any person or body other than the governing body etc, in compliance with this prohibition.
33A	No secretary or approved premises manager of the Amalgamated Club holds a hotel licence or a financial interest in a hotel, contrary to this prohibition.
10(1)(l)	The Amalgamated Club complies with the reporting requirements of registered clubs.
38(2)(a)	The Amalgamated Club satisfies the reporting provisions of the Corporations Act related to balance sheets and profit and loss accounts.
38(2)(b)	Not applicable as the Amalgamated Club is not a co-operative.
10(1)(m)	The Amalgamated Club operates in compliance with Part 4A - Accountability, disposal of property and termination of contracts - of the Clubs Act.
41C	The Amalgamated Club operates in conformity with the <i>Registered Clubs Accountability Code</i> and each of the provisions of that Code.
17AEB(b)	The Amalgamated Club is financially viable as demonstrated by its latest audited accounts and will continue to be financially viable after what for the Amalgamated Club is a relatively modest investment in order to complete the Amalgamation.
17AI1(1)	The Amalgamated Club will keep the major assets of the Dissolving Club intact for a period of three years (subject to the Clubs Act) - and that commitment is acknowledged in the MOU.

	There are presently 75 gaming machine entitlements held in connection with the Dissolving Club's club liquor licence and 75 gaming machines at the Dissolving Club's premises: as recorded in the MOU, those entitlements are to remain attached to that licence on and from Amalgamation.
Liquor Act:	
60(6) and Clubs Act Reg 4	The proposal for the Amalgamation has arisen consequent to an expression of interest lodged by the Amalgamated Club in response to a call for expressions of interest in amalgamating that was made by the Dissolving Club in compliance with the directions of the Secretary of the Department.
Clubs Act Reg 5	Each club has notified its members of the proposed Amalgamation by means of a notice displayed on a noticeboard in the club's premises, and published on the club's website, since prior to the date of the MOU.
60(6) and Clubs Act Reg 7	The Clubs have entered into the MOU in conformity with the Regulation, and the MOU will be: <ul style="list-style-type: none"> (a) made available to the ordinary members of each of the Clubs at least 21 days before the meetings held by the members of the Clubs for the purposes of voting on whether to approve the proposed Amalgamation, and (b) made available for inspection on the premises of each of the Clubs and on each of the Clubs' websites (if any) for at least 21 days before those meetings are held.
20	Neither of the Clubs holds a hotel licence or any financial interest in a hotel.
68	Simultaneously with lodgment of the Amalgamation Application, the Amalgamated Club will be applying for approval of an appropriately-qualified employee of the Amalgamated Club, to be the approved manager of the Dissolving Club's premises from Completion.
94	The present club premises of the Clubs are respectively the specified Dissolving Club's Premises and the Amalgamated Club's Premises.
95	Simultaneously with lodgment of the Amalgamation Application, the Amalgamated Club will be applying for approval of THE GREENS THE ENTRANCE as the approved name for the Dissolving Club's premises from Completion.