

PIGOTTSTINSON

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OVER **150** YEARS OF SERVICE

MEMORANDUM OF UNDERSTANDING

DATED 14th November 2024

PARTIES

WISEMAN PARK WOLLONGONG CITY BOWLING CLUB LIMITED ACN 001 059 356

AND

CITY OF WOLLONGONG TENNIS CLUB LIMITED ACN 001 042 842

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ABN 82 680 297 642

Associated Firm - Melbourne McKean Park

DATE: This Memorandum of Understanding is made on

PARTIES: **WISEMAN PARK WOLLONGONG CITY BOWLING CLUB LIMITED ACN 001 059 356** of Corner of Gipps Road and Foley Street, Gwynneville NSW 2500 (**the Bowling Club**).

AND: **CITY OF WOLLONGONG TENNIS CLUB LIMITED ACN 001 042 842** of 37 Foley Street, Gwynneville NSW 2500 (**the Tennis Club**).

BACKGROUND

- (A) The Bowling Club and the Tennis Club both operate registered clubs in New South Wales.
- (B) The Bowling Club has called for expressions of interest in amalgamation from clubs.
- (C) The Tennis Club submitted to the Bowling Club an expression of interest to amalgamate with the Bowling Club.
- (D) The Bowling Club has accepted the expression of interest from the Tennis Club and, following further negotiation, the Bowling Club and the Tennis Club have agreed to the terms set out in this Memorandum.
- (E) The Bowling Club and the Tennis 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.
- (G) The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 2 to 11 inclusive below. However, there are other matters of importance to the clubs that are included in this Memorandum.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

“Amalgamated Club” means the amalgamated registered club of the Bowling Club and the Tennis Club, the corporate vehicle of which will be the Bowling Club;

“Amalgamation” means the amalgamation of the Clubs in accordance with this Memorandum;

“Amalgamation Application” means the application for the transfer of the Tennis Club’s Liquor Licence to the Bowling Club pursuant to Sections 60(6) and (7) of the Liquor Act signed by the Bowling Club and the Tennis Club;

“Assets” means all of the goodwill, personal property, equipment, stock, intellectual property, gaming machine entitlements, poker machines, cash, cash equivalents, bank accounts and all other property, tangible or intangible belonging to the Tennis Club at the time of Completion of the Amalgamation;

“Authority” means the Independent Liquor and Gaming Authority;

“Board” means the group of directors constituting the governing body of a Party for the purposes of the RCA and the Corporations Act.

“Bowling Club’s CEO” means the individual who fulfils the role of Secretary or Secretary Manager at the Bowling Club for the purposes of the Corporations Act and RCA;

“Bowling Club Premises” means the Bowling Club’s premises located at Corner of Gipps Road and Foley Street, Gwynneville, NSW 2500;

“Claim” means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgment of any nature, whether known or unknown;

“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.

“Clubhouse” means the clubhouse building located on the Tennis Club Premises;

“Clubs” means both the Bowling Club and the Tennis Club;

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

- (a) the Final Order is granted and the Tennis Club’s Liquor Licence is transferred to the Bowling Club; and
- (b) the Assets, Debts and Liabilities of the Tennis Club are transferred to the Bowling Club, as referred to in clause 16;
- (c) the Tennis Club’s members become members of the Bowling Club and all members become members of the Amalgamated Club;
- (d) the Bowling Club take over responsibility, management and control of the Tennis Club Premises.

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

“Corporations Act” means the Corporations Act 2001 (Commonwealth) and its associated regulations;

“Debts” means the accumulated debts of the Tennis Club at the time of Completion of the Amalgamation;

“Final Order” means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby the Tennis Club’s Liquor Licence is transferred to the Bowling Club;

“Gaming Machines Act” means the Gaming Machines Act 2001 (NSW) and its associated regulations;

“GST” means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;

“Liabilities” means all liabilities, losses, damages, outgoings, costs and expenses of the Tennis Club (whatever description) at the time of Final Order;

“**Liquor Act**” means the Liquor Act 2007 (NSW) and its associated regulations;

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

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

“**Order**” means the provisional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;

“**Party**” means the Tennis Club and the Bowling Club respectively;

“**Records**” means all original and copy records, sales brochures and catalogues, lists of clients, documents, books, files, accounts, plans and correspondence belonging to or used by the Tennis Club in the conduct of the Tennis Club’s business including but not limited to corporate accounting and statutory records;

“**Regulations**” means the Regulations to the RCA;

“**RCA**” means the Registered Clubs Act 1976 (NSW) and its associated regulations;

“**Tennis Club Premises**” means the Tennis Club’s premises located at 37 Foley Street, Gwynneville NSW 2500.

1.2 In this Memorandum unless the context otherwise requires:

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

2. EACH CLUBS POSITION REGARDING THE PROPOSED AMALGAMATION

2.1 The Bowling Club and the Tennis Club agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

2.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities

and amenities of both Clubs.

2.3 The amalgamation will be effected by the continuation of the Bowling Club and the dissolution of the Tennis Club.

2.4 The process for the amalgamation will be as follows:

- (a) the members of the Tennis Club and the Bowling 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;
- (b) once the approvals in paragraph (a) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 14 below;
- (c) after the Amalgamation Application is granted (but subject to the Final Order and on Completion of the Amalgamation), Assets, Debts and Liabilities will be transferred to the Bowling Club in the manner referred to in clause 16 below;
- (d) the Bowling Club will continue as the body corporate of the Amalgamated Club;
- (e) subject to clauses 5.7 and 10.4, the Tennis Club Premises will become additional licensed premises of the Bowling Club and will be available to all members of the Amalgamated Club. The Tennis Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below;
- (f) all eligible members of the Tennis Club will, with their consent, be admitted as members of the Bowling Club and will be identified as a separate class of membership called "Tennis Club members". This will occur in accordance with the procedure set out in clause 13.5 below (which will be inserted into the Bowling Club's Constitution pursuant to the Special Resolution referred to in that clause);
- (g) employees of the Tennis Club who accept the offer of employment from the Amalgamated Club will become employees of the Amalgamated Club;
- (h) after Completion of the Amalgamation, the Tennis Club will be wound up or liquidated in the manner referred to in clause 16 below.

2.5 **Due Diligence**

- (a) The Tennis Club may, at its own expense, undertake a due diligence review of the Bowling Club's financial position.
- (b) The Bowling Club may, at its own expense, undertake a due diligence review of the Tennis Club.
- (c) The Tennis Club will, if required, provide to the Bowling Club a list of information (including, but not limited to, details of all the Tennis Club's Debts and Liabilities) and it will also provide reasonable assistance to the Bowling Club in order for the Bowling Club to properly carry out and complete the due diligence review.
- (d) The Bowling Club will, if required, provide to the Tennis Club a list of information (including, but not limited to, details of all the Bowling Club's Debts and Liabilities) and it will also provide reasonable assistance to the Tennis Club in order for the Tennis Club to properly carry out and complete the due diligence review.

3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE TENNIS CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE TENNIS CLUB PREMISES AND FACILITIES
[Regulations – Clause 7(2)(a)]

- 3.1 Subject to clauses 5.7 and 10.4, the Tennis Club Premises and facilities will become additional premises and facilities of the Bowling Club and the Amalgamated Club will operate from the Bowling Club Premises and Tennis Club Premises.
- 3.2 For the purposes of the RCA, the Bowling Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and will have overall responsibility for management of the Tennis Club Premises.
- 3.3 The Board of the Bowling Club will be the Board of the Amalgamated Club provided that one additional board member shall be appointed to the Amalgamated Club being a current Board member of the Tennis Club or other representative of the Tennis Club as may be nominated by the Tennis Club before Completion of the Amalgamation. The appointment of the Tennis Club nominee to the Board of the Amalgamated Club shall be for a term of 3 years and the appointment shall be made by the Board of the Bowling Club under section 30(1)(b1) of the RCA and clause 31 of the Regulations.
- 3.4 Subject to clauses 5.7 and 10.4, the Bowling Club will take over responsibility, management and control of the Tennis Club Premises with effect from Completion of the Amalgamation.

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

- 4.1 The traditions, amenities, sporting facilities, sporting activities and memorabilia of the Tennis Club will be maintained by the Amalgamated Club. Subject to clauses 5.7 and 10.4, the honour boards at the Tennis Club Premises may be displayed in their present form or electronically (or a combination of both).
- 4.2 The Amalgamated Club will explore opportunities to maintain and enhance community support to the local community of the Tennis Club Premises.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB
[Regulations – Clause 7(2)(c)]

- 5.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, it is the intention of the Bowling Club to operate the Amalgamated Club and the Tennis Club Premises in accordance with this clause 5.

Amalgamated Club Premises

- 5.2 It is the intention of the Bowling Club to operate the Amalgamated Club from the Bowling Club Premises and the Tennis Club Premises.

The Tennis Club Premises

- 5.3 Subject to clauses 5.7 and 10.4, the Amalgamated Club will trade from the Tennis Club Premises after Completion of the Amalgamation under the name of "Wollongong Tennis Club".
- 5.4 Subject to the terms of this MOU (including clauses 5.7 and 10.4) and any consents which may be required, the Bowling Club will:
- (a) maintain the Tennis Club Premises and carry on the business of a licensed registered

club under the RCA and the Liquor Act at the Tennis Club Premises with the usual facilities and amenities of a registered club; and

- (b) undertake any necessary upgrades, refurbishments and renovations to the Tennis Club Premises and facilities, with the nature, timeframe and budget of those works to be determined by the Board of the Amalgamated Club in its absolute discretion;
- (c) use reasonable endeavours to improve trading at the Tennis Club Premises and ensure that the Tennis Club Premises is relevant to its membership and its local community.

New Lease

5.5 The Tennis Club currently occupies the Tennis Club Premises under an expired lease.

5.6 The Bowling Club acknowledges that the Tennis Club has accepted from Wollongong City Council (**Council**) the offer of a new five year lease of the licensed premises and adjacent beer garden areas only (to the exclusion of the surrounding new tennis courts, which were part of the expired lease premises which remains in a 'holding over' status) (**the new lease**).

5.7 The Clubs acknowledge and agree that:

- (a) the intention of the Clubs is for the Bowling Club (as the Amalgamated Club) to trade from the Bowling Club Premises and the Tennis Club Premises after Completion of the Amalgamation; and
- (b) to enable the Amalgamated Club to trade from the Tennis Club Premises after Completion of the Amalgamation, the Tennis Club must enter into the new lease for the Tennis Club Premises before the Completion of the Amalgamation and the new lease must be assigned to the Bowling Club with effect from Completion of the Amalgamation; and
- (c) if the Tennis Club has not entered into the new lease for the Tennis Club Premises and/or the new lease has not been assigned to the Bowling Club on terms acceptable to the Bowling Club within six (6) months of the date of this Memorandum (or such later date acceptable to the Bowling Club in its absolute discretion), then:
 - (i) the Bowling Club can elect to complete the Amalgamation without the new lease being entered into and/or assigned to the Bowling Club; and
 - (ii) if the Bowling Club elects to complete the Amalgamation without the new lease being entered into and/or assigned to the Bowling Club, the Amalgamated Club will not trade from the Tennis Club Premises after Completion of the Amalgamation and it will only trade from the Bowling Club Premises.

Advisory Committee

5.8 The Amalgamated Club will create the Advisory Committee in respect of the Tennis 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 the Bowling Club's CEO or his delegate and those existing directors of the Tennis Club or any alternative four (4) members of the Tennis Club as the directors of the Tennis 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 Tennis 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 Tennis Club Premises; and
 - (ii) ClubGRANTS to be made by the Amalgamated Club that are attributable to the Tennis Club Premises;
 - (iii) membership matters at the Tennis Club Premises;
 - (iv) the operation of the tennis sub clubs at the Tennis Club Premises;
 - (v) the operation of the tennis courts and other sporting facilities at the Tennis Club Premises;
 - (vi) the conduct of tennis and other sporting and recreational activities at the Tennis Club Premises.
- (g) The Advisory Committee may be required to provide reports to the Board and Management of the Amalgamated Club as determined by the Board or Management of the Advisory Committee in their absolute discretion.
- (h) The Advisory Committee shall be in existence and will operate for at least the first three (3) years after the Completion of the Amalgamation.

Tennis Activities and Tennis Sub-Clubs

5.9 The Amalgamated Club intends to create tennis sub clubs to conduct and administer tennis at the Tennis Club Premises on behalf of the Amalgamated Club (**Tennis Sub Clubs**).

5.10 The Tennis Sub Clubs will be subject to the overall control and direction of the Board and management of the Amalgamated Club (and subject to any restrictions imposed by the Council as the owner and operator of the tennis courts) but it is intended that the Tennis Sub Clubs will each:

- (a) have their own rules, committees and members; and
- (b) be authorised to operate a bank account provided that the signatories of the bank account are first approved by the Amalgamated Club and on the basis, that all funds held by the Tennis Sub Clubs (irrespective of how they are received) are funds of the Amalgamated Club at all times;
- (c) continue using their existing uniforms, names and insignia for a minimum of three (3) years;
- (d) elect their own committees;

- (e) be eligible to affiliate with such bodies controlling tennis in New South Wales on such terms and conditions (not inconsistent with the Constitution of the Bowling 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 relevant Tennis Sub Club.

- 5.11 The Amalgamated Club will allocate an annual budget for the Tennis Sub Clubs. The annual budget will be determined by the Board of the Amalgamated Club after discussions with the Tennis Sub Clubs.
- 5.12 If, at the date of this Memorandum, there are any sub-clubs at the Tennis Club Premises (other than the Tennis Sub Clubs), the Board of the Amalgamated Club will allow those sub-clubs to continue to exist provided the members of those sub clubs become members of the Amalgamated Club.

Payment of Subscriptions

- 5.13 The Bowling Club will treat any annual subscriptions which have been paid to the Tennis 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. This will also apply to any multi-year membership subscriptions.

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED **[Regulations – Clause 7(2)(d)]**

- 6.1 Following Completion of the Amalgamation, the Tennis Club will be wound up/liquidated.
- 6.2 Prior to Completion of the Amalgamation, the Bowling Club will make offers of employment to all of the Tennis Club's employees.
- 6.3 The offers of employment will be:
 - (a) made as soon as reasonably practicable after the Order; and
 - (b) conditional upon and be effective from the Completion of the Amalgamation;
 - (c) on the same terms and conditions presently offered by the Bowling Club to employees of the Bowling Club in similar roles provided that it does not result in any employee of the Tennis Club receiving lesser benefits than they presently receive from the Tennis Club.
- 6.4 Any employee of the Tennis Club who receives and accepts an offer of employment with the Bowling Club will receive continuity of employment and their accrued entitlements as employees of the Tennis Club will be carried over to the Bowling Club and will be honoured by the Bowling Club.
- 6.5 Any employee of the Tennis Club who does not receive an offer of employment from the Bowling Club or who receives but does not accept an offer of employment with the Bowling Club will be paid their full entitlements when their employment with the Tennis Club comes to an end, which, if not before, will be when the Tennis Club is wound up/liquidated.
- 6.6 Each employee of the Bowling Club will continue to be employed by the Amalgamated Club after the Completion of the Amalgamation, subject to the terms and conditions of employment between each of those employees and the Bowling Club.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE TENNIS CLUB:
1. ANY CORE PROPERTY;
2. ANY CASH OR INVESTMENTS;
3. ANY GAMING MACHINE ENTITLEMENTS
[Regulations – Clause 7(2)(e)]

Core Property

- 7.1 As at the date of this Memorandum, the Tennis Club Premises is the core property of the Tennis Club.
- 7.2 However, at the general meeting referred to in clause 13.1, the members of the Tennis Club will be asked to pass an ordinary resolution declaring the Tennis Club Premises as non-core property of the Tennis Club with immediate effect.
- 7.3 If ordinary resolution in clause 7.2 is passed:
- (a) the Tennis Club Premises will immediately cease to be core property of the Tennis Club; and
 - (b) the Tennis Club will not have any core property.
- 7.4 Additionally, at the general meeting referred to in clause 13.3, the members of the Bowling Club will be asked to pass an ordinary resolution declaring the Tennis Club Premises as non-core property of Amalgamated Club as and from Completion of the Amalgamation.
- 7.5 If the ordinary resolution in clause 7.4 is passed, the Tennis Club Premises will not be core property of the Amalgamated Club.

Cash and Investments

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

Gaming Machine Entitlements

- 7.7 As at the date of this Memorandum, the Tennis Club has twenty six (26) gaming machine entitlements.
- 7.8 The Bowling Club intends to conduct a strategic analysis of the Tennis Club Premises and its gaming machine entitlements. Depending on the outcome of that strategic analysis, the Bowling Club may either increase or decrease the number of gaming machines at the Tennis Club Premises.

8. RISKS OF NOT PRESERVING THE TENNIS CLUB'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED
[Regulations – Clause 7(2)(E1)]

- 8.1 As at the date of this Memorandum, Tennis Club Premises is the core property of the Tennis Club.
- 8.2 However, at the general meeting referred to in clause 13.1, the members of the Tennis Club will be asked to pass the ordinary resolution referred to in clause 7.2.
- 8.3 If the ordinary resolution in clause 7.2 is passed, the Tennis Club will not have any core property as at the Completion of the Amalgamation.

9. DISPOSAL OF THE TENNIS CLUB'S MAJOR ASSETS
[Regulations – Clause 7(2)(E2)]

- 9.1 For the purposes of the RCA, the Tennis Club Premises is the core property of the Tennis Club.
- 9.2 However, at the general meeting referred to in clause 13.1, the members of the Tennis Club will be asked to pass an ordinary resolution set out in clause 7.2.
- 9.3 If the ordinary resolution in clause 7.2 is passed, the Tennis Club Premises will immediately cease to be a major asset of the Tennis Club and section 17A1 of the RCA will not apply in respect of the disposal of the Tennis Club Premises.

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

- 10.1 The Bowling Club does not intend to cease trading from the Tennis Club Premises.
- 10.2 The objects of the Bowling Club will become the objects of the Tennis Club with effect from Completion of the Amalgamation.
- 10.3 The Bowling Club intends to operate the Amalgamated Club in the manner referred to in clause 5.
- 10.4 For the purposes of Clause 7(2)(f) of the Regulations, the Bowling Club and the Tennis Club have agreed that the Amalgamated Club would cease trading from (which would result in the termination of the lease for the Tennis Club Premises) or cease the sporting activities at the Tennis Club Premises in the following circumstances:
- (a) if, after the second anniversary of the Completion of the Amalgamation, it is not financially viable (as determined by the Board of the Amalgamated Club in its absolute discretion) for the Amalgamated Club to continue to trade from or continue the sporting activities at the Tennis Club Premises;
 - (b) if, at any time within the first two (2) years of the Completion of the Amalgamation, the total losses incurred by the Amalgamated Club at the Tennis Club Premises is one hundred and fifty thousand dollars (\$150,000) or greater;
 - (c) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
 - (d) upon the lawful order of any government authority;
 - (e) if the premises are destroyed or partially destroyed by fire, flood, storm or other similar event such that it is not lawful for a licensed club to be operated at the Tennis Club Premises and/or any resulting insurance claim is not sufficient to re-instate or re-build an operational Clubhouse at the Tennis Club Premises which is acceptable to the Board of the Amalgamated Club in its absolute discretion;
 - (f) if the Tennis Club does not enter into the new lease and/or if the new lease is not assigned to the Bowling Club within six (6) months of the date of this Memorandum;
or
 - (g) if the lessor of the Tennis Club Premises terminates the lease or does not agree to an extension or renewal of the Amalgamated Club's lease over the Tennis Club Premises.

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

- 11.1 The Bowling Club does not intend to cease trading from the Tennis Club Premises and would only cease to do so in the circumstances referred to in clauses 5.7 and 10.4.
- 11.2 The objects of the Bowling Club will become the objects of the Tennis Club with effect from Completion of the Amalgamation. There is no intention to change the Bowling Club's objects.
- 11.3 Notwithstanding clause 11.1 but subject to clauses 5.7, 7, 8, 9 and 10.4, for the purposes of clause 7(2)(g) of the Regulations, the Bowling Club and the Tennis Club have agreed that the Amalgamated Club will continue to trade from the Tennis Club Premises for three (3) years from the date of Completion of the Amalgamation.

12. BINDING EFFECT OF MEMORANDUM

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

13. CALLING OF MEETINGS AND ADMISSION OF THE TENNIS CLUB'S MEMBERS TO MEMBERSHIP OF THE BOWLING CLUB

- 13.1 The Tennis Club will call a general meeting of the ordinary members of the Tennis 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 and declaring the Tennis Club Premises as non-core property of the Tennis Club with immediate effect.
- 13.2 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 13.3 The Bowling Club will call a general meeting of the ordinary members of the Bowling Club for the purposes of considering and if thought fit passing a resolution approving in principle the Amalgamation in accordance with section 17AEB(d) of the RCA and declaring the Tennis Club Premises as non-core property of the Amalgamated Club with effect from Completion of the Amalgamation.
- 13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the meeting referred to in clause 13.1.
- 13.5 In addition to the resolution referred to in clause 13.4, the Bowling Club will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the Bowling Club (which if passed will take effect from Completion of the Amalgamation) to the following effect:
- (a) Any member of the Tennis Club who, at Completion of the Amalgamation, has been refused admission to or been turned out of the Bowling Club Premises, suspended from or expelled from the Bowling Club shall not be eligible to apply for and/or be admitted to membership of the Bowling Club.
 - (b) All eligible members of the Tennis Club who apply to become members of the Bowling Club will, subject to the Amalgamated Club's Constitution, be admitted to membership of the Bowling Club.
 - (c) All eligible members of the Tennis Club will be able to apply for membership of the Bowling Club in the manner referred to in paragraphs (d) to (f) inclusive of this clause 13.5.

- (d) A member of the Tennis Club will not be required to be proposed or seconded for membership of the Bowling Club.
- (e) As soon as practicable after the Order, the Bowling Club will forward to each member of the Tennis Club, who is not already a member of the Bowling Club, a written invitation to become a member of the Bowling Club.
- (f) Any member of the Tennis Club who accepts the invitation and agrees in writing to be bound by the Constitution of the Bowling 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 the Bowling Club to membership of the Bowling Club with effect from the date of Completion of the Amalgamation.
- (g) The Tennis Club's members who are admitted to membership of the Bowling Club will be identified as a separate class called "Tennis Club Members" but may transfer to any other class of membership of the Bowling Club for which they are eligible to join.
- (h) Any person who, at Completion of the Amalgamation, is a Life member of the Tennis Club and is admitted to membership of the Amalgamated Club will:
 - (i) continue to be recognised as a Life member of the Tennis Club but only in respect of the Tennis Club Premises; and
 - (ii) be admitted to Life membership of a relevant Tennis Sub Club;
 - (iii) not be required to pay an annual subscription to the Amalgamated Club.

14. AMALGAMATION APPLICATION

- 14.1 The Bowling Club and its lawyers will prepare and file the Amalgamation Application.
- 14.2 The Tennis Club and its lawyers (if any) will co-operate with the Bowling Club and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 15.1 The Tennis Club warrants to the Bowling Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Tennis Club will:
 - (a) carry on its business in the usual ordinary course and in a diligent manner and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of \$500.00 plus GST without the prior approval of the Bowling Club's CEO or his delegate; and
 - (b) maintain the Assets of the Tennis Club 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 of the Tennis Club insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
 - (c) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of the Assets;
 - (d) provide the Bowling 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 Tennis Club;

- (e) comply with the terms of its current lease and if applicable, the new lease;
- (f) not do anything which may damage the goodwill of its business or that of the Bowling Club;
- (g) not without the prior written consent of the Bowling Club:
 - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
 - (ii) incur any actual or contingent liabilities whether in relation to the Tennis Club's operations or otherwise;
 - (iii) dispose of, encumber or grant an option over, or grant any interest in any of the Tennis Club's Assets;
 - (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 any equipment or borrow money from any third party;
 - (viii) increase the level of debt of the Tennis Club beyond that existing as at the date of this Memorandum other than any reasonable debt incurred in the normal day to day trading of the Tennis Club; or
 - (ix) engage in discussions or negotiations with anyone other than the Bowling Club concerning an amalgamation or the sale or disposal of all or any part of the Tennis Club's Assets, and the Tennis Club must immediately advise the Bowling Club of any such offer, inducement or solicitation by any third party to participate in any such discussion or negotiation.

15.2 Notwithstanding clause 15.1, each of the Tennis Club's warranties contained in clause 15.1 (in particular, the warranties in clauses 15.1(a), (e) and (f)) will remain in full force and effect notwithstanding Completion of the Amalgamation and until the Tennis Club is liquidated or otherwise wound up.

15.3 The Bowling Club's CEO and the Tennis Club's Chairperson will have regular discussions about the management and operations of the Tennis Club with the object of:

- (a) providing for an orderly transfer of the management and operations of the Tennis Club to the Bowling Club on the date of Completion of the Amalgamation;
- (b) achieving efficiencies and cost savings in the Tennis Club;
- (c) implementing operational changes in preparation for the 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 adverse 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 Tennis Club's Assets remain solely with the Tennis 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 the Tennis Club.

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

16.1 As soon as practicable after the Order, but subject to the Final Order, the Tennis Club must ensure the Assets, Debts and Liabilities of the Tennis Club are transferred to the Bowling Club in the manner referred to in clause 16.5).

16.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order.

16.3 For the purposes of clause 16.1, the Tennis Club must do all things necessary and execute all documents to cause all of the Assets of the Tennis Club to be transferred to or assigned to the Bowling Club with effect from the date of Final Order.

16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Tennis Club and held in escrow by the Bowling Club pending Completion of the Amalgamation.

16.5 The Tennis Club must ensure that the Assets are transferred to the Bowling Club free of charges, security interests and encumbrances of any other nature to enable the Bowling Club to become the absolute and beneficial owner of those Assets with effect from Completion of the Amalgamation.

16.6 After the Bowling Club has advised the Tennis Club that it is satisfied that all matters related to the Amalgamation have been completed, the Tennis Club must, as soon as reasonably practicable, ensure the Tennis Club is either voluntarily wound up, deregistered or liquidated. If the Tennis Club is liquidated then, in order to facilitate the liquidation, the Tennis Club must as soon as practicable after Completion of the Amalgamation:

- (a) call a general meeting of its members at which members will consider, and if thought fit, pass all the appropriate resolutions for the liquidation of the Tennis Club; and
- (b) thereafter liquidate the Tennis Club and after payment of any remaining Debts and Liabilities of the Tennis Club resulting from the liquidation, transfer any remaining Assets of the Tennis Club to the Bowling Club.

16.7 The Bowling Club will be responsible for the costs of liquidation of the Tennis Club.

16.8 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 16.

17. ACCESS TO RECORDS

- 17.1 From the date of this Memorandum and on the terms of confidentiality referred to in clause 18, the Tennis Club will provide to the Bowling Club at all reasonable times access to the Tennis Club Premises, its Records and Assets and other information and material reasonably required by the Bowling Club, including for the purpose of any due diligence referred to in clause 2.5.
- 17.2 From the date of this Memorandum and on the terms of confidentiality referred to in clause 18, the Bowling Club will provide to the Tennis Club at all reasonable times access to the Bowling Club's Records for the purpose of any 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 and information supplied by the other in connection with this Memorandum and any due diligence conducted pursuant to clause 2.5.
- 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 in relation to the preparation, execution and completion of this Memorandum.

21. STAMP DUTY

- 21.1 The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.
- 21.2 Despite the exemption from duty referred to in clause 21.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by the Bowling Club.

22. GENERAL

- 22.1 This Memorandum constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.
- 22.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.
- 22.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.
- 22.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.
- 22.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.
- 22.6 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.
- 22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales and the parties submit to the non exclusive jurisdiction of the Courts of New South Wales and any Court hearing appeals from those Courts.

23. TERMINATION

- 23.1 The Bowling Club may terminate this Memorandum at any time, without penalty or liability to the Tennis Club for any Claim by giving written notice to the Tennis Club if:
- (a) the due diligence review undertaken by it on the Tennis Club (as referred to in clause 2.5) is not satisfactory to the Board of the Bowling Club in its absolute discretion; and/or .
 - (b) the Tennis Club breaches any warranty contained in clause 15.
- 23.2 If:
- (a) the members of the Tennis Club have not passed the resolution referred to in clause 13.1 within six (6) months of the date of this Memorandum; or
 - (b) the members of the Bowling Club do not pass the resolutions referred to in clauses 13.3 and 13.5 within six (6) months of the members of the Tennis Club passing the resolution referred to in clause 13.1,
- then either party by giving written notice to the other may, without penalty or liability to the other for any Claim, terminate this Memorandum.
- 23.3 Notwithstanding anything contained in this Memorandum and subject to clause 23.4, if Completion of the Amalgamation has not occurred within eighteen (18) months of the date of this Memorandum or such other longer period agreed by the parties in accordance with clause 25.1, then either party by giving written notice to the other may, without penalty or liability to the other Party for any Claim terminate this Memorandum.
- 23.4 A Party may not rely on clause 23.3 to terminate this Memorandum if it is responsible for any delay in Completion of the Amalgamation occurring.
- 23.5 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 23 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 23.
- 23.6 If this Memorandum is terminated in accordance with this clause 23 the Amalgamation terminates.

24. NOTICES

- 24.1 A notice, 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 the Bowling Club then it must be addressed as follows:
- (a) **Name:** Wiseman Park Wollongong City Bowling Club Limited
 - (b) **Attention:** Mark Crossingham (CEO)
 - (c) **Email:** mark@wpwc.com.au
- 24.3 If the notice is to the Tennis Club then it must be addressed as follows:
- (a) **Name:** City of Wollongong Tennis Club Limited
 - (b) **Attention:** Robert Stephenson and Mark Johnston

(c) **Email:** rstephenson0410@gmail.com and mark@johnstonlegal.com.au

24.4 Notice is sent by the sender and received by the receiver upon the successful completion of the email.

25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

25.1 No variation or waiver of any provision of this Memorandum is of any force or effect unless it is confirmed in writing and signed by both Parties. The variation or waiver is effective only to the extent for which it is made or given.

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

26.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred on that Party by this Memorandum operates as a waiver of that power or right. No single or partial exercise of any such power or right will preclude any other or future exercise of it, or the exercise of any other power or right under this Memorandum.

27. NOTES

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

27.2 This Memorandum is to be:

- (a) made available to the ordinary members of the Tennis Club and the Bowling Club at least 21 days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.
- (b) made available for inspection on the premises of each club and on the website of each club (if the club has a website) for at least 21 days before any meeting as referred to in paragraph (a) of these Notes is held.
- (c) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by the Tennis Club to the Bowling Club.

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SIGNING PAGE

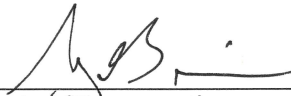
Executed by **WISEMAN PARK
WOLLONGONG CITY BOWLING
CLUB LIMITED ACN 001 059 356**)
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pursuant to Section 127 of the
Corporations Act 2001



Director (President)


Brian Hood



Director (Treasurer)

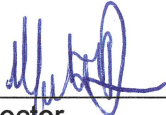
Garry O'Brien

Executed by **CITY OF WOLLONGONG
TENNIS CLUB LIMITED ACN 001 042
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pursuant to Section 127 of the
Corporations Act 2001



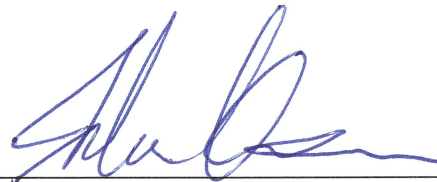
Director

Rolf Lokker



Director

Matt Davidson



Director

Stephen Hansen
