

MEMORANDUM OF UNDERSTANDING

DATED

PARTIES:

MILTON ULLADULLA EX-SERVOS CLUB LIMITED
ACN 000 858 364

MILTON ULLADULLA BOWLING CLUB COOPERATIVE LIMITED
ABN 20 793 988 758

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Standards Legislation

ABN 82 680 297 642

This Memorandum of Understanding is made on 3rd October 2017.

BETWEEN:

Milton Ulladulla Ex-Servos Club Limited ACN 000 858 364 of Princes Highway, Ulladulla, New South Wales 2539 (“**the Ex Servos Club**”).

AND

Milton Ulladulla Bowling Club Cooperative Limited ABN 20 793 988 758 of Corner of Green and St Vincent Streets, Ulladulla, New South Wales, 2539 (“**the Bowling Club**”)

BACKGROUND

- (A) The Ex Servos Club and the Bowling Club both operate registered clubs in the City of Shoalhaven.
- (B) The Ex Servos Club has called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of the Ex Servos Club. The Ex Servos Club’s call for expressions of interest in amalgamation was made on the basis that the Ex Servos Club would be the continuing club in the amalgamation.
- (C) The Ex Servos Club is within 50 kilometres of the Bowling Club.
- (D) The Bowling Club submitted an expression of interest to the Ex Servos Club.
- (E) Following further negotiations, the Ex Servos Club and the Bowling Club have agreed to the terms set out in this Memorandum.
- (F) The Ex Servos Club and the Bowling 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 Registered Clubs Act, the Regulations, the Liquor Act and the Corporations Act.
- (G) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding. The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 2 to 9 inclusive below. However there are other matters of importance to the clubs that are included in this Memorandum.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

“**Amalgamated Club**” means the amalgamated registered club of the Ex Servos Club and the Bowling Club the corporate vehicle of which will be the Ex Servos Club.

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

“Amalgamation Application” means the provisional application for the transfer of the Bowling Club’s Liquor Licence to the Ex Servos Club pursuant to Sections 60(6) and (7) of the Liquor Act by the Ex Servos Club’s CEO and the Bowling Club’s CEO.

“Asset” means all of the goodwill, land, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to the Bowling Club.

“Authority” means the Independent Liquor & Gaming Authority.

“Bowling Club Premises” means the Bowling Club’s premises at 68 St Vincent Street, Ulladulla New South Wales, 2539.

“Bowling Club’s CEO” means the individual who fulfils the Secretary or Secretary Manager’s role at the Bowling Club.

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

“Clubs” means both the Ex Servos Club and the Bowling Club.

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

- (a) the Final Order is granted and the Bowling Club’s Liquor Licence is transferred to the Ex Servos Club;
- (b) the Assets, Debts and Liabilities of the Bowling Club are transferred to the Ex Servos Club, as referred to in clause 14; and
- (c) the Ex Servos Club takes over responsibility and control of the Bowling 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.

“Co-operatives Act” means the *Co-operatives Act 2011 (NSW)* including any amendments and Regulations made under it.

“Corporations Act” means the *Corporations Act 2001 (Commonwealth)* and the regulations made thereunder.

“Debts” means the accumulated debts of the Bowling Club.

“EBITDARD” means Earnings Before Interest, Taxes, Depreciation, Amortisation, Rent and Donations.

“Ex Servos Club Premises” means the Ex Servos Club’s premises at 216-222 Princes Highway, Ulladulla, New South Wales 2539.

“Ex Servos Club’s CEO” means the individual who fulfils the Secretary or Secretary Manager’s role at the Ex Servos Club.

“Final Order” means the final order pursuant to Section 60(8) of the *Liquor Act* by the Authority whereby the Bowling Club’s Liquor Licence will be transferred to the Ex Servos Club.

“Gaming Machines Act” means the *Gaming Machines Act 2001 (NSW)* and the regulations made thereunder.

“Greenkeeper” means the greenkeeper employed by the Bowling Club as at the date of this Memorandum.

“GST” means *Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)* and the regulations made thereunder.

“Liabilities” means all liabilities, losses, damages, outgoings, costs and expenses of the Bowling Club (whatever description).

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

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

“Memorandum” means this Memorandum of Understanding.

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

“Party” means the respective management and Board of Directors of the Bowling Club and the Ex Servos Club.

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

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

“Regulations” means the regulations to the Registered Clubs Act.

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 Ex Servos Club and the Bowling Club agree to amalgamate in accordance with this Memorandum, the Registered Clubs Act, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 The amalgamation will be effected by the continuation of the Ex Servos Club and the dissolution of the Bowling Club.
- 2.3 The Amalgamation is intended to enhance the existing facilities and amenities of both Clubs. The Amalgamation is also intended to:
 - (a) Preserve the existing facilities and amenities of both clubs in the manner set out in this Memorandum;
 - (b) enable the Bowling Club Premises to be upgraded and renovated; and
 - (c) preserve the bowling facilities and activities of the Bowling Club in the manner set out in this Memorandum.
- 2.4 The process for the amalgamation will be as follows:
 - (a) The Clubs entering into this Memorandum.
 - (b) The Ex Servos Club, at its own expense, undertaking a due diligence review of the Bowling Club's financial position and operations.
 - (c) The Bowling Club, at its own expense, undertaking a due diligence review of the Ex Servos Club's financial position.
 - (d) The Bowling Club will liaise with NSW Fair Trading in relation to the requirements for compliance with section 359 and Part 4.5 of the Co-Operatives Act and the parties acknowledge and agree that the requirement to liaise with NSW Fair Trading can impact on the timeframes contained in this Memorandum and the business to be considered at the general meeting of Bowling Club.
 - (e) The members of the Bowling Club will be asked to approve:
 - (i) the Amalgamation;
 - (ii) the Bowling Club and Ex Servos Club making the Amalgamation

Application; and

- (iii) any other matters requiring approval;

at a general meeting of the ordinary members of the Bowling Club.

- (f) The Ex Servos Club will call and hold, in the manner referred to in clause 11 below, a separate general meeting of the ordinary members of the Ex Servos Club to approve:

- (i) in principle, the amalgamation; and
- (ii) amendments to the Ex Servos Club's Constitution in the manner provided for in clauses 11.6, 11.7 and 11.9 below.

- (g) After the approvals in paragraphs (d) to (f) inclusive have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 11.13 below.

- (h) After the Amalgamation Application is granted:

- (i) the Bowling Club's Assets, Debts and Liabilities will be transferred to the Ex Servos Club in the manner referred to in clause 14 below;

- (ii) all members of the Bowling Club will, with their consent, be admitted as members of the Ex Servos Club and will be identified as a separate class of membership called "Milton Ulladulla Bowling Club members". This will occur in accordance with the procedure set out in clause 11.6 below (which will be inserted into the Ex Servos Club's Constitution pursuant to the Special Resolution referred to in that clause); and

- (iii) all employees of the Bowling Club will be offered similar employment with the Ex Servos Club, and if they accept, will be employed by the Ex Servos Club. This will occur in accordance with the procedure set out in clause 6 below.

- (i) From Completion of the Amalgamation, the Bowling Club Premises will become additional licensed premises of the Ex Servos Club and will be available to all members of the Amalgamated Club. The Bowling Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below.

- (j) After Completion of the Amalgamation:

- (i) the Ex Servos Club will continue as the body corporate of the Amalgamated Club; and

- (ii) the Bowling Club will be wound up in accordance with the law.

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

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

[Regulations – Clause 7(2)(a)]

- 3.1 The Bowling Club premises and facilities will become additional premises of the Ex Servos Club.
- 3.2 The Amalgamated Club will operate from two (2) premises being:
 - (a) the Ex Servos Club Premises; and
 - (b) the Bowling Club Premises.
- 3.3 For the purposes of the Registered Clubs Act, the Ex Servos Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and will be responsible for the Ex Servos Club Premises and the Bowling Club Premises.
- 3.4 The Board of the Amalgamated Club will be the Board constituted in accordance with clause 11.8 of this Memorandum.

Bowling Activities and Bowling Sub-Clubs

- 3.5 Subject to clauses 8 and 9 of this Memorandum, the Amalgamated Club will maintain the bowling greens and bowling activities at the Bowling Club Premises.
- 3.6 The Amalgamated Club will permit the existing Men's bowling sub-club and a Women's bowling sub-club to continue to conduct and administer men's and women's bowling at the Bowling Club Premises and will amend its Constitution or By Laws to recognise the men's bowling sub-club and women's bowling sub club as permanent sub-clubs of the Amalgamated Club.
- 3.7 It is intended for:
 - (a) both the men's and women's bowling sub-clubs to have their own constitutions, committees and members;
 - (b) both the men's and women's bowling sub-clubs to be authorised to operate a bank account (and retain any cash assets they presently hold);
 - (c) both the men's and women's bowling sub-clubs to be authorised to set daily bowling fees and to retain any amount charged in excess of the fees set by the BAC as funds for use by the men's or women's sub-club.
 - (d) the men's and women's bowling sub-clubs to continue using their existing names;
 - (e) the men's and women's bowling sub-clubs to continue using the insignia of the Bowling Club;
 - (f) the respective committees of the men's and women's bowling sub-clubs to be elected by members of the men's or women's bowling sub-club;
 - (g) the men's bowling sub-club to affiliate with the Royal New South Wales Bowling Association and the women's bowling sub-club to affiliate with the New South Wales Women's Bowling Association;
 - (h) the men's and women's bowling sub clubs (with or independently to the

Amalgamated Club) to continue conducting and holding bowls, competitions, tournaments and events. For the avoidance of doubt, the BAC will conduct the annual "Winter Carnival" at the Bowling Club Premises with assistance from sub clubs.

Bowling Administration Committee

- (i) The Board of the Amalgamated Club will create a Bowling Administration Committee (**BAC**) in respect of the Bowling Club Premises and the following shall apply.
 - (i) The BAC will comprise:
 - (1) Three (3) nominees from the committee of the men's bowling club;
 - (2) three (3) nominees from the committee of the women's bowling club;
 - (3) the approved manager of the Bowling Club Premises; and
 - (4) one (1) nominee of the Amalgamated Club Board, who will chair the BAC.
 - (ii) The Board of the Amalgamated Club will adopt By-laws giving effect to the above.

4. A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB

[Regulations – Clause 7(2) (b)]

- 4.1 The traditions, amenities, culture and memorabilia of the Bowling Club will be maintained by the Amalgamated Club at the Bowling Club Premises.
- 4.2 The Amalgamated Club will continue to support the community to the same extent provided by the Bowling Club and will explore opportunities to enhance community support.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB

[Regulations – Clause 7(2) (c)]

- 5.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, it is the intention of the Ex Servos Club to operate the Amalgamated Club and the Bowling Club Premises in accordance with this clause 5 and subject to clauses 8 and 9.

Amalgamated Club Premises

- 5.2 The Ex Servos Club will operate the Amalgamated Club from the Ex Servos Club Premises and the Bowling Club Premises.

Bowling Club Premises

- 5.3 The Bowling Club Premises will be named and promoted as the “Milton Ulladulla Bowling Club” or such other name as approved by the Board of the Amalgamated Club.
- 5.4 The Bowling Club’s insignia will be made available to the men’s and women’s bowling sub-clubs referred to in clauses 3.6 and 3.7.
- 5.5 The Amalgamated Club will subject to this Memorandum:
- (a) carry on the business of a licensed registered club at the Bowling Club Premises with all the facilities and amenities of a registered club; and
 - (b) maintain the bowling greens and bowling activities at the Bowling Club Premises;
 - (c) undertake any necessary upgrades and renovations of the Bowling Club Premises and facilities as determined by the Amalgamated Club in its absolute discretion.

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED

[Regulations – Clause 7(2) (d)]

- 6.1 Subject to clauses 2 and 6.66, prior to Completion of the Amalgamation, the Ex Servos Club will offer similar employment to all of the Bowling Club’s employees. The employment will be on the same terms and conditions presently offered by the Ex Servos Club to employees of the Ex Servos Club.
- 6.2 The Ex Servos Club agrees that, prior to Completion of the Amalgamation, it will make an offer of employment to the Green Keeper of the Bowling Club on the same terms as the Green Keeper is employed by the Bowling Club.
- 6.3 Any employee of the Bowling Club who accepts the offer of employment with the Ex Servos Club will receive continuity of employment and their entitlements will be honoured by the Amalgamated Club.
- 6.4 Any employee of the Bowling Club who does not accept the offer of employment with the Ex Servos Club will be paid their full entitlements when their employment with the Bowling Club comes to an end.
- 6.5 The employment of any employee of the Bowling Club who does not accept the offer of employment with the Ex Servos Club will come to an end on Completion of the Amalgamation unless it is terminated before then.
- 6.6 The Ex Servos Club agrees that the Secretary Manager of the Bowling Club will be employed by the Ex Servos Club, on and from the date of Completion, on the same terms and conditions as the Secretary Manager is employed by the Bowling Club and the employment will be regarded as a continuation of employment and the entitlements will be honoured by the Amalgamated Club.

7. **INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE BOWLING CLUB:**
1. **ANY CORE PROPERTY;**
 2. **ANY CASH OR INVESTMENTS;**
 3. **ANY POKER MACHINE ENTITLEMENTS**

[Regulations – Clause 7(2) (e)]

Core Property

- 7.1 For the purposes of the Registered Clubs Act, the Bowling Club Premises is “core property” of the Bowling Club.
- 7.2 The Ex Servos Club intends to retain the Bowling Club Premises as core property for the purposes of section 41J of the Registered Clubs Act (unless the members of the Amalgamated Club declare the Bowling Club Premises as non-core property) and operate the Amalgamated Club in the manner referred to in clause 5.

Cash and Investments

- 7.3 The cash and investments (if any) of the Bowling Club will be transferred (in accordance with clause 14) to the general reserves of the Amalgamated Club.

Poker Machine Entitlements

- 7.4 The Bowling Club has sixty-four (64) poker machine entitlements.
- 7.5 Subject to the ongoing operation of a registered club facility at the Bowling Club premises the Ex Servos Club intends to retain the sixty four (64) poker machine entitlements at the Bowling Club Premises during the period referred to in clause 9. After that date the question of the number of entitlements allocated to both premises of the Amalgamated Club will be determined by the Board of the Amalgamated Club.

8. **THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE BOWLING CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE BOWLING CLUB**

[Regulations – Clause 7(2) (f)]

- 8.1 The Ex Servos Club does not intend to:
- (a) cease trading from the Bowling Club Premises;
 - (b) substantially change the objects of the Bowling Club Premises; or
 - (c) cease the sporting activities conducted at the Bowling Club Premises.
- 8.2 The Ex Servos Club intends to operate the Amalgamated Club in the manner referred to in clause 5.
- 8.3 However, for the purposes of clause 7(2) (f) of the Regulations, the Ex Servos Club and the Bowling Club are required to agree to the matters referred to in clauses 8.4 to 8.7.
- 8.4 Therefore, for the purposes of clause 7(2)(f) of the Regulations, the Ex Servos Club

and the Bowling Club have agreed that the Amalgamated Club would either cease trading from, change the objects of or cease the sporting activities (see clause 8.8 below) at the Bowling Club Premises in the following circumstances:

- (a) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
- (b) upon the lawful order of any government authority;
- (c) if the premises were destroyed or partially destroyed by fire, flood, storm etc., except where appropriate insurance cover is available to reinstate the premises or where it is otherwise economically viable to do so; or
- (d) if it is not financially viable for the Amalgamated Club (as defined in clause 8.5) to continue to trade from, continue the objects of or continue the sporting activities at the Bowling Club Premises.

8.5 For the purposes of clause 8.4(d), the Bowling Club Premises will be deemed not to be financially viable if, after the Amalgamated Club has traded from the Bowling Club Premises for at least five (5) years, the Bowling Club Premises fails to achieve an EBITDARD percentage of at least ten per cent (10%) over any three (3) consecutive quarters with such EBITDARD percentage to be determined by an independent company auditor.

8.6 The Ex Servos Club and the Bowling Club have agreed that as part of any de-amalgamation, the Amalgamated Club will be required, at its expense, to:

- (a) ensure that the Bowling Club Premises has a gaming machine threshold of sixty four (64) gaming machine entitlements; or
- (b) ensure that if the Bowling Club Premises has a gaming machine threshold of less than sixty four (64) gaming machine entitlements, that it will guarantee the payment of an amount to the de-amalgamated entity equal to the market value, at the relevant time, of the number of gaming machine entitlements the de-amalgamated entity would be required to purchase in order to get the gaming machine entitlement threshold of the Bowling Club Premises to sixty four (64) regardless of whether it can in fact get the gaming machine entitlement threshold of the Bowling Club Premises to sixty four (64); and

8.7 The possible de-amalgamation entity will be required to:

- (a) pay all fees and duties in respect of any de-amalgamation (including legal fees and stamp duty); and
- (b) pay to the Amalgamated Club such amount, as determined by an independent company auditor selected by the Board of the Amalgamated Club, an amount representing the cost of any refurbishment and renovations works undertaken at the Bowling Club Premises, less depreciation, since Completion of the Amalgamation.

8.8 Notwithstanding any other provision contained within this Memorandum the Amalgamated Club shall continue bowling activities at the Bowling Club Premises for a period of at least five (5) years from Completion of the Amalgamation except in the circumstances referred to in clauses 8.4 (a), (b) and (c).

9. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM THE BOWLING CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE BOWLING CLUB PREMISES

[Regulations – Clause 7(2) (g)]

- 9.1 The Ex Servos Club does not intend to cease trading from the Bowling Club Premises or substantially change the objects of the Bowling Club Premises. The Ex Servos Club intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 8.
- 9.2 However, for the purposes of clause 7(2) (g) of the Regulations, the Ex Servos Club and the Bowling Club are required to agree to the matters in clause 9.3.
- 9.3 Therefore, for the purposes of clause 7(2)(g) of the Regulations, the Ex Servos Club and the Bowling Club have agreed that the Amalgamated Club will continue:
- (a) to trade from the Bowling Club Premises;
 - (b) the objects of the Bowling Club Premises; and
 - (c) the bowling activities at the Bowling Club Premises,

for as long as it remains financially viable (pursuant to clause 8.5) but for at least five (5) years (except in the circumstances referred to in clauses 8.4 (a), (b) or (c)).

10. BINDING EFFECT OF MEMORANDUM

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

11. CALLING OF MEETINGS AND ADMISSION OF BOWLING CLUB MEMBERS TO MEMBERSHIP OF THE EX SERVOS CLUB

- 11.1 The Bowling Club will call a special 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 Registered Clubs Act.
- 11.2 At the meeting referred to in clause 11.1, the Bowling Club may, with the consent of NSW Fair Trading, also seek to put other resolutions, including special resolutions, to the ordinary members of the Bowling Club, seeking approvals required under section 359 and Part 4.5 of the Co-Operatives Act and the parties acknowledge and agree that the requirement to liaise with and obtain consent from NSW Fair Trading can impact on the timeframes contained in this Memorandum.
- 11.3 The meeting referred to in clause 11.1 must be held after the date of this Memorandum at a time mutually agreed between the Bowling Club and Ex Servos Club.
- 11.4 Subject to the Bowling Club passing the resolutions referred to in clauses 11.1 and 11.2 (if required), the Ex Servos Club will call a general meeting of the ordinary members of the Ex Servos 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 Registered Clubs Act.

- 11.5 The meeting referred to in clause 11.4 will be held as soon as reasonably practicable after the meeting referred to in clause 11.1.
- 11.6 In addition to the resolution referred to in clause 11.4, the Ex Servos Club will, at the meeting referred to in clause 11.4, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the Ex Servos Club so that:
- (a) All members of the Bowling Club who apply to become members of the Ex Servos Club will be admitted to membership of the Ex Servos Club;
 - (b) All members of the Bowling Club will be able to apply for membership of the Ex Servos Club in the manner referred to in paragraphs (c) to (e) inclusive of this clause 11.6;
 - (c) A member of the Bowling Club will not be required to be proposed or seconded for membership of the Ex Servos Club.
 - (d) As soon as practicable after the Order, the Ex Servos Club will forward to each member of the Bowling Club, who is not already a member of the Ex Servos, a written invitation to become a member of the Ex Servos Club.
 - (e) Any member of the Bowling Club who accepts the invitation and agrees in writing to be bound by the Constitution of the Ex Servos Club will, subject to the Amalgamated Club's Constitution, be elected by a resolution of the Board of the Ex Servos Club to membership of the Ex Servos Club as either a Life Member, Club Member or Junior Member with effect from the date of Completion of the Amalgamation.
 - (f) The Amalgamated Club will create an additional category of Junior Member.
 - (g) Bowling Club members who are admitted to membership of the Ex Servos Club will also be identified as a separate class called the "Milton Ulladulla Bowling Club Members" for the purpose of section 17AC(2) of the Registered Clubs Act.
 - (h) Life members, Club Members and Junior members will, subject to the rules of the men's bowling sub-club and the women's bowling sub-club, be permitted to join the men's bowling sub-club and the women's bowling sub-club and have such bowling privileges as may be conferred on the members of those bowling sub-clubs from time to time.
- 11.7 In addition to the resolution referred to in clause 11.4, the Ex Servos Club will, at the meeting referred to in clause 11.4, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the Ex Servos Club so that any person who, at Completion of the Amalgamation, is a Life member of the Bowling Club will become a Life member of the Amalgamated Club.
- 11.8 In order to assist the smooth transition of the Amalgamation both Clubs have agreed that from the date of Completion of the Amalgamation until the end of the third Annual General Meeting of the Amalgamated Club after that date ("**Period**"):
- (a) Subject to 11.8(b) the Board of the Amalgamated Club will increase to 9 directors comprising of:

- (i) a President;
- (ii) three (3) Vice Presidents, one (1) who must be the Chairman of the Bowling Club at the date of Completion; and
- (iii) three (3) Ordinary directors;

all of whom shall be or have been elected by the members (with the existing Board Members to continue in their current positions in accordance with the Triennial rule except for the resignation of an ordinary director required to accommodate the appointment of the Chairman of the Bowling Club as vice President), and

- (iv) two (2) Ordinary directors who:
 - (1) shall be appointed by the Board ("**Board Appointed Directors**") of the Amalgamated Club pursuant to the provisions of the Registered Clubs Act and the Regulations;
 - (2) shall be current directors of the Bowling Club as approved by the Board of the Bowling Club; and
 - (3) shall be appointed for a period of 3 years each, at the expiry of which they shall retire.

- (b) Only members of the Ex Servos Club who are not and have not been within the previous 12 months bowling members of the Bowling Club as at the date of this Memorandum shall be able to be elected to the position of President, two positions of Vice President and three positions of Ordinary Director during the 3 year period.
- (c) While the Board comprises nine (9) directors, the quorum for meetings of the Board of the Amalgamated Club is to be increased to five (5) directors.
- (d) At the expiry of the three (3) year term referred to in clause 11.8(a)(iv) the Amalgamated Club Board shall consist of 7 Directors comprising of a President, two (2) Vice Presidents and four (4) Ordinary Directors.
- (e) On and from the end of the third Annual General Meeting of the Amalgamated Club following the date of Completion of the Amalgamation:
 - (i) All members of the Amalgamated Club shall, subject to the terms of the Amalgamated Club's Constitution, be eligible to be elected to the Board of the Amalgamated Club;
 - (ii) The quorum for meetings of the Board of the Amalgamated Club will be reduced to four (4) directors; and
 - (iii) For the purposes of nominating for or being elected or appointed to the Board of the Amalgamated Club, membership of the Bowling Club will be recognised as membership of the Ex Servos Club.
- (f) All members of the Amalgamated Club shall, subject to the terms of the Amalgamated Club's Constitution, be eligible to be elected to the Board of the Amalgamated Club.

- 11.9 In addition to the resolution referred to in clause 11.4, the Ex Servos Club will, at the meeting referred to in clause 11.4, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of the Ex Servos Club in order to put into effect the provisions set out above in clause 11.8.
- 11.10 The Bowling Club agrees that prior to issuing its notice of special general meeting to the members of the Bowling Club, it will provide the Ex Servos Club with a copy of the completed notice, including the resolution referred to in clause 11.1 for the approval of the Ex Servos, prior to sending the notice to its members.
- 11.11 The Ex Servos Club agrees that prior to issuing its notice of general meeting to the members of the Ex Servos Club, it will provide the Bowling Club with a copy of the completed notice, including the ordinary resolution referred to in clause 11.4 and the special resolutions referred to in clauses 11.6, 11.7 and 11.9 for the approval of the Bowling Club, prior to sending the notice to its members.
- 11.12 Notwithstanding anything contained in this Memorandum, any member of the Bowling Club who, at Completion of the Amalgamation, is then:
- (a) refused admission to or being turned out of the Ex Servos Club Premises;
 - (b) suspended from the Ex Servos Club; or
 - (c) expelled from the Ex Servos Club;

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

- (a) the person is again permitted to enter the Ex Servos Club Premises; or
 - (b) the period of suspension has been served;
 - (c) the Board of the Amalgamated Club has overturned the person's expulsion from the Amalgamated Club or has readmitted the person to membership of the Amalgamated Club.
- 11.13 Notwithstanding anything contained in this Memorandum, any member of the Ex Servos Club who, at Completion of the Amalgamation, is then:
- (a) refused admission to or has been turned out of the Bowling Club Premises;
 - (b) suspended from the Bowling Club; or
 - (c) expelled from the Bowling Club;

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

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

Amalgamated Club.

12. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 12.1 As soon as reasonably practicable after the meetings referred to in clauses 11.1 and 11.4:
- (a) the Bowling Club (in relation to the resolution required by clause 11.1) and the Ex Servos Club (in relation to the resolution required by clause 11.4) must forward to the lawyers for the Ex Servos Club the following documents:
 - (i) a true copy of the notice of the meeting at which the resolution was passed; and
 - (ii) a true copy of the minutes of the meeting which will include the number of members present at the meeting and whether or not the resolution was passed.
 - (b) the Bowling Club must forward to the lawyers for the Ex Servos Club a copy of the following documents:
 - (i) a true copy of the documents that were sent to Bowling Club members; and
 - (ii) a true copy of the results of the resolutions. .
- 12.2 The Ex Servos Club and its lawyers will prepare and file the Amalgamation Application. The Ex Servos Club will provide the Bowling Club with a copy of the Amalgamation Application.
- 12.3 The Bowling Club will co-operate with the Ex Servos Club and the lawyers for the Ex Servos Club and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the approved Secretary of the Bowling Club to sign the Amalgamation Application if required to do so.

13. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 13.1 The Bowling Club warrants to the Ex Servos Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Bowling 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 \$15,000 plus GST without the prior approval of the Ex Servos Club's CEO or his delegate.
 - (b) Keep the Assets of the Bowling 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) Ensure that the Bowling Club's CEO has regular discussions with the Ex Servos Club's CEO regarding the management and operations of the Bowling Club with the object of:
 - (i) providing for an orderly transfer of the management and operations of the Bowling Club to the Ex Servos Club on the date of Completion of the Amalgamation; and
 - (ii) reducing losses, increasing profitability and achieving efficiencies and cost savings at the Bowling Club.
- (e) Provide the Ex Servos Club CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of the Bowling Club.
- (f) Not do anything which may damage the goodwill of its business or that of the Ex Servos Club.
- (g) Not without the prior written consent of the Ex Servos 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) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;
 - (iii) except in the usual and routine conduct of its operations, dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of the Bowling Club's Assets;
 - (iv) employ any employee (other than a casual employee);
 - (v) terminate the employment of any employee (other than a casual employee);
 - (vi) except in accordance with the terms of any employment agreement or in the ordinary course of the business of the Bowling Club, alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
 - (vii) seek to borrow or borrow money from any third party;
 - (viii) increase the level of debt of the Bowling Club beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of the Bowling Club; or
 - (ix) engage in discussions or negotiations with anyone other than the Ex Servos Club concerning a possible amalgamation and/or the sale of all or any part of the Bowling Club's Assets (otherwise than as permitted under (iii) above), and the Bowling Club must advise the Ex Servos Club of any solicitation by any third party in respect of any such discussion or negotiation.

- 13.2 Each of the Bowling Club's warranties contained in clause 13.1 remain in full force and effect notwithstanding Completion of the Amalgamation.
- 13.3 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, the Ex Servos Club may terminate this Memorandum and the amalgamation at any time prior to Completion of the Amalgamation if there is any material breach of any of the Bowling Club's warranties set out in clause 13.1.
- 13.4 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
- (a) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
 - (b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
 - (c) any Claim of any nature is threatened or asserted by or against the subject Club; or
 - (d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,
- then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.
- 13.5 Title to, property in and risk of the Bowling Club's Assets remain solely with the Bowling Club until such time as they are passed to the Amalgamated Club in accordance with clause 14.
- 13.6 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 relevant club.
- 13.7 Subject to the Bowling Club complying with clauses 13.1 and 13.4, the Ex Servos Club warrants to the Bowling Club that from the date the Assets of the Bowling Club are transferred to the Ex Servos Club, the Ex Servos Club will:
- (a) accept full responsibility for the Bowling Club's Debts and Liabilities; and
 - (b) indemnify and keep indemnified the directors of the Bowling Club in respect of any Claims made against them by creditors of the Bowling Club.
- 13.8 Subject to clause 13.9 and the Bowling Club complying with clause 13.1 and 13.4, the Ex Servos Club warrants to the Bowling Club that, provided the members of the Bowling Club pass the ordinary resolution referred to in clauses 11.1 and 11.2 and the members of the Ex Servos Club pass the resolutions referred to in clauses 11.4, 11.6, 11.7 and 11.9, the Ex Servos Club will provide to the Bowling Club such reasonable financial assistance (in accordance with clause 13.9) as is required to assist the Bowling Club to remain solvent until Completion of the Amalgamation or termination of this Memorandum (whichever is the earlier).
- 13.9 Any financial assistance referred to in clause 13.8 will be subject to the following:
- (a) the Clubs entering into appropriate loan and security documents ("**Loan**

Agreement") on terms and conditions satisfactory to the Ex Servos Club; and

- (b) if this Memorandum is terminated (and the Amalgamation is not completed):
 - (i) the monies loaned under the Loan Agreement plus interest will be repaid in accordance with the Loan Agreement; and
 - (ii) interest will be charged at five percent (5%) per annum and will be calculated from the date of the Loan Agreement until repayment;
 - (iii) in default thereof, the Ex Servos Club may deal with any security provided by the Bowling Club in accordance with the Loan Agreement.

14. DISSOLUTION OF THE BOWLING CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO EX SERVOS CLUB

- 14.1 As soon as practicable after the Final Order, but subject to the Final Order, the Bowling Club must ensure the Assets, Debts and Liabilities of the Bowling Club are transferred to the Ex Servos Club (less an amount sufficient for the purposes of liquidating the Bowling Club in the manner referred to in clause 14.5).
- 14.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 14.1 to occur on the date of the Final Order.
- 14.3 For the purposes of clause 14.1, the Bowling Club must do all things necessary and execute all documents to cause all of the Assets of the Bowling Club to be transferred to or assigned to the Ex Servos Club with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:
 - (a) all real property;
 - (b) all poker machines and all poker machine entitlements;
 - (c) all contract rights including hire purchase agreements;
 - (d) all intellectual property rights; and
 - (e) all physical assets, furniture and fittings and stock in trade,owned or entered into by the Bowling Club.
- 14.4 The transfers and assignments referred to in clause 14.3 must be executed by the Bowling Club and held in escrow by the Ex Servos Club pending Completion of the Amalgamation.
- 14.5 As soon as practicable after Completion of the Amalgamation, the Bowling Club must ensure the Bowling Club is wound up.
- 14.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 14.

15. ACCESS TO RECORDS

15.1 From the date of this Memorandum:

- (a) For the purpose of any due diligence referred to in clause 2.4(b), the Bowling Club will, if required, provide information (including but not limited to, details of all their Assets, Debts and Liabilities) and assistance to the Ex Servos Club in order for the Ex Servos Club to properly carry out and complete the due diligence review.
- (b) For the purposes of the due diligence referred to in clause 2.4(c), the Ex Servos Club will, if required, provide information (including, but not limited to, details of all their Assets, Debts and Liabilities) and assistance to the Bowling Club in order for the Bowling Club to properly carry out and complete the due diligence review.
- (c) The Bowling Club will provide to the Ex Servos Club at all reasonable times access to the Bowling Club's Premises, Records and other information and material reasonably required by the Ex Servos Club.

16. CONFIDENTIALITY

- 16.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 16.2 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.
- 16.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 16.4 This clause 16 survives completion of this Memorandum.

17. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- 17.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 17.2 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.
- 17.3 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.
- 17.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 17.2 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.

17.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 17.2 a party which has complied with the provisions of this clause 17 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.

17.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 17 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.

18. COSTS

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

19. STAMP DUTY

19.1 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.

19.2 Despite the exemption from duty referred to in clause 19.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by the Ex Servos Club.

20. GENERAL

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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.

20.6 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.

- 20.7 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.

21. TERMINATION

- 21.1 The Ex Servos Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Bowling Club if:

- (a) the due diligence review undertaken by it on the Bowling Club (as referred to in clause 2.4(b)) is not satisfactory to the Board of the Ex Servos Club. The Board of the Ex Servos Club can waive this requirement at any time;
- (b) the Bowling Club breaches any warranty contained in clause 13; or
- (c) the circumstances in clause 13.4 exist in relation to the Bowling Club.

- 21.2 The Bowling Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Ex Servos Club if:

- (a) the due diligence review undertaken by it on the Ex Servos Club (as referred to in clause 2.4(c)) is not satisfactory to the Board of the Bowling Club. The Board of the Bowling Club can waive this requirement at any time; or
- (b) the circumstances in clause 13.4 exist in relation to the Ex Servos Club.

- 21.3 If:

- (a) the members of the Bowling Club have not passed the resolutions referred to in clauses 11.1 and 11.2 within nine (9) months of the date of this Memorandum; or
- (b) the members of the Ex Servos Club do not pass the resolutions referred to in clauses 11.4, 11.6, 11.7 and 11.9 within nine (9) months of the members of the Bowling Club passing the resolutions referred to in clauses 11.1 and 11.2,

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

- 21.4 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within eighteen (18) months of the date of this Memorandum or such other later date agreed by the parties, then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

- 21.5 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 21 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 21.

- 21.6 If this Memorandum is terminated in accordance with this clause 21 the Amalgamation terminates.

22. NOTICES

- 22.1 A notice to be given by one club to the other pursuant to this Memorandum must be:
- (a) in writing;
 - (b) directed to the recipients address specified in this Memorandum or as varied by written notice; and
 - (c) left at, or sent by pre-paid registered post, hand delivery or by facsimile to that address.
- 22.2 A notice given in accordance with subparagraphs 22.1(a), 22.1(b), 22.1(c) of paragraph 22.1 will be deemed to be duly given:
- (a) on the day of delivery;
 - (b) two days after the date of posting by pre-paid post; or
 - (c) if sent by facsimile, when the answer back or message confirmation is received,
- as the case may be.

23. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

- 23.1 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.

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

- 24.1 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.

25. NOTES

- 25.1 This Memorandum is to be:
- (a) Made available to the ordinary members of the Bowling Club and the Ex Servos 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 Bowling Club to the Ex Servos Club.

Executed by **Milton Ulladulla Ex-)**
Servos Club Limited ACN 000 858 364)
pursuant to Section 127 of the)
Corporations Act 2001

Director / Secretary

Director / Secretary

Name of Director/Secretary
(print name)

Name of Director/Secretary
(print name)

Executed by **Milton Ulladulla Bowling)**
Club Cooperative Limited ABN 20 793)
988 758 pursuant to Section 49 of)
Cooperatives (Adoption of National
Law) Act 2012

Director / Secretary

Director / Secretary

Name of Director/Secretary
(print name)

Name of Director/Secretary
(print name)