

Memorandum of Understanding

between

ST JOHNS PARK BOLWING CLUB LIMITED

ABN 65 823 421 682

and

PENRITH RUGBY LEAGUE CLUB LIMITED

ABN 57 000 578 398

and

TEMPORARY HOLDING CLUB (NO.4) LIMITED

ACN 629 457 227

MEMORANDUM OF UNDERSTANDING BETWEEN PROPOSED AMALGAMATING CLUBS

DATE:

PARTIES:

St John's Park Bowling Club Ltd ACN 001 067 241 ABN 65 823 421 682 of 93 Edensor Road, St Johns Park NSW 2176
(SJPBC)

and

Penrith Rugby League Club Limited ABN 57 000 578 398 of Mulgoa Road, Penrith NSW 2750
(Panthers)

and

Temporary Holding Club (No.4) Limited ACN 629 457 227 of 123 Mulgoa Road, Penrith New South Wales 2750 **(TCL)**

BACKGROUND

- A. SJPBC is a registered club under the Registered Clubs Act and holds a club licence (No: LIQC300230481) under the Liquor Act in NSW.
- B. Panthers is a registered club under the Registered Clubs Act and holds multiple club licences including a club licence in respect of premises known as Wallacia Panthers (No: LIQC300241920) under the Liquor Act in NSW.
- C. Panthers called for expressions of interest for amalgamation with Wallacia Panthers from other registered clubs on 22 August 2018 by way of ClubsNSW Circular (18-069).
- D. SJPBC submitted an expression of interest in pursuing an amalgamation with Wallacia Panthers.
- E. In order to facilitate the amalgamation between SJPBC and Wallacia Panthers, Panthers must de-amalgamate Wallacia Panthers. To allow the de-amalgamation of Wallacia Panthers, Panthers has incorporated TCL.
- F. The purpose of TCL is to be the public company limited by guarantee that will hold the club licence of the de-amalgamated Wallacia Panthers, and which club licence will be transferred to SJPBC to give effect to the amalgamation.

- G. Both SJPBC, Panthers and TCL are proposing to amalgamate in accordance with the provisions of the Corporations Act, Liquor Act, Registered Clubs Act, including any amendments made to these Acts, and subject to the approval of its members and subject to the approval of the Independent Liquor and Gaming Authority.
- H. In accordance with clause 7(1) of the Regulation, the registered clubs proposing to amalgamate (being SJPBC and TCL) must enter into a Memorandum of Understanding with respect to the proposed amalgamation.
- I. In accordance with clause 7(2) of the Regulation, the Memorandum of Understanding must state each club's position regarding the proposed amalgamation and deal with (or include) matters specified in clauses 7(2)(a) to 7(2)(g). However, there are other matters of importance to the clubs that are also included in this Memorandum.
- J. It is proposed that this amalgamation will be effected under section 17AB(2)(b) by the transfer, under section 60 of the Liquor Act, of the Club Licence of TCL (**the dissolving club**) to SJPBC (**the continuing club**).
- K. SJPBC, Panthers and TCL enter into this Memorandum of Understanding to state each club's position regarding the proposed amalgamation, as required by clause 7 of the Regulation.

1. DEFINITIONS

1.1 Definitions

The following definitions apply in the Recitals and this Memorandum of Understanding unless the context requires otherwise:

Amalgamated Club means SJPBC as the parent/continuing club after Completion of the Amalgamation;

Amalgamation means the amalgamation of the Clubs in accordance with this Memorandum, the Registered Clubs Act, the Liquor Act and the Corporations Act.

Amalgamation Application means the provisional application for the transfer of TCL's Licence to SJPBC pursuant to sections 60(6) and (7) of the Liquor Act by TCL's Secretary and SJPBC's CEO.

Assets include the assets specified in the Schedule;

Completion of the Amalgamation means the day on which all of:

- (a) the Assets and Club Licence of the TCL are transferred to SJPBC; and
- (b) the liabilities of the TCL are paid by, or transferred to, SJPBC.

Club Licence means a club licence granted or held under section 10 of the Liquor Act;

Corporations Act means the *Corporations Act 2001 (Cth)* including any amendments and regulations made under it;

De-amalgamation Application means the provisional application for the transfer of Panthers' Club Licence (LIQC300241920) to TCL pursuant to sections 60(6) and (7) of the Liquor Act by TCL's Secretary and Panthers' CEO.

Financially viable means the trading at Wallacia Golf Premises is deemed financially viable after assessment by an independent company auditor or accountant appointed by the Amalgamated Club for this purpose.

Liquidator means a liquidator to be:

- approved by SJPBC (such approval not to be unreasonably withheld); and
- to be approved by the Independent Liquor and Gaming Authority to act as a Liquidator of TCL.

Liquor Act means the *Liquor Act 2007 (NSW)*;

SJPBC means St John's Park Bowling Club Ltd ACN 001 067 241 ABN 65 823 421 682 of 93 Edensor Road, St Johns Park NSW 2176;

Order means the provisional approval of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act.

Parent Club means SJPBC;

Registered Clubs Act means the *Registered Clubs Act 1976 (NSW)*;

Regulation means the *Registered Clubs Regulation 2009 (NSW)*.

TCL means Temporary Holding Club (No.4) Limited ACN 629 457 227 of 123 Mulgoa Road, Penrith New South Wales 2750;

TCL Premises and Wallacia Golf Premises mean the premises at 13 Park Road, Wallacia New South Wales 2745 but excludes the 18 hole golf course.

2. EACH CLUBS POSITION IN RELATION TO DIVISION 1A OF RCA AND SECTION 60 OF THE LIQUOR ACT 2007 AND THE AMALGAMATION

- 2.1 The proposed amalgamation will involve the continuation of SJPBC as the Parent/Amalgamated Club and the dissolution of the TCL.
- 2.2 The Parent Club and continuing club will be SJPBC.
- 2.3 The dissolved club will be TCL.
- 2.4 Upon Completion of the Amalgamation the Club Licence of TCL (No: LIQC300241920) will be transferred to SJPBC.
- 2.5 Upon amalgamation the Assets and liabilities of TCL will be transferred to SJPBC.
- 2.6 The only premises of the Amalgamated Club are proposed to be SJPBC's four (4) premises situated at:
 - SJPBC's current premises at:
 - (i) St Johns Park;
 - (ii) Tuncurry;

- (iii) Wallacia Bowling Club; and
 - the Wallacia Golf Premises.
- 2.7 SJPBC proposes:
 - (a) the full members of the TCL will be invited by SJPBC to become full members of SJPBC as the Amalgamated Club; and
 - (b) at the meeting of SJPBC to pass the resolution approving the amalgamation in principle and authorising an application to be made to the Independent Liquor and Gaming Authority to transfer the TCL's Club Licence to SJPBC, the members of SJPBC will be asked to consider, and if thought fit, to pass a resolution to amend the constituent documents of SJPBC, (if considered necessary) with effect from Completion of the Amalgamation, to add a class of members for identification purposes only under section 17AC of the Registered Clubs Act to be known as the "Wallacia Golf Members."
- 2.8 Those persons who are Life members of TCL as at the date of this Memorandum of Understanding will be identified as Wallacia Golf Club Life Members in the Amalgamated Club's records and will continue to have the rights of Life Membership conferred upon them but only in relation to the Wallacia Golf Club premises.
- 2.9 The amalgamation will be subject to the approval of:
 - (a) each club's ordinary members at separately convened General Meetings; and
 - (b) the Independent Liquor and Gaming Authority.
- 2.10 The process for the Amalgamation will be as follows:
 - (a) The parties entering into this Memorandum.
 - (b) The members of Panthers being asked to:
 - (i) approve the de-amalgamation of Wallacia Panthers and Panthers in accordance with section 17AM(d) of the Registered Club Act; and
 - (ii) approve the clubs making the De-amalgamation Application,

at a general meeting of the ordinary members and life members of Panthers.
 - (c) The members of Wallacia Panthers being asked to:
 - (iii) approve the de-amalgamation of Wallacia Panthers and Panthers in accordance with section 17AM(d) of the Registered Club Act;
 - (iv) approve the Amalgamation; and
 - (v) approve the clubs making the De-amalgamation Application and Amalgamation Application,

at a general meeting of the ordinary members and life members of Wallacia Panthers.
 - (d) The members of TCL being asked to:

- i. approve the de-amalgamation of Wallacia Panthers and Panthers in accordance with section 17AM(d) of the Registered Club Act;
 - ii. approve the Amalgamation; and
 - iii. approve the clubs making the De-amalgamation Application and Amalgamation Application,

at a general meeting of the ordinary members and life members of TCL
- (e) The members of SJPBC being asked to:
 - (vi) approve the Amalgamation; and
 - (vii) approve the clubs making the Amalgamation Application,

at a general meeting of the ordinary members and life members of SJPBC.
- (f) The general meetings referred to in clauses 2.10(b), (c), (d) and (e) will be called and held in the manner referred to in clause 12 below.
- (g) At the meeting of SJPBC referred to in 2.10(d) the members of SJPBC will (if considered necessary) be asked to consider, and if thought fit, pass a special resolution to amend the Constitution of SJPBC (with effect from Amalgamation Completion) to add a class of members (for identification purposes only under section 17AC of the Registered Clubs Act) to be known as "Wallacia Golf Members".
- (h) The de-amalgamation application and the Amalgamation Application will then be made. The de-amalgamation application and Amalgamation Application will be made in the manner provided for in clause 14 below.
- (i) After the Order is made by the Authority all members of TCL, who are not already members of SJPBC, will be invited to become ordinary members of SJPBC.
- (j) On Amalgamation Completion:
 - (i) All of the Assets of TCL are transferred to SJPBC; and
 - (ii) All members of TCL who have accepted the invitation to become ordinary members of SJPBC will become members of SJPBC.
- (k) From Completion the Amalgamated Club will be available to all members of the Amalgamated Club.
- (l) After Amalgamation Completion, SJPBC will continue as the body corporate of the Amalgamated Club.

2.11 Due Diligence

- (a) TCL may, at its own expense, undertake a due diligence review of SJPBC's financial position.
- (b) SJPBC may, at its own expense, undertake a due diligence review of TCL's financial position and operations.

- (c) TCL will, if required, provide to SJPBC a list of information (including, but not limited to, details of all TCL's debts and liabilities) and will also provide reasonable assistance to SJPBC in order for SJPBC to properly carry out and complete the due diligence review.

3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE DISSOLVED CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THOSE PREMISES AND FACILITIES – [CLAUSE 7 (2) (A)]

- 3.1 The Wallacia Golf premises are leased from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) and are currently occupied on a holding over basis.
- 3.2 Subject to SJPBC negotiating a further lease on acceptable terms or purchasing sufficient land from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709), the Amalgamated Club will operate from the following premises:
- 93 Edensor Road, St Johns Park NSW 2176;
 - 21 Parkes Street, Tuncurry NSW 2428;
 - 1 Roma Avenue, Wallacia New South Wales 2745; and
 - 13 Park Road, Wallacia New South Wales 2745.
- 3.3 The Board of Directors of SJPBC will be the governing body of the Amalgamated Club.
- 3.4 SJPBC Chief Executive Officer will be the Chief Executive Officer of the Amalgamated Club.

Transition Committee

- 3.5 Both SJPBC and TCL agree that, as and from the date of date of the Order, they shall form a committee (**Transition Committee**) comprising of four (4) members of the Boards of each Club. Both Clubs shall, as soon as members of both clubs have approved the amalgamation, determine the details of the operation of the Transition Committee and prepare rules developed for this purpose containing, amongst other things the following provisions:
- (a) The Transition Committee will oversee and assist with the management of golfing activities at the Wallacia Golf Premises.
 - (b) The role of the Transition Committee shall be to provide advice to the CEO and Board of the Amalgamated Club in relation to golfing activities at the Wallacia Golf Premises.
 - (c) The Transition Committee is subject to the overall control and direction of the Board and management of the Amalgamated Club.
 - (d) The Transition Committee may be wound up at any time if determined appropriate by the Board of the Amalgamated Club.

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

- 4.1 The Amalgamated Club will preserve and maintain the traditions and ethos of Wallacia Golf at the Wallacia Golf Premises.
- 4.2 The Amalgamated Club will maintain the appropriate facilities and amenities for responsible gaming and responsible service of alcohol, function and dining facilities and members' activities at the Wallacia Golf Premises.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB – [CLAUSE 7 (2) (C)]

- 5.1 The Wallacia Golf Premises are leased from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) and are currently occupied on a holding over basis only.
- 5.2 Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) currently have a development application for a cemetery and memorial park to be developed on the 18 hole golf course adjoining the Wallacia Golf Premises.
- 5.3 SJPBC has been negotiating a lease of the Wallacia Golf Premises and the adjoining golf course with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709). Subject to negotiating acceptable terms of a lease over the Wallacia Golf Premises and over the adjoining golf course, SJPBC intends to be able to operate the Wallacia Golf Premises and a nine (9) hole golf course for at least five (5) years.
- 5.4 SJPBC has also expressed an interest in purchasing sufficient land from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709), to continue to operate the Wallacia Golf Premises. However, such interest does not include the golf course land as it is earmarked for future development as a cemetery by Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 5.5 Subject to clauses 5.3 and 5.4, SJPBC proposes that the Amalgamated Club will continue to trade the Wallacia Golf Premises for at least five (5) years from Amalgamation Completion subject to the Wallacia Golf Premises being Financially Viable within three (3) years from Amalgamation Completion.
- 5.6 Subject to clause 5.3, the Club will continue to trade the Wallacia Golf Premises after five (5) years from Amalgamation Completion on a year to year basis subject to the Wallacia Golf Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
- 5.7 It is the intention of SJPBC to operate the Amalgamated Club and Wallacia Golf Premises in accordance with this clause 5.
- 5.8 The Amalgamated Club will trade from the current premises of SJPBC at:
- 93 Edensor Road, St Johns Park NSW 2176;
 - 21 Parkes Street, Tuncurry NSW 2428;
 - 1 Roma Avenue, Wallacia New South Wales 2745; and
- the Wallacia Golf Premises at 13 Park Road, Wallacia New South Wales 2745.

- 5.9 The future direction of the Amalgamated Club generally will be subject to the overall strategic plan of the Amalgamated Club and its finances.

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED – [CLAUSE 7 (2) (D)]

- 6.1 All current employees of Wallacia Golf Premises will initially be offered continuing employment by the Amalgamated Club.
- 6.2 The Wallacia Golf Premises business will be monitored and reviewed and changes in the structure of the staffing and roles performed within the business may be required to ensure the Amalgamated Club can meet the required level of service standards and at the same time remain financially viable.
- 6.3 As a part of the amalgamation transition process, all Wallacia Golf Premises staff will be given the opportunity to discuss with SJPBC their concerns and provide input into the business through SJPBC's existing human resources department. Development of staff will be offered, if required.
- 6.4 Wallacia Golf Premises staff will be given access to the SJPBC group staff rewards program, collective union agreement, if requested and agreed, as well as the in-house training department.
- 6.5 Fundamental administrative functions including payroll, accounts, finance, marketing, gaming and human resources will be conducted from the SJPBC St Johns Park premises. There will be no St Johns Park premises cost allocation to Wallacia Golf Premises.
- 6.6 Employees that do not accept an offer of employment with the Amalgamated Club will be terminated on Amalgamation Completion and those employees will be entitled to be paid the balance of their accrued entitlements by Panthers.
- 6.7 Panthers will pay to SJPBC the amount of all employee entitlements, including amounts for accrued sick leave, annual leave and long service leave of those employees that do accept an offer of employment with the Amalgamated Club.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE DISSOLVED CLUB – [CLAUSE 7 (2) (E)]

- (i) ANY CORE PROPERTY OF THE CLUB
- (ii) ANY CASH OR INVESTMENTS HELD BY THE CLUB
- (iii) ANY GAMING MACHINE ENTITLEMENTS ALLOCATED UNDER THE GAMING MACHINES ACT 2001 IN RESPECT OF THE PREMISES OF THE CLUB

7.1 Core Property

- 7.2 TCL has no "core property" as defined in section 41E of the Registered Clubs Act.

Cash and Investments

- 7.3 The cash and investments of TCL will form part of the Assets and will be transferred to the Amalgamated Club in accordance with this Memorandum.

Gaming Machine Entitlements

- 7.4 The gaming machine entitlements held by the TCL upon amalgamation will be an Asset of the Amalgamated Club and will be transferred to the Amalgamated Club.
- 7.5 SJPBC expects and requires that the TCL will:
- (a) be the holder of twenty seven (27) transferable gaming machine entitlements at the date of this Memorandum of Understanding but will still be held by the TCL on Completion of the Amalgamation;
 - (b) will continue to also be the owner of twenty seven (27) gaming machines at Completion of the Amalgamation; and
 - (c) have a gaming machine threshold of twenty seven (27) at Completion of the Amalgamation.

8. THE RISKS OF NOT MEETING ANY SPECIFIED INTENTIONS REGARDING THE PRESERVATION OF THE CORE PROPERTY OF THE DISSOLVED CLUB AND HOW THOSE RISKS ARE TO BE ADDRESSED IF REALISED [CLAUSE 7(2)(E1)]

- 8.1 The Wallacia Golf Premises are leased from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) and are currently occupied on a holding over basis only.
- 8.2 Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) currently have a development application for a cemetery and memorial park to be developed on the 18 hole golf course adjoining the Wallacia Golf Premises.
- 8.3 SJPBC has been negotiating a lease of the Wallacia Golf Premises and the adjoining golf course with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 8.4 The continuation of the Wallacia Golf Premises and the adjoining golf course is subject to SJPBC negotiating acceptable terms of a lease with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 8.5 If acceptable terms are not able to be negotiated, SJPBC expects that Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) will request the club to cease operation at the site.
- 8.6 Despite clause 8.5, SJPBC is confident that it will be able to negotiate acceptable lease terms over the Wallacia Golf Premises and over the adjoining golf course to allow SJPBC to be able to operate the Wallacia Golf Premises and at least a nine (9) hole golf course for at least five (5) years.
- 8.7 SJPBC has also expressed an interest in purchasing sufficient land from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709), to continue to operate the Wallacia Golf Premises. However, such interest does not include the golf course land as it is earmarked for future development as a cemetery by Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 8.8 Accordingly, these are the risks to the core property that SJPBC and TCL acknowledge and agree.

9. ANY AGREEMENT UNDER SECTION 17AI (1) OF THE ACT RELATING TO THE PERIOD DURING WHICH THE MAJOR ASSETS OF THE DISSOLVED CLUB MUST NOT BE DISPOSED OF [CLAUSE 7(2)(E2)]

- 9.1 The Wallacia Golf Premises are leased from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) and are currently occupied on a holding over basis only.
- 9.2 SJPBC has been negotiating a lease of the Wallacia Golf Premises and the adjoining golf course with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 9.3 The continuation of the Wallacia Golf Premises and the adjoining golf course is subject to SJPBC negotiating acceptable terms of a lease with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 9.4 If acceptable terms are not able to be negotiated, SJPBC expects that Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) will request the club to cease operation at the site. This may occur at any time.

10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED TO CEASE TRADING ON THE PREMISES OF THE DISSOLVED CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE DISSOLVED CLUB- [CLAUSE 7 (2) (F)]

- 10.1 The Wallacia Golf Premises are leased from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) and are currently occupied on a holding over basis only.
- 10.2 SJPBC has been negotiating a lease of the Wallacia Golf Premises and the adjoining golf course with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 10.3 The continuation of the Wallacia Golf Premises and the adjoining golf course is subject to SJPBC negotiating acceptable terms of a lease with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 10.4 If acceptable terms are not able to be negotiated, SJPBC expects that Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) will request the club to cease operation at the site. This may occur at any time.
- 10.5 For the purposes of clause 6(2)(f) of the Regulations:
 - (a) the objects of the TCL will cease to have effect on dissolution or winding up of that club; and
 - (b) on and from Completion of the Amalgamation, the objects of SJPBC will be the objects of the Amalgamated Club.

11. AN AGREED PERIOD OF TIME BEFORE ANY ACTION REFERRED TO IN CLAUSE 7 (2) (F) CAN BE UNDERTAKEN BY THE AMALGAMATED CLUB- [CLAUSE 7 (2) (G)]

- 11.1 As noted above, the Wallacia Golf Premises are leased from Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) and are currently occupied on a holding over basis only.

- 11.2 SJPBC has been negotiating a lease of the Wallacia Golf Premises and the adjoining golf course with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 11.3 The continuation of the Wallacia Golf Premises and the adjoining golf course is subject to SJPBC negotiating acceptable terms of a lease with Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709).
- 11.4 If acceptable terms are not able to be negotiated, SJPBC expects that Catholic Metropolitan Cemeteries Trust (ABN 85 744 325 709) will request the club to cease operation at the site. This may occur at any time.
- 11.5 The members of the Amalgamated Club may amend the objects of the Amalgamated Club at any time, subject to the requirements of the Corporations Act, the Registered Clubs Act and the constituent documents of the Amalgamated Club.

12. CALLING OF MEETINGS AND ADMISSION OF TCL MEMBERS TO MEMBERSHIP OF SJPBC

- 12.1 Panthers will call a general meeting of its ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
 - (a) approve the de-amalgamation of Wallacia Panthers and Panthers in accordance with section 17AM(d) of the Registered Club Act; and
 - (b) approve the clubs making the De-amalgamation Application.
- 12.2 Panthers will call a general meeting of its Wallacia Panthers Club ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
 - (a) approve the de-amalgamation of Wallacia Panthers and Panthers in accordance with section 17AM(d) of the Registered Club Act;
 - (b) approve the Clubs making the De-amalgamation Application.
 - (c) approve in principle, the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act; and
 - (d) approve the Clubs making the Amalgamation Application.
- 12.3 TCL will call a general meeting of its ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
 - (a) approve the de-amalgamation of Wallacia Panthers and Panthers in accordance with section 17AM(d) of the Registered Club Act;
 - (b) approve the Clubs making the De-amalgamation Application.
 - (c) approve in principle, the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act; and
 - (d) approve the Clubs making the Amalgamation Application.
- 12.4 The meetings referred to in clause 12.1, 12.2 and 12.3 will be held as soon as possible following the execution of this MOU.

- 12.5 SJPBC will call a general meeting of its ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve in principle the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act;
 - (b) approve the Clubs making the Amalgamation Application; and
 - (c) if necessary, amending the Constitution of SJPBC as provided in clause (c).
- 12.6 The meeting referred to in clause 12.5 will be held as soon as reasonably practicable but in any case, no later than 25 days after the date of the last of the meetings referred to in clause 12.1 and 12.2.
- 12.7 Subject to clause 12.8, the resolution which will be submitted to the meetings referred to in this clause 12 will be as follows:

ORDINARY RESOLUTION

"That the members hereby approve in principle:

- 1. The amalgamation of St Johns Park Bowling Club ACN 001 067 241 with Temporary Holding Club (No.4) Limited ACN 629 457 227, such an amalgamation to be effected by:
 - (a) the continuation of St Johns Park Bowling Club ACN 001 067 241 (as the amalgamated club) and the dissolution Temporary Holding Club (No.4) Limited ACN 629 457 227; and
 - (b) the transfer of the club licence of Temporary Holding Club (No.4) Limited ACN 629 457 227 to St Johns Park Bowling Club ACN 001 067 241; and
 - 2. The making of an application to the Independent Liquor and Gaming Authority for the transfer of the club licence of Temporary Holding Club (No.4) Limited ACN 629 457 227 to St Johns Park Bowling Club ACN 001 067 241 for the purposes of such amalgamation."
- 12.8 The resolution referred to in clause 12.7 to be considered at the meeting of SJPBC will provide that it is subject to TCL passing the:
- (a) resolutions referred to in clauses 12.7 and 13; and
 - (b) if necessary, the special resolution to amend the SJPBC Constitution as foreshadowed by clause 13 of this Memorandum.

13. AMENDMENTS TO CONSTITUTION OF SJPBC

- 13.1 In addition to the resolution referred to in clause 12.7, SJPBC may, if it is considered necessary by SJPBC, at the meeting referred to in clause 12.5, submit to those members eligible to attend and vote a special resolution to amend the SJPBC Constitution to give effect to the following from Completion:

Admission to membership of SJPBC by members of TCL who are not members of SJPBC:

- (a) All members of TCL will be able to apply for membership of SJPBC in the manner referred to in sub paragraphs (b) to (d) of this clause 13.1.
- (b) All members of TCL who apply to become members of SJPBC pursuant to the Amalgamation will be admitted to membership of SJPBC.
- (c) After SJPBC and TCL have passed the resolutions approving in principle the Amalgamation, SJPBC will forward to each member of TCL who is then not currently a member of SJPBC a written invitation to become a member of SJPBC.
- (d) Any member of TCL who accepts the invitation referred to in clause 13.1(c) and agrees in writing to be bound by the SJPBC Constitution will, (subject to the name of that person being displayed on the noticeboard of SJPBC for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by SJPBC) be elected by a resolution of the Board of SJPBC to membership of SJPBC with effect from the date of Completion.
- (e) TCL members who are admitted to membership of SJPBC will, for the purpose of section 17AC(2) of the Registered Clubs Act, be identified as a separate class called Wallacia Golf Members but may transfer to any other class of membership of SJPBC for which they are eligible to join but will also still retain and be recorded as Wallacia Golf members.

Wallacia Golfing Members

- (a) All members of TCL and of SJPBC shall be eligible for election or transfer to membership of SJPBC as a Wallacia Golfing Member.
- (b) A person who applies for Wallacia Golfing Membership of SJPBC, must satisfy the Board that he or she has an interest in actively and regularly taking part in the golfing activities of the Amalgamated Club. The Board may determine, from time to time by By-Law, any additional eligibility criteria which a person must comply with in order to be eligible for Wallacia Golfing Membership.
- (c) Any Wallacia Golfing members will have the same rights and privileges as SJPBC Full Playing members (except the right to nominate or second any person for election to the Board, be elected or appointed to the Board of SJPBC or vote on any special resolution) as well as the right to use the golfing and such other facilities of SJPBC, as determined by the Board of SJPBC from time to time, by By-Law or otherwise.

Life members of TCL

- (a) All Life members of TCL will be admitted to "Wallacia Golf Life membership" of SJPBC.
- (b) Any Wallacia Golf Life member will (except as specified in clause 13.1(c) of this MOU) be afforded the same rights as he or she is currently afforded with TCL in respect of the Wallacia Golf Premises only.

- (c) For the purpose of this clause, it is acknowledged that Wallacia Golf Life members will be required to pay the minimum subscription specified in the Registered Clubs Act per annum and any affiliation, green and other fees relating to the playing of golf (if he or she participates in the game of golf).

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 14.1 As soon as reasonably practicable after the meetings referred to in clauses 12.1, 12.2, and 12.3 both TCL and Panthers must forward to the lawyers for Panthers, such documents relevant to it as requested by the lawyers for Panthers, including but not limited to:
 - (a) a true copy of the Notice provided to members of each Club under clause 5 of the Regulation;
 - (b) a true copy of the Notice of General Meeting issued by each Club under clause 12 of this Memorandum;
 - (c) copies of the financial reports of each Club for the last three (3) financial years;
 - (d) a true copy of the minutes of the General Meeting of each Club which will include the number of members present at the meeting and whether or not the resolution was passed; and
 - (e) such other documents requested by the lawyers for Panthers to give effect to the De-amalgamation Application.
- 14.2 As soon as reasonably practicable after the meetings referred to in clauses 12.1 and 12.5, TCL and SJPBC must forward to the lawyers for SJPBC such of the following documents relevant to it, including but not limited to:
 - (a) a true copy of the Notice provided to members of each Club under clause 5 of the Regulation;
 - (b) a true copy of the Notice of General Meeting issued by each Club under clause 12 of this Memorandum;
 - (c) copies of the financial reports of each Club for the last three (3) financial years;
 - (d) a true copy of the minutes of the General Meeting of each Club which will include the number of members present at the meeting and whether or not the resolution was passed;
 - (e) true copies of the registers of directors disclosures made in accordance with the Registered Clubs Accountability Code;
 - (f) a true copy of the advertisement in which SJPBC called for expressions of interest;
 - (g) a copy of the Expression of Interest submitted by TCL to SJPBC; and
 - (h) such other documents requested by the lawyers for SJPBC to give effect to the Amalgamation Application.

- 14.3 Panthers and its lawyers will prepare and file the De-amalgamation Application. Panthers will provide TCL and SJPBC with a copy of the De-amalgamation Application
- 14.4 SJPBC and its lawyers will prepare and file the Amalgamation Application. SJPBC will provide TCL and Panthers with a copy of the Amalgamation Application.
- 14.5 TCL will co-operate with Panthers, SJPBC and the lawyers for each and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the De-amalgamation Application and Amalgamation Application and will cause the approved Secretary of TCL to sign the De-amalgamation Application and Amalgamation Application if required to do so.

15. ACCESS TO RECORDS

- 15.1 From the date of this Memorandum and on a confidential basis, Panthers and TCL will provide to SJPBC at all reasonable times access to such records and Assets at and relating to the Wallacia Premises and other information and material reasonably required by SJPBC, including for the purpose of any due diligence referred to in clause 2.11.
- 15.2 From the date of this Memorandum and on a confidential basis, SJPBC will provide to TCL and Panthers at all reasonable times access to the SJPBC records and other information and material reasonably required by TCL, including for the purpose of any due diligence referred to in clause 2.11.

16. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 16.1 TCL warrants to SJPBC that from the date of this Memorandum to the date of Completion of the Amalgamation, TCL 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 \$2,500.00 plus GST without the prior approval of SJPBC's CEO or their delegate.
 - (b) Keep the Assets of TCL 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.
 - (d) Ensure that Panthers' CEO has regular discussions with SJPBC's CEO regarding the management of Wallacia Premises with the object of:
 - (i) providing for an orderly transfer of the management and operations of TCL to SJPBC on the date of Completion of the Amalgamation; and
 - (ii) reducing losses, increasing profitability and achieving efficiencies and cost savings at TCL.
 - (e) Provide SJPBC CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Wallacia Premises.

- (f) Not do anything which may damage the goodwill of its business or that of SJPBC.
 - (g) Not without the prior written consent of SJPBC:
 - (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 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) otherwise than 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 TCL's Assets;
 - (iv) employ any employee;
 - (v) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
 - (vi) seek to borrow or borrow money from any third party except from SJPBC;
 - (vii) engage in discussions or negotiations with anyone other than SJPBC concerning a possible amalgamation and/or the sale of all or any part of TCL's Assets, and TCL must advise SJPBC of any solicitation by any third party in respect of any such discussion or negotiation.
- 16.2 Each of TCL's warranties contained in clause 16.1 remain in full force and effect notwithstanding Completion of the Amalgamation.
- 16.3 As an inducement to TCL to enter into this Memorandum, SJPBC represents and warrants as essential conditions that:
- (i) SJPBC is a company duly incorporated under the provisions of the *Corporations Act 2001* (Cth) in good standing with the Australian Securities and Investment Commission;
 - (ii) except as expressly stated in this Memorandum, no other corporate act or proceeding on the part of SJPBC or its members or directors is necessary to authorise this Memorandum or the transactions contemplated;
 - (iii) neither the signing of this Memorandum nor the consummation of the proposed Amalgamation will conflict with or constitute a default under any term or provision of the Constitution of SJPBC or of any agreement, arrangement, commitment, understanding or restriction of any kind to which SJPBC is a party or by which SJPBC is bound nor any law;
 - (iv) there are no Claims (for amounts in aggregate in excess of \$50,000) or investigations pending or threatened by or against SJPBC of any nature; and

- (v) SJPBC is in a position from its own financial resources to consummate the proposed Amalgamation on the terms set out in this Memorandum.
- 16.4 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, SJPBC 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 TCL's warranties set out in clause 16.1.
- 16.5 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, TCL 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 SJPBC's warranties set out in clause 16.3.
- 16.6 If, before Final Order:
 - (a) an event occurs which has or may have a material effect on the profitability of the Wallacia Premises or value of any of the Assets;
 - (b) an event occurs which makes any warranty, or any of the other warranties made or given by TCL untrue or misleading;
 - (c) any Claim of any nature is threatened or asserted by or against TCL; or
 - (d) there is any material adverse change in the condition (financial or otherwise) or prospects of TCL or of its operations,
 - (e) then TCL or Panthers must within a reasonable time on becoming aware of the circumstances, give notice to SJPBC fully describing the circumstances.
- 16.7 On Final Order of the Amalgamation Application by the Authority, Panthers will:
 - (a) conduct a cash clearance of the gaming machines located at the Wallacia Premises and provide a report to SJPBC;
 - (b) pay in full the amount of all accrued employee entitlements of Wallacia Premises employees as foreshadowed in clauses 6.6 and 6.7; and
 - (c) pay in full all outstanding Wallacia Premises creditors and/or contracts owing at the date of Final Order.
- 16.8 On Final Order of the Amalgamation Application by the Authority, SJPBC will to pay to Panthers:
 - (a) the amount referred to the poker machine cash clearance report; and
 - (b) the amount of \$720,000.00 in accordance with the following:
 - (i) a first instalment of \$500,000.00 upon approval of the amalgamation by the Authority and transfer of the New Entity's Club Licence to SJPBC; and
 - (ii) a second instalment of \$220,000.00 on or prior to the first anniversary of the date of approval of the amalgamation by the Authority and transfer of the New Entity's Club Licence to SJPBC.

- (c) If GST is payable in respect of the amount referred to in (b) above, SJPBC will be responsible for remitting that amount to Panthers.
- 16.9 Title to, property in and risk of TCL's Assets remain solely with TCL and Panthers until such time as they are passed to the Amalgamated Club in accordance with clause 18.
- 16.10 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.
- 16.11 Subject to TCL and Panthers complying with clauses 16.1 and 16.5, SJPBC warrants to TCL that from the date the Assets of TCL are transferred to SJPBC, SJPBC will:
 - (a) accept full responsibility for TCL's Debts and Liabilities; and
 - (b) indemnify and keep indemnified the directors of TCL in respect of any Claims made against them by creditors of the TCL.

17. TERMINATION

- 17.1 This Memorandum may be terminated by either TCL, Panthers or SJPBC if they are not satisfied with the outcome of the due diligence referred to in clause 2.11 of this Memorandum.
- 17.2 This Memorandum may be terminated by SJPBC if the members of Panthers do not pass the resolutions referred to in clause 12.1 of this Memorandum.
- 17.3 This Memorandum may be terminated by SJPBC if the members of TCL do not pass the resolutions referred to in clause 12.2 of this Memorandum.
- 17.4 This Memorandum may be terminated by Panthers, TCL or SJPBC if the members of SJPBC do not pass the resolutions referred to in clause 12.5 of this Memorandum.
- 17.5 This Memorandum may be terminated by either party without cause on the giving of ten (10) business days notice to the other party.
- 17.6 This Memorandum may be terminated immediately by any party if the Authority declines to approve the Amalgamation Application and the party reasonably determines that it is unlikely the Authority will grant the Amalgamation Application at any future date.
- 17.7 The termination of this Memorandum on any ground specified in this clause 17 shall (except as specified in clause 17.8) not give rise to any right of the non-terminating party to claim any costs, losses or damages in connection with, arising from or consequential on the termination howsoever arising.
- 17.8 If this Memorandum is terminated on any ground specified in this clause 17 or for any other reason, Panthers agrees to sell and SJPBC agrees to purchase the twenty seven (27) gaming machine entitlements and poker machines located at the Wallacia Premises and allocated in respect of the Club Licence relating to the Wallacia Premises for the price of \$720,000.00 payable in accordance with the following:
 - (a) a first instalment of \$500,000.00 within fourteen (14) days of the date of termination of this Memorandum; and

- (b) a second instalment of \$220,000.00 on or prior to the first anniversary of the date of termination of the Memorandum.
- 17.9 If GST is payable in respect of the purchase price referred to above, SJPBC will be responsible for remitting that amount to Panthers.

18. TRANSFER OF TCL'S ASSETS, DEBTS AND LIABILITIES TO SJPBC

- 18.1 As soon as practicable after the Order, but subject to the Final Order, the TCL must ensure the Assets, Debts and Liabilities of TCL are transferred to SJPBC Club (less the amount referred to in clause 19.2 for the purposes of liquidating TCL in the manner referred to in clause 19).
- 18.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 18.1 to occur on the date of the Final Order.
- 18.3 For the purposes of clause 18.1, TCL and Panthers must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to SJPBC with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:
 - (c) all poker machines and all poker machine entitlements;
 - (d) all contract rights including hire purchase agreements;
 - (e) all intellectual property rights; and
 - (f) all physical assets, furniture and fittings and stock in trade,
 - (g) owned or entered into by the TCL.
- 18.4 The transfers and assignments referred to in clause 18.3 must be executed by TCL and/or Panthers and held in escrow by SJPBC pending Completion of the Amalgamation.

19. DISSOLUTION OF TCL

- 19.1 As soon as practicable after Completion of the Amalgamation, TCL must ensure that it is liquidated. In order to facilitate the liquidation, as soon as practical after Completion of the Amalgamation, the TCL Board must:
 - (a) do all things necessary to liquidate TCL which may include calling a general meeting of TCL's members at which such members will consider and if thought fit, pass all the appropriate resolutions to:
 - (i) liquidate TCL;
 - (ii) appoint the Liquidator (approved by SJPBC and Panthers) for the purpose of liquidation; and
 - (iii) approve of any remaining assets of the TCL after liquidation, being transferred to SJPBC.

- (b) thereafter permit TCL to be liquidated and after payments of any remaining debts and liabilities of TCL resulting from the liquidation, permit the Liquidator to transfer any remaining assets of the TCL to SJPBC.
- 19.2 For the purpose of clause 19.1(a)(ii), Panthers agrees to indemnify TCL and SJPBC for the costs of the Liquidator and the liquidation of TCL.
- 19.3 Each of the parties warrants to the other it will co-operate with the other and their respective advisors and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to this clause 19.

20. CONFIDENTIALITY

- 20.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 20.2 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.
- 20.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 20.4 This clause 20 survives completion of this Memorandum.

21. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- 21.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 21.2 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.
- 21.3 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.
- 21.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 21.2 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,
 - (d) 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.

- 21.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 21.2 a party which has complied with the provisions of this clause 21 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.
- 21.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 21 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.

22. COSTS

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

23. STAMP DUTY

- 23.1 The parties acknowledge that section 65(3) of the *Duties Act 1997* (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.
- 23.2 Despite the exemption from duty referred to in clause 23.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by SJPBC.

24. GENERAL

24.1 Further assurances

Each party must do everything necessary to give full effect to this Memorandum in good faith.

24.2 Entire agreement

This Memorandum and any other deed or agreement entered into pursuant to this Memorandum:

- (a) are the entire agreements between the parties in relation to the proposed amalgamation of the parties; and
- (b) supersede all previous agreements.

24.3 Counterparts

- (a) A party may execute this Memorandum by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

24.4 Variation

The parties can only vary a term of this Memorandum if the variation is in writing and both parties sign and approval is given by the Members of both parties in general meeting.

NOTES

This Memorandum is to be:

1. Made available to the ordinary members of the TCL and SJPBC at least 21 days before any meeting of the members of each club referred to in clause 12 for the purpose of voting on whether to approve the proposed amalgamation;
2. Made available for inspection on the premises of each club and on the website of each club for at least 21 days before any meeting contemplated by clause 12 of this Memorandum is held; and
3. Be lodged with any Amalgamation Application under section 60 of the Liquor Act 2007 to transfer the Club Licence held by the TCL to SJPBC.

EXECUTED BY:


Executed as a deed by **St John's Park Bowling Club Ltd ACN 001 067 241 ABN 65 823 421 682** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

PAUL MORRIS

Name of Director

BLOCK LETTERS


~~*Director~~/*Company Secretary

DAVID MARSH

Name of ~~*Director~~/*Company Secretary

BLOCK LETTERS

*please strike out as appropriate

Executed as a deed by **Penrith Rugby League Club Limited ABN 57 000 578 398** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Director/CEO 

BRIAN FLETCHER

Name of Director

BLOCK LETTERS



Director

David O'Neill

Name of Director

BLOCK LETTERS

Executed as a deed by **Temporary Holding Club(No.4) Limited ACN 629 457 227** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Director/CEO 

BRIAN FLETCHER

Name of Director

BLOCK LETTERS


Director

David O'Neill

Name of Director

BLOCK LETTERS

ASSETS

- All assets located at the Wallacia Panthers and used in connection with the business of Panthers at the Wallacia Premises including, without limitation:
 - cash at hand,
 - twenty seven (27) gaming machines
 - twenty seven (27) gaming machine entitlements
 - debtors
 - creditors
 - intellectual property rights
 - goodwill
 - insurance policies
 - water access licences
 - physical assets including furniture and fittings
 - motor vehicles
 - golf carts
 - machinery
 - plant