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OVER **150** YEARS OF SERVICE

MEMORANDUM OF UNDERSTANDING

DATED *09/05/2023*

PARTIES

KURRI KURRI BOWLING CLUB
ACN 000 796 501

KURRI GOLF CLUB LTD
ACN 001 059 052

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ABN 82 680 297 642

Associated Firm - Melbourne McKean Park

This Memorandum of Understanding is made on

BETWEEN

KURRI KURRI BOWLING CLUB (ACN 000 796 501) of Tarro Street, Kurri Kurri, New South Wales (**KKBC**).

and

KURRI GOLF CLUB LTD (ACN 001 059 052) of 66 Clift Street, Heddon Greta, New South Wales (**KGC**).

BACKGROUND

- (A) KKBC and KGC are both located in the Cessnock Local Government Area and both operate registered clubs pursuant to Club Licences.
- (B) KKBC is within fifty (50) kilometres of KGC.
- (C) KGC called for Expressions of Interest (**EOI**) from other registered clubs interested in amalgamation on 1 June 2021 by way of ClubsNSW Circular Number 21-090.
- (D) KKBC lodged an EOI.
- (E) KGC accepted the EOI from KKBC and, following further negotiation, KKBC and KGC have agreed to the terms set out in this Memorandum.
- (F) KKBC and KGC propose to amalgamate the two Clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

- (a) **"Amalgamated Club"** mean the amalgamated registered club from the amalgamation of KKBC and KGC.
- (b) **"Amalgamation"** means the amalgamation of the Clubs in accordance with this Memorandum.
- (c) **"Amalgamation Application"** means the provisional application for the transfer of KGC's Liquor Licence to KKBC pursuant to sections 60(6) and (7) of the Liquor Act to be made by KGC and KKBC.
- (d) **"Assets"** means all of the goodwill, land, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines and all other property, tangible or intangible belonging to KGC at the time of Completion of the Amalgamation.
- (e) **"Authority"** means the Independent Liquor and Gaming Authority.

- (f) **"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.
- (g) **"Clubs"** means both KKBC and KGC.
- (h) **"Completion of the Amalgamation"** means the day on which:
- (i) the Final Order is granted and KGC's Liquor Licence is transferred to KKBC;
 - (ii) the Assets, Debts and Liabilities of KGC are transferred to KKBC, as referred to in clause 16.1;
 - (iii) KGC members become members of KKBC; and
 - (iv) the Amalgamated Club takes over responsibility for the management and control of the KGC Premises and the KKBC Premises.
- (i) **"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 but not limited to all correspondence by letter and/or electronic mail, compact discs, digital video discs, universal serial bus sticks, 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.
- (j) **"Corporations Act"** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder.
- (k) **"Debts"** means the accumulated debts of KGC at the time of Completion of the Amalgamation.
- (l) **"EBITDARD"** means earnings before interest, taxes, depreciation, amortisation, rent and donations.
- (m) **"Final Order"** means the final order pursuant to section 60(8) of the Liquor Act by the Authority whereby KGC's Liquor Licence will be transferred to KKBC.
- (n) **"Gaming Machines Act"** means the Gaming Machines 2001 (NSW) and the Regulations made thereunder.
- (o) **"Golf Committee"** means the committee referred to in clause 5.9.
- (p) **"GST"** means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999.
- (q) **"KGC Conceptual Plan"** means the Kurri Golf Conceptual Plan to be developed by KKBC, subject to clause 5.6(h).
- (r) **"KGC's CEO"** means the individual who fulfils the Secretary at KGC.
- (s) **"KGC's Premises"** means KGC's premises located at 66 Clift Street, Heddon Greta NSW 2321 and comprising the golf course and the licensed premises/clubhouse.

- (t) **"KKBC Premises"** means KKBC's premises located at 2321 Tarro Street Kurri Kurri NSW 2327.
- (u) **"Liabilities"** means all liabilities, losses, damages, outgoings, costs and expenses of KGC (whatever description) at the time of Final Order.
- (v) **"Liquor Act"** means the Liquor Act 2007 (NSW) and the Regulations made thereunder.
- (w) **"Liquor Licence"** means the club licence issued to a registered club under the Liquor Act.
- (x) **"Memorandum"** means this Memorandum of Understanding.
- (y) **"Order"** means the conditional grant of the Amalgamation Application by the Authority pursuant to section 60(7) of the Liquor Act.
- (z) **"Party"** means the respective management and Board of Directors of KGC and KKBC.
- (aa) **"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 KGC and KKBC in the conduct of KGC and KKBC business including but not limited to corporate, accounting and statutory records.
- (bb) **"Regulations"** mean the Regulations to the RCA.
- (cc) **"RCA"** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder.

1.2 In this Memorandum unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a category or sub-category of membership is interchangeable with a reference to a class or sub-class of membership, respectively;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (f) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (g) a reference to a Party to a document includes that Party's successors, permitted assigns, administrators and substitutes;
- (h) an agreement on the part of two or more persons binds them jointly and severally;

- (i) a reference to a notice from, consent or approval of a Party and agreement between the Parties for the purposes of this Memorandum means a written notice, consent, approval or agreement;
- (j) mentioning anything after 'include', 'includes' or 'including' does not limit what else might be included; and
- (k) a reference to "dollars" or "\$" is to Australian currency.

2. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION

- 2.1 KGC and KKBC agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.
- 2.3 The Amalgamation will be effected by the continuation of the KKBC and the dissolution of the KGC.

Process for Amalgamation

- 2.4 The process for the Amalgamation will be as follows:
 - (a) The Clubs enter into this Memorandum.
 - (b) The members of KKBC and KGC will be asked to approve the Amalgamation at separate general meetings of the ordinary members of each Club. These meetings will be called and held in the manner referred to in clause 13 below.
 - (c) The members of KKBC will be asked to approve (by special resolution) amendments to the Constitution at the general meeting held to approve the Amalgamation in the manner provided for in clause 13.5 below.
 - (d) Once the approvals in clauses 2.4 (b) and (c) have been obtained, the Amalgamation Application will then be made to the Authority in the manner referred to in clause 14 below.
 - (e) After the Amalgamation Application is granted and on the date of the Final Order:
 - (i) the Assets, Debts and Liabilities will be transferred to the KKBC in the manner referred to in clause 16 below;
 - (ii) all members of KGC will, with their consent, be admitted as members of KKBC and will be identified as a separate class of ordinary membership called "KGC members" and in separate categories (including sub-categories) of golfing membership in accordance with the procedure set out in clause 13.5 below (such that, the categories of membership will be inserted into KKBC's Constitution pursuant to the Special Resolution(s) referred to in that clause); and
 - (iii) all employees of KGC will be offered similar employment with KKBC, and if they accept, will be employed by KKBC. This will occur in accordance with the procedure set out in clause 6 below.

- (f) After Completion of the Amalgamation, KKBC will continue as the body corporate of the Amalgamated Club.
- (g) From Completion of the Amalgamation, the KGC Premises will become additional licensed premises of KKBC and will be available to all members of the Amalgamated Club. The KGC Premises will be operated in the manner set out in clauses 3, 4 and 5 below;
- (h) After Completion of the Amalgamation, KGC will be liquidated in the manner referred to in clause 16 below.

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

- 3.1 The KGC Premises and facilities will become premises of the KKBC as the surviving club in the Amalgamation.
- 3.2 The Amalgamated Club will operate and trade from the KKBC Premises and the KGC Premises.
- 3.3 For the purposes of the RCA, KKBC's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- 3.4 The Board of the KKBC will be the Board of the Amalgamated Club.
- 3.5 The Amalgamated Club will take over responsibility and control of the KKBC and KGC Premises with effect from Completion of the Amalgamation.

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

- 4.1 The traditions, amenities, culture and memorabilia of KGC will be maintained by the Amalgamated Club at the KGC Premises.
- 4.2 The Amalgamated Club will continue to support the community that was supported by KGC (as at the date of this Memorandum) and it will explore opportunities to expand community support.

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

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

Amalgamated Club Premises

- 5.2 The Amalgamated Club will operate and trade from the KKBC Premises and the KGC Premises.
- 5.3 The Amalgamated Club will offer parity pricing for beverages at both venues of the Amalgamated Club.
- 5.4 The Amalgamated Club will use its best endeavours to ensure that the KGC Premises (including golf course) remains sustainable and profitable to continue the 90 year legacy of golf in the Kurri Kurri local area.

KGC Premises

- 5.5 The KGC Premises will be named and promoted as "Kurri Golf Club".
- 5.6 Subject to clauses 9, 10 and 11, the Amalgamated Club intends to:
 - (a) subject to clause 5.7, maintain the KGC Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the KGC Premises, with facilities and amenities of a registered club for at least 20 years from the Completion of the Amalgamation.
 - (b) subject to clause 5.7, operate the KGC golf course as a successful and well supported stand-alone 18 hole minimum 71 par golf course and facility for at least 20 years from the Completion of the Amalgamation.
 - (c) promote the golf course and golf facilities at the KGC Premises and the KGC licensed premises/clubhouse at the KGC Premises.
 - (d) seek to enhance the social facilities, amenities and activities at the KGC Premises.
 - (e) maintain and where possible enhance, the existing facilities and activities at the KGC Premises.
 - (f) make improvements to the clubhouse and surrounds of the KGC Premises in order to provide superior facilities and food offerings, and the parties note that subject to formal scoping of works and quotations, the costs of these works is currently estimated by the parties to be \$1,376,000, which includes the amount to be expended on the golf course as referred to in paragraph (g).
 - (g) implement the KGC Conceptual Plan which will include the following key elements in relation to improvements to the golf course and the licensed premises/clubhouse at the KGC Premises within 5 years of Completion of the Amalgamation. The parties agree that it is currently anticipated that \$750,000 of the total amount to be spent will be expended on the course plan component of the KGC Conceptual Plan.

Golf Course

- (i) Installation of automatic irrigation system for the golf course.
- (ii) Upgrading irrigation mains pipeline to the Front 9 golf holes.



- (iii) Sprays and spray pipelines upgrades including double-sided fairway watering.
- (iv) Cart path construction and renovation.
- (v) Tee upgrades and greens replacement.
- (vi) Bunker reconstruction and renovation.
- (vii) Course equipment upgrades and replacement.

Licensed premises/clubhouse

- (viii) Furniture replacement.
 - (ix) Painting.
 - (x) Carpet.
 - (xi) Changing the bar profile to open up the general floor area of the Club.
 - (xii) Honour board upgrade.
 - (xiii) EGM additions and upgrades.
 - (xiv) Additional gaming facilities.
 - (xv) Improved entry to the Club (including car parking).
 - (xvi) Upgrade golf and management IT systems.
- (h) implement the KGC Conceptual Plan in accordance with the following:
- (i) Within 6 months of Completion of the Amalgamation develop and finalise the KGC Conceptual Plan.
 - (ii) Include the proposed scope, expenditure and timeframe for the improvement works to be undertaken.
 - (iii) Use its best endeavours to lodge any application for development consent required in support of the KGC Conceptual Plan.
 - (iv) At Completion of the Amalgamation use its best endeavours to substantially commence any works on the clubhouse plan component of the KGC Conceptual Plan or if required within 6 months of receiving development consent.
 - (v) Use best endeavours to substantially commence works on the course plan component of the KGC Conceptual Plan within 2 years of Completion of the Amalgamation or upon receiving development consent.
 - (vi) Use best endeavours to complete the KGC Conceptual Plan 5 years after Completion of the Amalgamation.

- (i) ensure that all the golf course equipment is properly maintained and stored housed in facilities that are adequate and safe to satisfy the short and long term requirements to maintain the Course.
- (j) ensure that any successful grant applications prepared by KGC but due for receipt after Completion of the Amalgamation will be invested at the KGC course and/or KGC clubhouse.

Course relocation

5.7 The Amalgamated Club may relocate the golf course and dispose of the KGC Premises for the purposes of relocating the golf course provided that:

- (a) the golf course is relocated to another site within 5 kilometres of the current golf course;
- (b) the new course consists of minimum stand-alone 18 hole minimum 71 par golf course;
- (c) the relocation of the golf course has been approved by an ordinary resolution passed at a general meeting of the KGC members of the Amalgamated Club;
- (d) the golf course is not relocated, and the KGC Premises are not disposed of, until the new premises are ready to be used; and
- (e) the relocated golf course is to be owned, or leased and managed, by the Amalgamated Club.

Golf Professional

5.8 The Clubs:

- (a) acknowledge that KGC has a contract with a golf professional;
- (b) agree that, with the golf professional's consent, the contract will be assigned from KGC to KKBC;
- (c) agree that the Amalgamated Club will engage a golf professional for as long as the KGC Premises (or relocated KGC Premises) continues to trade.

Golf Committee

5.9 The Board of the Amalgamated Club will create the Golf Committee in respect of the KGC Premises and the following shall apply in respect of the Golf Committee:

- (a) The first Golf Committee will comprise the President at the time of Completion of the Amalgamation and four other KGC members who were directors of KGC at the Completion of the Amalgamation (**First Golf Committee**);
- (b) The First Golf Committee shall hold office until the first election of the KGC Golf Committee.
- (c) The first election of the Golf Committee will be held on a date determined by the Board of the Amalgamated Club on or before the date of the Amalgamated Club's first Annual General Meeting after Completion of the Amalgamation.

- (d) The election of the Golf Committee will be held at a meeting called by the Board of KKBC and held at the KGC Premises.
- (e) Only KGC members, and members who join the Amalgamated Club in a category (including any sub-category) of golfing membership referred to in clause 13 after Completion of the Amalgamation, will be eligible to:
 - (i) vote in the election of the Golf Committee; or
 - (ii) stand for election to the Golf Committee.
- (f) With effect from the first election of the Golf Committee, the Golf Committee will comprise of 5 members.
- (g) The Golf Committee will have its own set of rules initially in the form referred to in paragraph (j)(iv), and thereafter as may be approved by the Board of the Amalgamated Club following consultation with the Golf Committee, governing the roles, responsibilities and operations of the Golf Committee, and available on request to any golfing member.
- (h) The Golf Committee will meet at such intervals as may be determined by the Golf Committee from time to time.
- (i) The Golf Committee may make recommendations to the Board and/or management of the Amalgamated Club regarding the following matters:
 - (i) For the first 5 years after Completion of the Amalgamation, the fulfilment of this Memorandum.
 - (ii) Golfing matters (for example, rules of golf) and competitions.
 - (iii) Promotion of golf generally at the KGC Premises.
 - (iv) Membership matters at the KGC Premises.
 - (v) An annual golf program of events and competitions.
 - (vi) Membership subscriptions, green fees, competition fees and other amounts relating to the playing of golf.
- (j) The Golf Committee:
 - (i) will not have any governance or management powers in the Amalgamated Club (except if specifically delegated to it by resolution of the Board) and it shall be subject to the overall control and direction of the Board and management of the Amalgamated Club;
 - (ii) will be required to provide reports to the Board of the Amalgamated Club;
 - (iii) may, subject to the approval of KKBC, create mens' and womens' or unified golf, greens and match sub committees;

- (iv) operate according to a defined set of rules, initially in the form proposed by KGC and endorsed by the Boards of each party prior to signing of this Memorandum, and available on request to any KGC member;
 - (v) subject to clauses 9, 10 and 11, will be in force and effect for at least 20 years after Completion of the Amalgamation after which the Board of the Amalgamated Club will determine whether the Golf Committee should continue to exist.
- (k) The Board of the Amalgamated Club will adopt By-laws which give effect to the matters set out in this clause.

Golf competition rewards/trophies

5.10 The Amalgamated Club will, for at least 5 years from Completion of the Amalgamation, maintain the program and value of rewards/trophies for golf competitions undertaken at the KGC Premises as at the date of this Memorandum.

Subscriptions

5.11 The Clubs agree that after Completion of the Amalgamation, KKBC cannot:

- (a) increase membership subscriptions for golfing members (including each category/sub-category referred to in clause 13.5(g)), green fees and competition fees for a period of 12 months from Completion of the Amalgamation; and
- (b) after the 12 month period referred to in paragraph (a) and for the first 5 years from Completion of the Amalgamation, subscriptions for golfing members (including each category/sub-category referred to in clause 13.5(g)) can only increase annually at either \$20 per year or by a percentage equivalent to the most recently reported annual percentage change in the Consumer Price Index (All Groups, Sydney) whichever is greater; and
- (c) after the 12 month period referred to in paragraph (a) and for the first 5 years from Completion of the Amalgamation, green fees and competition fees may increase annually but not by more than a percentage equivalent to the most recently reported annual percentage change in the Consumer Price Index (All Groups, Sydney).

5.12 The parties agree that the membership subscription relativities between the categories/sub-categories of golfing membership listed in clause 5.14 will be maintained for at least 5 years after Completion of the Amalgamation.

5.13 The parties acknowledge that:

- (a) at Completion of the Amalgamation, membership subscriptions paid to KGC by KGC members who become members of the Amalgamated Club will be deemed to have been paid to the Amalgamated Club until the next expiry of the Amalgamated Club's membership subscription period; and

- (b) the annual membership subscription period (1 July to 30 June) for which KGC members have paid prior to Completion of the Amalgamation will be adjusted to correspond with the earlier expiry of the relevant annual membership subscription period (1 June to 31 May) of the Amalgamated Club, provided that those members will receive a one-twelfth discount on the first annual membership subscription payable to KKBC after Completion of the Amalgamation.

5.14 The parties acknowledge that for the KGC membership subscription period from 1 July 2023 to 30 June 2024, KGC's Board has determined that the annual membership subscription (GST inclusive) for each category/sub-category of golfing membership will be as follows:

- (a) Golf membership – \$650.00
- (b) Pensioner Golf membership – \$555.00
- (c) Golf Youth membership sub-category – \$80.00
- (d) Junior Golf membership – \$30.00
- (e) Sub-Junior Golf membership – \$30.00

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

6.1 As part of the Amalgamation, the KGC will be wound up/liquidated. As part of the winding up/liquidation of KGC, the employment of all KGC's employees by KGC would, if not for this clause 6, come to an end.

6.2 Prior to Completion of the Amalgamation, but subject to any individual agreement between KKBC and a KGC Employee:

- (a) KKBC will offer employment to all of KGC's employees.
- (b) The offers of employment will be effective from the Completion of the Amalgamation and will be on the same terms and conditions presently offered by KKBC to employees of KKBC provided that it does not result in any employee of the KGC receiving lesser benefits than they presently receive from KGC.
- (c) Any employee of KGC who accepts the offer of employment with KKBC will receive continuity of employment and their accrued entitlements will be honoured by the KKBC.
- (d) Any employee of the KGC who does not accept the offer of employment with KKBC will be paid their full entitlements (funded by KKBC when their employment with the KGC comes to an end).

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

- 7.1 For the purposes of the RCA, the KGC Premises is the “core property” of the KGC.
- 7.2 Subject to other provisions of this Memorandum, the Amalgamated Club will retain the core property of the KGC and operate the Amalgamated Club in the manner referred to in clause 5.
- 7.3 The Clubs acknowledge that:
- (a) the core property of KGC could be disposed in the case of a golf course relocation in accordance with clause 5.7 of this Memorandum; and
 - (b) those parts of the KGC Premises not used for club or golfing operations could be disposed of in accordance hereof; and
 - (c) any financial benefit gained from the disposal of the KGC core property within five years after Completion of the Amalgamation must be retained in the Amalgamated Club reserves and only be used for KGC Premises purposes.

Cash and Investments

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

Gaming Machine Entitlements

- 7.5 As at the date of this Memorandum, KGC has 10 gaming machine entitlements issued to the KGC Premises.
- 7.6 Subject to clause 7.7, the Board of the Amalgamated Club will retain a minimum of 10 gaming machine entitlements as currently issued to the KGC Premises and have a minimum of 10 gaming machines operating at the KGC Premises while the KGC Premises is trading.
- 7.7 If considered necessary to carry out renovations or works at the KGC Premises, the Amalgamated Club may temporarily remove any or all of the gaming machine entitlements issued to the KGC Premises and/or remove or shutdown the gaming machines operating at the KGC Premises. As soon as practicable after completion of the renovations or works, the Amalgamated Club will reinstate to the KGC Premises at least the minimum number of gaming machine entitlements and operating gaming machines referred to in clause 7.6.

7.8 The operation of clauses 10.4(a) and 10.6 (regarding financial viability of the KGC Premises) will be suspended for the duration of any period (rounded up to the nearest calendar month) whenever clause 7.7 applies and:

- (a) less than 10 gaming machine entitlements are currently issued to the KGC Premises; and/or
- (b) less than 10 gaming machines are currently operating at the KGC Premises.

8. RISKS OF NOT PRESERVING KGC'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED
[Regulations – Clause 7(2) (e1)]

8.1 Subject to clauses 5.7, 9, 10 and 11, the Amalgamated Club will not dispose of the core property of KGC during the first 20 years after Completion of the Amalgamation.

8.2 The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the core property of KGC are those set out in clause 10.4.

8.3 If the risks (or any of them) in clause 10.4 are realised during the first 5 years after the Completion of the Amalgamation, clause 8.1 and section 17A1 of the RCA will prevent the Amalgamated Club from disposing of the KGC core property.

8.4 If the risks (or any of them) in clause 10.4 are realised after the first 20 years after Completion of the Amalgamation, the Amalgamated Club will use its reasonable endeavours to find ways to address those risks so that the disposal of the KGC core property will be considered only after all other ways have been exhausted and provided the disposal is in accordance with the RCA.

9. DISPOSAL OF KGC'S MAJOR ASSETS
[Regulations – Clause 7(2) (e2)]

9.1 For the purposes of the RCA, the KGC Premises are the "core property" of KGC.

9.2 Subject to clauses 5.7, 10 and 11 of this Memorandum, the Amalgamated Club will not dispose of the major assets of KGC during the first 20 years after Completion of the Amalgamation.

9.3 The Clubs acknowledge and agree that the core property of KGC may be disposed of in the case of any golf course relocation that takes place subject to the conditions set out in clause 5.7.

9.4 The parties:

- (a) acknowledge that not all of the KGC Premises is used for the golf course or licensed/registered club operations at KGC;
- (b) agree that those parts of the KGC Premises not so used may be disposed of and/or developed; and
- (c) acknowledge that as at the date of this Memorandum, a total area of approximately 0.98 hectares is not used for the golf course or licensed/registered club operations at the KGC Premises.

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

10.1 The Amalgamated Club does not intend to:

- (a) cease trading from the KGC Premises; or
- (b) substantially change the objects of the KGC.

10.2 The Amalgamated Club intends to operate in the manner referred to in clause 5.

10.3 However, for the purposes of clause 7(2)(f) of the Regulations, KKBC and KGC are required to agree to the matters set out in clause 10.4.

10.4 For the purposes of clause 7(2)(f) of the Regulations, KKBC and KGC have agreed that the Amalgamated Club would not cease trading from nor change the objects of the KGC Premises except in any of the following circumstances:

- (a) if it is not financially viable for the Amalgamated Club to continue to trade from the KGC Premises in the period between the 5th and 20th anniversary of the Completion of the Amalgamation;
- (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs, provided that the order has not been sought by the Amalgamated Club;
- (c) upon the lawful order of any government authority, provided that the order has not been sought by the Amalgamated Club.

10.5 For the purposes of clause 7(2)(f) of the Regulations, KKBC and KGC have agreed that the Amalgamated Club could cease to trade from the KGC licensed premises/clubhouse in either of the following circumstances:

- (a) if the KGC licensed premises/clubhouse is destroyed or partially destroyed by fire, floods, storms etc such that it is not lawful for a licensed premises/clubhouse to be operated at that site and any resulting insurance claim is not sufficient to re-instate or re-build licensed premises/clubhouse at that site;
- (b) upon the lawful order of any government authority, provided that the order has not been sought by the Amalgamated Club,

and provided that the parties acknowledge and agree that this clause 10.5 relates only to the KGC licensed premises/clubhouse only and not the remainder of the KGC Premises.

10.6 For the purposes of clauses 10 and 11 and subject to clauses 7.8 and 10.7, the KGC Premises will not be financially viable if, in any two consecutive 12 month periods (commencing after the period referred to in clause 11.4), the EBITDARD percentage for the KGC Premises is ten per cent (10%) or less.

10.7 For the purposes of clauses 10.4(a) and 10.6 the Amalgamated Club must prepare separate financial reports for the KKBC Premises and the KGC Premises after Completion of the Amalgamation.

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

11.1 The Amalgamated Club does not intend to cease trading from the KGC Premises. The Amalgamated Club intends to operate the KGC Premises in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clauses 5.7, 9 and 10.

11.2 The objects of the Amalgamated Club will be the objects of KGC and KKBC with effect from Completion of the Amalgamation, as amended in accordance with clause 13.5.

11.3 However, for the purposes of clause 7(2)(g) of the Regulations, KKBC and KGC are required to agree to the matters set out in clause 11.4.

11.4 For the purposes of clause 7(2)(g) of the Regulations, KKBC and KGC have agreed that the Amalgamated Club will continue to trade from the KGC Premises:

(a) for at least 5 years from Completion of the Amalgamation; and

(b) for the period in clause 11.4(a) plus at least for a further 15 years but subject to clause 10.4.

12. BINDING EFFECT OF MEMORANDUM

KKBC and the KGC agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

13. CALLING OF MEETINGS AND ADMISSION OF KGC MEMBERS TO MEMBERSHIP OF KKBC


13.1 KGC will call a general meeting of the ordinary members of KGC for the purposes of considering and if thought fit passing a resolution approving in principle the Amalgamation in accordance with section 17AEB (d) of the RCA.

13.2 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after the date of this Memorandum.

13.3 If the resolution referred to in clause 13.1 is passed, KKBC will call a general meeting of the ordinary members of KKBC for the purposes of considering and if thought fit passing a resolution approving in principle the Amalgamation in accordance with section 17AEB (d) of the RCA.

13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the general meeting referred to in clause 13.1 is held.

- 13.5 In addition to the resolution referred to in clause 13.3, KKBC will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, one or more Special Resolutions to amend the Constitution of KKBC as follows:
- (a) A new object will be inserted into the KKBC constitution to refer to the promotion of golf as an object of the Amalgamated Club.
 - (b) All members of KGC who apply to become members of KKBC will be admitted to membership of KKBC.
 - (c) All members of KGC will be able to apply for membership of KKBC in the manner referred to in this clause 13.5.
 - (d) As soon as practicable after the Order, KKBC will forward to each member of KGC, who is not already a member of KKBC, a written invitation to become a member of KKBC.
 - (e) Any member of KGC who accepts the invitation and agrees in writing to be bound by the Constitution of KKBC will (subject to the name of that person being displayed on the noticeboard of KKBC for not less than 7 days and a period of not less than 14 days elapsing after the receipt of the acceptance by KKBC) be elected by a resolution of the Board of KKBC to membership of KKBC with effect from the date of Completion of the Amalgamation.
 - (f) KGC's members who are admitted to membership of KKBC will be identified as a separate class of ordinary membership called the "KGC Members" but may transfer to any other class of membership of KKBC for which they are eligible to join.
 - (g) The following new categories and sub-categories of membership will be created in the KKBC Constitution:
 - (i) Bowling/Golf members, including the sub-category of Bowling/Golf Youth members for persons between 18 and 21 years of age inclusive;
 - (ii) Bowling/Pensioner Golf members comprising persons who are in receipt of a Commonwealth government pension;
 - (iii) Golf members, including the sub-category of Golf Youth members for persons between 18 and 21 years of age inclusive;
 - (iv) Pensioner Golf members comprising persons who are in receipt of a Commonwealth government pension;
 - (v) Junior Golf members between 12 and 17 years of age inclusive;
 - (vi) Sub-Junior Golf members under 12 years of age.



(h) From Completion of the Amalgamation, Bowling/Golf members (including the sub-category of Bowling/Golf Youth members) and Bowling/Pensioner Golf members will be entitled to:

- (i) such playing and social privileges and advantages of the Club as may be determined by the Board from time to time;
- (ii) attend and vote at Annual General Meetings and general meetings of the Club;
- (iii) nominate for and be elected to hold office on the Board;
- (iv) vote in the election of the Board;
- (v) nominate for and be elected to the Golf Committee;
- (vi) vote in the election of the Golf Committee;
- (vii) vote on any special resolution to amend this Constitution;
- (viii) propose, second, or nominate any eligible member for any office of the Club;
- (ix) propose, second or nominate any eligible member for Life membership; and
- (x) introduce guests to the Club,

provided that the President, Senior Vice President, Junior Vice President, Treasurer and at least three (3) Ordinary directors of KKBC must be Bowling members, Bowling/Golf members, Bowling/Pensioner Golf Members or Life members who have played Pennant Bowls in three of the previous five Pennant Bowls seasons.

(i) From Completion of the Amalgamation, Golf members (including the sub-category of Golf Youth members) and Pensioner Golf members will be entitled to:

- (i) such playing and social privileges and advantages of the Club as may be determined by the Board from time to time;
- (ii) attend and vote at Annual General Meetings and general meetings of the Club;
- (iii) nominate for and be elected to hold office on the Board;
- (iv) vote in the election of the Board;
- (v) nominate for and be elected to the Golf Committee;
- (vi) vote in the election of the Golf Committee;
- (vii) propose, second, or nominate any eligible member for any office of the Club;

(viii) propose, second or nominate any eligible member for Life membership; and

(ix) introduce guests to the Club,

provided that the President, Senior Vice President, Junior Vice President, Treasurer and at least three (3) Ordinary directors of KKBC must be Bowling members, Bowling/Golf members, Bowling/Pensioner Golf members or Life members who have played Pennant Bowls in three of the previous five Pennant Bowls seasons.

(j) Junior Golf members and Sub Junior Golf Members will have the same rights as Junior members under the KKBC Constitution.

(k) The membership subscription for the category of Bowling/Golf membership will not exceed the subscription for Bowling membership plus the subscription for Golf membership.

(l) The membership subscription for the category of Bowling/Pensioner Golf membership will not exceed the subscription for Bowling membership plus the subscription for Pensioner Golf membership.

(m) The membership subscription for the sub-category of Bowling/Golf Youth membership will not exceed the subscription for Bowling membership plus the subscription for Golf Youth membership.

(n) Any person who, at Completion of the Amalgamation, is a Life member of KGC is to be admitted to Life membership of KKBC, with Rule 10.30 of KKBC's Constitution to be amended to increase the 6 Life member limit by the number of Life members to be admitted under this paragraph.

13.6 Notwithstanding anything contained in this Memorandum, any member of KGC who, at Completion of the Amalgamation, is then:

(a) refused admission to or being turned out of KKBC Premises; or

(b) suspended from KKBC pursuant to KKBC's Constitution; or

(c) expelled from KKBC pursuant to KKBC's Constitution;

shall only be entitled to attend at and use the facilities at the KGC Premises and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at the KKBC Premises until such time as:

(d) the person is again permitted to enter the KKBC Premises; or

(e) the period of suspension has been served; or

(f) the Board of the Amalgamated Club has overturned the person's expulsion from KKBC.

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 14.1 KKBC and its lawyers will prepare and file the Amalgamation Application.
- 14.2 KGC will co-operate with KKBC and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 15.1 KGC warrants to KKBC that from the date of this Memorandum to the date of Completion of the Amalgamation, KGC will subject to clause 15.2:
- (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 \$5,000.00 plus GST without the prior approval of KKBC's CEO or the CEO's delegate;
 - (b) maintain the Assets of KGC in the same state of repair as they are at the date of this Memorandum, subject to reasonable wear and tear, and keep the Assets of KGC 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 reasonable endeavours to reduce losses and increase profitability and use reasonable endeavours to maintain and increase the value of the Assets;
 - (d) provide KKBC's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of KGC;
 - (e) not do anything which may damage the goodwill of its business or that of KKBC;
 - (f) not without the prior written consent of KKBC's CEO or the CEO's delegate:
 - (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) dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of KGC's Assets;
 - (iv) employ any employee (other than a casual employee);
 - (v) terminate the employment of any employee (other than a casual employee);
 - (vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;

- (vii) seek to borrow or borrow money from any third party;
- (viii) increase the level of debt of KGC beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of KGC; or
- (ix) engage in discussions or negotiations with anyone other than KKBC concerning the sale of all or any part of KGC's Assets (otherwise than as permitted under (iii) above), and KGC must advise KKBC of any solicitation by any third party in respect of any such discussion or negotiation.

15.2 KKBC acknowledges that:

- (a) the KGC Board has approved a 2022-2023 (1 October – 30 September) capital budget, and that some items in this budget are part of the course plan;
- (b) up until Completion of the Amalgamation, KGC will spend the funds required for the 2022-2023 capital budget from its cash reserves; and
- (c) the prohibition in clause 15.1(a) does not apply to any such funds expended.

15.3 Each of KGC's warranties contained in clause 15.1 remains in full force and effect notwithstanding Completion of the Amalgamation.

15.4 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, either 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 warranties given by the other club as set out in clause 15.1.

15.5 KKBC's CEO and KGC's CEO with the Executive members of the KCG Board will have regular discussions about the management and operations of the Amalgamated Club with the object of:

- (a) providing for an orderly transfer of the management and operations of KGC to KBC on the date of Completion of the Amalgamation; and
- (b) achieving efficiencies and cost savings in at both KKBC and KGC; and
- (c) implementing operational changes in preparation for Completion of the Amalgamation.

15.6 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):

- (a) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
- (b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given, to the other Club untrue or misleading;
- (c) any Claim of any nature is threatened or asserted by or against the subject Club; or

- (d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,

then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.

15.7 Title to, properly in and risk of KGC's Assets will remain solely with KGC until such time as KGC's Assets are transferred to the Amalgamated Club in accordance with clause 16.

15.8 For the avoidance of doubt it is acknowledged that no liability by KGC is accepted or will exist for any breach of a warranty in the absence of actual knowledge by KGC.

16. DISSOLUTION OF KGC AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO KKBC

16.1 As soon as practicable after the Order, but subject to the Final Order, KGC must ensure the Assets, Debts and Liabilities of KGC are transferred to KKBC (less an amount sufficient for the purposes of any liquidation of the KGC).

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

16.3 For the purposes of clause 16.1, KGC must do all things necessary and execute all documents to cause all of the Assets of KGC to be transferred to or assigned to KKBC with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:

- (a) all gaming machines and all gaming machine entitlements;
- (b) all contract rights including hire purchase agreements;
- (c) all intellectual property rights;
- (d) all physical assets, furniture and fittings and stock in trade,

owned or entered into by KGC.

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

16.5 As soon as practicable after Completion of the Amalgamation, KGC must ensure KGC is either voluntarily deregistered or liquidated.

16.6 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 16.

17. ACCESS TO RECORDS

17.1 From the date of this Memorandum, KGC will provide to KKBC at all reasonable times, access to the KGC Premises Records and other information and material reasonably required by KKBC for the purposes of the Amalgamation.

17.2 From the date of this Memorandum, KKBC will provide to KGC at all reasonable times, access to KBBC Records and other information and material reasonably required by KGC for the purposes of the Amalgamation.

18. CONFIDENTIALITY

18.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.

18.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties' Confidential Information.

18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.

18.4 This clause 18 survives completion of this Memorandum.

19. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

19.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.

19.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the Amalgamation process must give written notice to the other party specifying the nature of the dispute.

19.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.

19.4 If the parties do not within 7 days of the receipt of the notice referred to in clause 19.2 or any extended period agreed in writing between the parties as to:

(a) the dispute resolution technique or procedures to be adopted;

(b) the timetable for steps in those procedures; and

(c) the selection and compensation of an independent person required for such dispute resolution technique or procedures,

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

19.5 If the dispute is not resolved within 28 days after notice is given under clause 19.2, a party which has complied with the provisions of this clause 19 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.

19.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

20. COSTS

Each party shall pay its own costs arising out of and incidental to the preparation, execution and completion of this Memorandum.

21. STAMP DUTY

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

21.2 Despite the exemption from duty referred to in clause 21.1, the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by KKBC.

22. GENERAL

22.1 This Memorandum constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.

22.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.

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

22.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.

22.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.

22.6 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.

22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales.

23. TERMINATION

23.1 KKBC may terminate this Memorandum at any time, without penalty, by giving written notice to KGC if KGC breaches any warranty contained in clause 15.1.

23.2 If:

- (a) the members of KGC have not passed the resolution referred to in clause 13.1 within 6 months of the date of this Memorandum; or
- (b) the members of KKBC have not passed the resolutions referred to in clauses 13.3 and 13.5 within 6 months of the members of KGC passing the resolution referred to in clause 13.1; or
- (c) either club breaches clause 15.6,

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

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

23.4 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 23 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 23.

23.5 If this Memorandum is terminated in accordance with this clause 23 the Amalgamation terminates.

24. NOTICES

24.1 A notice to be given by one club to the other pursuant to this Memorandum must be:

- (a) in writing;
- (b) directed to the recipient's 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 email to that address.

24.2 A notice given in accordance with clause 24.1 will be deemed to be duly given:

- (a) two days after the date of posting by pre-paid registered post;
- (b) on the day of hand delivery;
- (c) if sent by email, the day after the email was sent,

as the case may be.

25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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

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


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

27. **NOTES**

27.1 This Memorandum is to be:

- (a) made available to the ordinary members of KGC and KKBC 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 for at least 21 days before any meeting as referred to in paragraph (a) of these Notes is held; and
- (c) lodged with any application under section 60 of the Liquor Act to transfer the club licence held by KGC to KKBC.

Executed by **KURRI KURRI BOWLING**)
CLUB ACN 000 796 501 pursuant to)
section 127 of the Corporations Act)
2001)



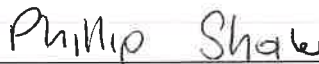
Director / Secretary



Name of Director / Secretary



Director



Name of Director


Executed by **KURRI GOLF CLUB LTD**)
ACN 001 059 052 pursuant to)
section 127 of the Corporations Act)
2001)



Director / Secretary



Name of Director / Secretary



Director



Name of Director