



KURRI

GOLF CLUB

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Member Raised Questions and Answers Combined

Just a few explanations before we go into answering your questions.

The Board's decision to register an amalgamation interest with Clubs NSW originated from an approach from Club Maitland City. The KGC Board in 2018/19 had already recognised that without a significant capital injection or substantially increasing the member fee structure that the Club was heading for insolvency with a diminishing cash fund and a rapidly deteriorating asset. On 16 July 2019 the then KGC Board registered its own amalgamation EOI and apart from a cursory interest from a few local clubs, Club Maitland City included, there were no formal amalgamation offers for the Board to consider.

In May 2021 an informal approach was made by CMC with a view to pursue amalgamation.

As due process and under the expectation of the Club's constitution the Board considered it prudent that before putting the CMC interest to its members that the market should be tested to ascertain if there may be better offers available.

It should be stressed that this was a Board decision to go down this path in responding to the CMC interest and not an action promoted specifically by any individual Directors.

Question 1

How much of the Course and Environs (Course Plan) are guaranteed?

The total amount of the Course Plan, Table 1, page 14 and dated July 2021 is \$3,194,000. Could further details be provided as to exactly what items are to be funded and an accurate and up to date estimate of costs and investment be given?

Answer 1

Until the commencement of this amalgamation process there is no available evidence of KGC ever having a Course Plan. The Course Plan included in the EOI was developed from information held in the course database which is being continually updated (work in progress). It specifically relates to obvious problems and issues associated with maintaining the course to state of sustainability. The Course Plan as it stands is a first draft and it is recognised that further review and member interaction is required.

The \$3,194,000 is an estimate only from concepts held in the database and includes estimates for equipment replacement of \$1,395,000. The attached schedule identifies items to be funded as part of the amalgamation offer and the works for items will be undertaken during the first five year period after completion of amalgamation. Accurate and up to date estimate of costs are not available and will be determined at the time these works are to be undertaken. It would be reasonable to assume that in the event of non-amalgamation that little or none of these works will be undertaken as capital funds will not be available.



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SCHEDULE 'A'

KURRI GOLF CLUB - COURSE PLAN PRIORITY

Element	Element Description	Year 2022 - Current KGC cash	Course Plan 3 Year Priority		
			Year #1	Year #2	Year #3
Greens	Replacement			50000	100000
	Resurfacing				20000
	Nursery		20000		
	Surrounds		5000	5000	5000
	Total Cost Allowances	0	25000	55000	125000
Tees	Total Tees Cost Allowance	0	20000	15000	17500
Fairways	Total Fairways Cost Allowance	0	10000	10000	10000
Bunkers	Total Bunkers Cost Allowance	0	10000		10000
Irrigation	Automatic Watering	80000	50000	25000	15000
	Mains Upgrade	30000	5000		
	Spray Lines Upgrade	50000	50000	50000	20000
	Spray Replacement		10000	10000	5000
	Total Irrigation Cost Allowance	160000	115000	85000	40000
Course Access	General vehicle access		5000	5000	5000
	Cart Paths	25000	60000	70000	42500
	Total Access Cost Allowance	25000	65000	75000	47500
Practice Facilities	Total Practice Cost Allowance	65000	5000	10000	0
Total Course Plan Costs		250000	250000	250000	250000

Question 2

Is the sum of \$1,376,000 the total sum to be invested by KKBC into KGC over the period of 5 years?

Answer 2

The sum of \$1,376,000 is the total minimum agreed commitment by KKBC to invest in KGC in the first five-year period. KKBC has indicated that profits generated at the KGC site will be reinvested into improving the venue amenities and facility.



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Question 3

Does item 5.6 (h) mean that the current Course Plan will be implemented in full or will it be updated, reconsidered, re-negotiated?

Answer 3

KKBC has indicated commitment to the whole of the Course Plan over time. The Course Plan, as it is only a first draft, will require continual updating with input from members and interaction with the amalgamated Club Board.

Question 4

Will members still be able to access the kitchen and self-cater for functions such as Open Days and ANZAC Day?

Answer 4

Currently member access and use of the kitchen and its facilities, although in some instances are allowed, is not encouraged. The main reason for this is insurance and public risk and liability. Catering arrangements are generally provided using Club staff and pricing arrangements. It is expected that this will continue.

Question 5

Will members still be able to have Sausage Sizzles and provide food on special occasions or for general novelty events?

Answer 5

It is envisaged that undercover alfresco facilities may be established that will include upgraded BBQ, improved seating and outdoor dining. This will enhance the ability to continue to cater for events such as sausage sizzles, special occasions, novelty events and provide an alternative to dining room/kitchen catering as above.

Question 6

Will members still be able to have Fund Raiser events for charities? Either by sausage sizzle, BBQ or catered events.

Answer 6

As per Questions 4 & 5 above, facilities will be accessible subject to availability.



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Question 7

Are there specific proposals to increase the patronage of the Club and to increase revenue? If so, details of such proposals being made available to members would be beneficial in helping to make an informed decision.

Answer 7

KKBC, in its offer, outlined the basic concepts for improving patronage and increasing revenue at the KGC venue. These included clubhouse upgrades, course improvements, targeted marketing, advertising and golf promotions including corporate golf days and charity events. It is unreasonable to expect KKBC to expend the cost of producing a detailed and specific business plan prior to a guarantee that amalgamation will in fact complete.

In accordance with the provisions of the MOU, the KGC Conceptual Plan is to be completed and available within 6 months of amalgamation completion.

Question 8

Why is there provision for a new course to be leased? If the current land is wholly owned then why would there be any need to lease a course?
Where would excess funds be deployed?

Answer 8

This is a very important question and may be extremely so in the event of non-amalgamation if the Club is forced to look at other options for survival.

The Club is bounded on the east and north by Crown Land and proposed extension to Collumbey National Park. The Club is currently attempting to ascertain whether it is possible to extend golf holes into this area. If this is possible then a leasing arrangement may be the only tenure available. Securing entitlement to any of this land may allow the Club to consider development related options for current land to ensure survival and sustainability should amalgamation not proceed. KGC has also made representation to Council to ensure that rezoning options are available.

It should be noted that all clauses in the MOU relating to the KGC land have been included at KGC request. KKBC has not on any occasion requested or indicated that they require to deal in the land. Council has indicated that they will not support rezoning the KGC land for residential purposes and NSW Planning will not approve any proposal to do so.



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Question 9

Is this an amalgamation, takeover, or a fire sale? From what I have read it's not an amalgamation?

Answer 9

It is reasonable to assume that this is not an amalgamation as that is defined in the dictionary. It is though an amalgamation provided for under the NSW Registered Clubs and Liquor Acts. It is not considered a Joint Venture or sale of assets and certainly not in KGC case a "fire sale". It may be a reasonable assumption to consider it a takeover as there can only be one dominant partner in the amalgamation process.

Question 10

From the list of items for the club house upgrade how will this help to make us viable. Is there some information missing?

Answer 10

It is very much the improvements to the Clubhouse and a stepped change in our business model and administration that will help to make the business viable and sustainable. The list of items for the clubhouse upgrade are an initial assessment as to what is required to lift our very important amenity to a standard that will attract patronage other than golfers. The Board cannot put a business plan together that indicates profitability from golf patronage alone without substantial increases in all fees. Without profitability the Club is trending towards insolvency and cash funds are likely to completely diminish within 5 years.

Question 11

Course upgrade will there be an opportunity for the members to have an input?

Answer 11

Members should always have the opportunity to have a say in their Course improvements and upgrades. The Course Plan included in the EOI is only a first draft and was developed on the fly solely for the amalgamation process and has not been reviewed since. It does though have the key elements and basic cost estimates to move forward with improving the Course and prioritising the necessary works.

KKBC has indicated commitment, although not expressed in the MOU, to the whole of the Course Plan over time. The Course Plan, being in its infancy, will require continual updating with input from members and interaction with the amalgamated Club Board.



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Question 12

Course relocation is this the builders offer rehashed; it was in the original expression of interest paperwork sent out by the club. Why is this on the table now as an option, it seems to be the end goal set out by whoever wrote the expression of interest?

Answer 12

Course relocation is not the 'end goal' and was included in the EOI specifically to cover all possible scenarios for the survival of our golf legacy. Club survival is the 'end goal' and the EOI has this as the primary goal. In c.2006 when a developer offer was being voted on by the members the then Board made an impromptu suggestion that members consider relocation of the Course. No specific site was mentioned. To cover the possibility that an offer might have be forthcoming from a large club with connections to a developer maybe having access to suitable nearby land it was decided to provide for this scenario in both the EOI and the agreed terms. At some time in the future there may be an opportunity for relocation whether it be adjoining land or nearby remote land. KKBC has shown absolutely no interest in relocating the course and these clauses and conditions are there at KGC request to ensure controls in the event of this occurring.

Question 13

10.5 Insurance of the club house, not sure how we could be under insured unless KKBC underinsure the club? Or is it up to the takeover date?

Answer 13

Insurance is a current issue for the Board and is under review. The Board feels that the premises and contents, including machinery, may be significantly under-insured and regardless of amalgamation an increase in coverage should be sought. Effectively this will add \$20-30K to our current premium and significantly impact on budget profit projections that are already negative.

Question 14

10.6 EBITDARD less than 10% for 2 consecutive years, does that mean they can close the club if in year 4 and 5 we do not meet the 10%? Can we have a view of the last 10 years of our EBITDARD so we can ascertain the risk?

Answer 14

The MOU provides for the EBITDARD 10% to kick in after the initial 5 year period. By that time the commitment by KKBC to improve amenities and business viability should have taken effect. Previous 10 year EBITARD figures from our accountant are attached. Without amalgamation or a change in business strategy it is assumed that this 10 year trend will continue. Our accountant will also be present at the members information session should you wish to seek further clarification on the figures stated below.



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KURRI GOLF CLUB LIMITED EBITDA SUMMARY

	YEAR END 30.9.22	YEAR END 30.9.21	YEAR END 30.9.20	YEAR END 30.9.19	YEAR END 30.9.18	YEAR END 30.9.17	YEAR END 30.9.16	YEAR END 30.9.15	YEAR END 30.9.14	YEAR END 30.9.13
Total Revenue and other income	1,354,920	1,452,938	1,636,242	1,174,368	1,255,362	1,269,488	1,319,139	1,398,604	1,344,801	1,347,182
Less Non recurring income										
Covid support	(16,970)	(49,745)	(261,142)							
Insurance recovery		(80,682)								
Compensation - Hunter Land Holdings			(250,000)							
Grant income	(4,500)	(9,091)	(16,311)		(30,001)					
Compensation - Easement								(15,000)		
	(21,470)	(139,518)	(527,453)	-	(30,001)	-	-	(15,000)	-	-
Adjusted revenue	1,333,450	1,313,420	1,108,789	1,174,368	1,225,361	1,269,488	1,319,139	1,383,604	1,344,801	1,347,182
Operating Profit/(Loss)	(3,932)	138,947	415,310	(36,869)	5,996	(49,563)	17,882	(5,059)	10,342	(51,058)
Less Non recurring income	(21,470)	(139,518)	(527,453)	-	(30,001)	-	-	(15,000)	-	-
Add back:										
Interest	3,181	2,148	3,770	5,031	4,596	4,911	4,697	6,038	5,190	7,899
Income Tax	-	-	-	-	-	-	-	-	-	-
Depreciation and Amortisation	54,040	55,332	52,501	52,450	52,271	55,110	56,859	59,995	56,415	56,584
EBITDA	31,819	56,909	(55,872)	20,612	32,862	10,458	79,438	45,974	71,947	13,425
EBITDA MARGIN	2.39%	4.33%	-5.04%	1.76%	2.68%	0.82%	6.02%	3.32%	5.35%	1.00%

Question 15

I hate the words best endeavours this means zero, If I say I will dig a hole 1M deep to my best endeavours but only reach 30cm and give up that is my best endeavours. What assurance do we have they will meet the best endeavours?

Answer 15

It is assumed that reference to best endeavours relates to Clause 5.6(h). The context of the words "best endeavours" in this clause relates only to getting the approvals to undertake these works. There is no reasonable indication that approval to undertake any of these works is even necessary and as a third party is required to give such approval then KKBC can only use its "best endeavours". If approvals sought, for any reason, are not forthcoming then the works will need to be revised or the financial commitment redirected to some other improvement in the clubhouse to satisfy the commitment in the MOU.



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Question 16

Over the last 3 years what have we done to have a contingency plan in place just in case the members vote no. As far as I know there is no Plan B. My question would be why not? We should be voting on amalgamation / stay as we are / or have a plan to improve our bottom line.

Answer 16

This amalgamation process has only been running two years and Board focus has only been on amalgamation. The Board is of the opinion that other options should only be considered if amalgamation does not proceed as the Board considers this is the best option to take to the members. It is the Board's responsibility under the Club constitution to assess the best offer and recommend it to its members. The Board feels that in electing to go to the market by registering an EOI under the relevant legislation and sending EOI information to the other clubs having shown interest to amalgamate as a parent club it has shown due process and initiative and acted in the best interest of its members. Until the last 4 years the Club has not had a clear plan. The Club is currently operating under a Board agreed Business Plan and approved Y2023 Budget. Section 5 of this Business Plan deals with sustainability and a survival strategy. The Board has posted this Business Plan in the member's area on the Club website.

Question 17

There is no mention of selling off half the club (being the back half) is this on the table with KKBC?

Answer 17

It should be noted that all clauses in the MOU relating to the KGC land have been included at KGC request. KKBC has not on any occasion requested or indicated that they require to deal in the land. Council has indicated that they will not support rezoning the KGC land for residential purposes and NSW Planning will not approve any proposal to do so. The land only has value at its current zoning which is RU2 (rural) and a recent 2021 valuation undertaken by Preston Rowe Paterson at the request of KGC valued the Club land at \$27,000 per hectare making the value of the back half at about \$550,000. Of course, this value would change dramatically if the relevant authorities reconsidered their positions and supported residential development.

Question 18

To me all the risk is with KGC and KKBC can only win after 5 years, Why take the risk?

Answer 18

It is true that most of the risk is with KGC. The Board is of the opinion that there is far greater risk of KGC becoming insolvent and facing liquidation if an attempt (Plan B if developed) is made to pursue profitability. The end result is highly likely to be loss of golf activity and amenity in our community. Members generally are not interested in the administration of the Club business and this complacency is reflected in the continual vacancies on the Board and lack of financial planning. In particular there have been significant periods of operation without a Treasurer to oversee finances. The Board is of the



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opinion that a successful amalgamation with KKBC may in fact mitigate most of our risk and result in taking the club forward for future generations of not only golfers but also the wider community to utilize and enjoy this facility.

Question 19

The amount of money being offered to improve KGC would appear to be very low considering the list of improvements.

Answer 19

The KKBC offer was not only the preferred offer but was the best financial offer. The money offered may appear low, however the KKBC commitment is to make the necessary improvements to generate initial profitability and reinvest it all back into the KGC venue.

Question 20

Has consideration been thought of as to how the reciprocal rights clubs we currently have will fit into the amalgamation process? *My thoughts are that should the amalgamation go ahead all those will become automatically transferred over to the new renamed re named Club, and or the need to be reconnected in the future, perhaps they could be setup and included prior to the amalgamation in preparation.

Answer 20

There will be no change to golf activities including reciprocal rights that are currently in place refer section 5.5 of the MOU. The KGC premises will be named and promoted as Kurri Golf Club.

Question 21

Has considerations been given and sorted out as to how our current affiliation with Hunter District Golf, NSW Golf Association, Australian Golf Association, Golf Link and its various sections are effected? My thoughts these also need to be included in the process.

Answer 21

There will be no change to the current affiliations that we currently hold with HRDGA or Golf NSW Etc. These will continue as normal.

Question 22

Or should these be not included all we would become potentially is a Social Club and without any affiliations in place Under the Banner of Kurri Bowling Club *(Note the total Financial Control Board of Kurri Bowling Club will have Total and Absolute control of the current Kurri Golf Club)

Answer 22

Not relevant refer to above in Question 21.



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Question 23

How will our current Life Members be treated do they also just lose their respective life memberships should the amalgamation be passed and go ahead? What safe guards are can or are possible to put in place to protect those individuals to retain their Life Membership status?

Answer 23

Refer Clause 13.5 (n) of the MOU as follows:

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 10.3 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.

Question 24

Feel that a copy of our current constitution should most importantly be Emailed out to all members and also be made available to inform members about procedures on the voting night. Highlighting a few of the major Items? What Numbers of members attending constitutes a valid meeting? What majority need to be achieved to have the motion Passed by the Eligible members attending that meeting?

Answer 24

A copy of the Club constitution is now in the member's area of the Club website.

There are certain procedures in voting for amalgamation that by law override the Club constitution.

With respect to voting rights on amalgamation, all Ordinary Members including social members are entitled to vote. A majority only is required from the members that attend the Special General meeting, ie 50% +1

Question 25 Is the signed MOU / Contract / Deed a legally enforceable document?

Question 25

Clause 12 of the MOU states that the MOU is executed as a Deed. My view is the Deed is legally enforceable by Kurri Golf Club Ltd (KGC) until Completion of the Amalgamation, using clause 19 regarding resolution of disputes. However, in reality, there is not much that KGC can dispute prior to 'Completion of the Amalgamation' (as defined in clause 1.1(h)). I can only see the matters listed in clause 15.6 as being a potential ground of dispute prior to Completion of the Amalgamation.

On company deregistration, KGC will cease to have legal standing (i.e. it will cease to be a party for the purpose of clause 19.1) to pursue a dispute or commence any Supreme Court action.

After Completion of the Amalgamation, which is when the vast majority of obligations of KKBC under the MOU commence, the Independent Liquor and Gaming Authority (ILGA) can potentially take disciplinary action against Amalgamated Club or its officers (KKBC is the licensee under the Liquor Act 2007) if the Amalgamated Club's Board and management does not honour the MOU. To my



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knowledge, I have not seen this power being exercised in relation to an alleged failure to comply with a MOU in NSW club amalgamations. For reference, I attach ILGA's 'Disciplinary Complaints under section 139 of the Liquor Act' Guideline 5 dated 10 December 2020, and 'Disciplinary Complaints against registered clubs' Guideline 8 dated 10 November 2020.

<https://www.liquorandgaming.nsw.gov.au/documents/ilga/guidelines/gl4009-guideline-5-disciplinary-complaints-under-section-139-of-the-liquor-act-2007.pdf>

<https://www.liquorandgaming.nsw.gov.au/documents/ilga/guidelines/gl4012-ilga-guideline-8.pdf>

Question 26 Does the signed document have a time limit?

Answer 26

There are time limits in clauses 23.2 and 23.3 of the MOU.

The key time limit is Completion of the Amalgamation must occur within 18 months of 9 May 2023 unless both parties agree in writing to extend this time limit. Clause 23.2(c) of the MOU provides KGC or KKBC with the potential ability to terminate the MOU if the other party breaches clause 15.6 of the MOU.

Question 27 If the KKBC management break the conditions of the document, how are these conditions enforced and by whom?

Answer 27

After KGC is deregistered (refer to clauses 6.1 and 16 of the MOU), KGC will not have legal standing to take legal action to enforce the MOU because KGC as a corporate entity would no longer exist. However, in practice, as of Completion of the Amalgamation (i.e. the date on which the ILGA transfers KGC's club licence to KKBC and all KGC assets are transferred to KKBC), KGC will not have the financial means to commence legal action.

In my view, after Completion of the Amalgamation, an individual member of the Amalgamated Club could complain to the ILGA (see the ILGA Guidelines 5 and 8 linked above), or potentially, take Supreme Court action at the member's own expense. The current limitation period for taking Court action in relation to a Deed, is 12 years after the alleged breach occurs.

After 20 years from Completion of the Amalgamation, KKBC will not have to comply with the MOU (for example; see clauses 5.6(a), 5.6(b) and 9.2), but will still be subject to the Registered Clubs Act as then in force.



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The Amalgamated Club could attempt to sell the KGC land after 20 years from Completion of the Amalgamation. However, the Registered Clubs Act currently includes restrictions on the disposal of 'core property' (referred to in clause 9.1 of the MOU). Provided that section 41E(1) of the Registered Clubs Act still exists in 20 years' time, KKBC would have to, in addition to the other requirements in section 41E(1), obtain approval of members in general meeting (see section 41E(1)(b)) for the proposed disposal, unless an exception (in the Regulation) applies.

See section 41E of the Registered Clubs

Act: <https://legislation.nsw.gov.au/view/html/inforce/current/act-1976-031#sec.41E>

See clause 29B of the Registered Clubs Regulation for exceptions to section

41E(1): <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2015-0479#sec.29B>

Question 28 What penalties apply to KKBC if the document conditions are not met?

Answer 28

Section 41E(2) of the Registered Clubs Act provides potential remedies for an attempted disposal of core property which is contrary to section 41E(1) of the Registered Clubs Act. Also see the ILGA Guidelines 5 and 8 linked above.

Question 29 Where does anyone go to get a ruling?

Answer 29

Until Completion of the Amalgamation, KGC could attempt to use the dispute resolution procedure in clause 19 of the MOU for the limited grounds of dispute (in my view, under clause 15.6) which could arise under the MOU. After Completion of the Amalgamation, a member would have to obtain personal legal advice at the member's expense.

Question 30 How will KGC members know of any document breaches without having golf club members on the board of the KKBC?

Answer 30

KKBC's Constitution will be amended to give Life members, Bowling members, Bowling/Golf members and Bowling/Pensioner Golf members who have played pennants bowls (note: not golf) in three of the



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previous five pennants bowls seasons, the right to stand for seven out of the nine positions on the KKBC Board.

The Registered Clubs Act does not require the Amalgamated Club to report to members on compliance against the provisions of the MOU.

Ex-KGC members will have to rely on publicly available information; for example, in quarterly financial statements required to be made available for inspection by members, and in annual financial reports. Clause 10.7 of the MOU requires the Amalgamated Club to prepare separate financial reports for each premises after Completion of the Amalgamation. The KKBC Board is accountable to the Amalgamated Club's membership at each election of the Board (which occurs every second year), and Directors of the Amalgamated Club could be potentially removed from office by a resolution passed at a member-requested general meeting.

Prepared and issued by Chad Cresswell & Adam Jones (KGC Lawyer)

On behalf of Kurri Golf Club Board of Directors

19 June 2023