

# **Memorandum of Understanding**

**between**

**ST JOHNS PARK BOWLING CLUB LIMITED**

**ABN 65 823 421 682**

**and**

**MOLLYMOOK BEACH BOWLING & RECREATION CLUB LIMITED**

**ABN 33 000 960 994**

## **MEMORANDUM OF UNDERSTANDING BETWEEN PROPOSED AMALGAMATING CLUBS**

**DATE:** 27 APRIL 2024

### **PARTIES:**

**St Johns Park Bowling Club Ltd ACN 001 067 241** of 93 Edensor Road, St Johns Park  
NSW 2176  
(SJPBC)

and

**Mollymook Beach Bowling & Recreation Club Limited ABN 33 000  
960 994** of 60 Forest Way, Mollymook Beach NSW 2539  
(Mollymook Bowling)

### **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. Mollymook Bowling is a registered club under the Registered Clubs Act and holds a club licence (No: LIQC300245292) under the Liquor Act in NSW.
- C. SJPBC called for expressions of interest for amalgamation from other registered clubs on 10 October 2023 by way of ClubsNSW Circular (23-167).
- D. Mollymook Bowling submitted an expression of interest in pursuing an amalgamation with SJPBC.
- E. Both SJPBC and Mollymook Bowling 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.
- F. In accordance with clause 7(1) of the Regulation, the registered clubs proposing to amalgamate must enter into a Memorandum of Understanding with respect to the proposed amalgamation.
- G. 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.

- H. 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 Mollymook Bowling (**the dissolving club**) to SJPBC (**the continuing club**).
- I. SJPBC and Mollymook Bowling 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

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### 1.1 Definitions

The following definitions apply in the Recitals and this Memorandum of Understanding (**Memorandum**) 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 Mollymook Bowling's Licence to SJPBC pursuant to sections 60(6) and (7) of the Liquor Act by Mollymook Bowling's Secretary and SJPBC's CEO.

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

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

in accordance with clause 19.

**Assets** means the Real Property and Mollymook Bowling Premises and all of the goodwill, personal property, plant, equipment, fixtures and fittings, stock in trade, intellectual property, twenty eight (28) gaming machines and twenty eight (28) gaming machine entitlements, cash at hand and cash at bank and all other property, tangible or intangible belonging to Mollymook Bowling at the time of Amalgamation Completion.

**Authority** means the Independent Liquor and Gaming Authority of NSW.

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

**Clubs** means both SJPBC and Mollymook Bowling.

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

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

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

**Debts** means the accumulated debts of Mollymook Bowling at the time of Amalgamation Completion.

**Encumbrance** means any:

- (a) security granted for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009 (Cth)*; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist other than any Encumbrance in existence at the date of this Memorandum which has been expressly brought to the attention of SJPBC.

**Final Order** means the confirmation of the Order by the Authority pursuant to Section 60(8) of the Liquor Act.

**Financially Viable** means the Mollymook Bowling Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA) as determined by an independent company auditor or accountant appointed by the Amalgamated Club for this purpose.

**Liabilities** means all liabilities, obligations, losses, damages, outgoings, costs and expenses of Mollymook Bowling (by whatever description) whether or not presently known and whether arising before or after the date of this Memorandum including all necessary or reasonably incurred costs and expenses in proceeding to Amalgamation Completion and subsequent dissolution, and including all amounts payable to employees of Mollymook Bowling who do not accept employment with SJPBC.

**Liquidator** means a liquidator to be:

- approved by SJPBC (such approval not to be unreasonably withheld); and
- to be approved by the Authority to act as a Liquidator of Mollymook Bowling.

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

**Mollymook Bowling** means Mollymook Beach Bowling & Recreation Club Limited ABN 33 000 960 994 of 60 Forest Way, Mollymook Beach NSW 2539.

**Mollymook Bowling Premises** means the building comprising the licensed premises of Mollymook Bowling located on the Real Property and known as 60 Forest Way, Mollymook Beach NSW 2539.

**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.

**Party** means the respective management and Board of Directors of SJPBC and Mollymook Bowling.

**Real Property** means Mollymook Bowling's land located at the premises at 60 Forest Way, Mollymook Beach NSW 2539 comprising Lot 1000 in Deposited Plan 557683 and any other real property owned by Mollymook Bowling.

**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 a Party in the conduct of its business including but not limited to corporate, accounting and statutory records.

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

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

## **2. CONDITIONS PRECEDENT**

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2.1 Amalgamation Completion is subject to and conditional upon each of the following:

- (a) Mollymook Bowling's members passing the ordinary resolution approving in principle the Amalgamation in accordance with Section 17AEB(d) of the Registered Clubs Act and clause 3.9(b) and (c);
- (b) the Authority not imposing any conditions on the Amalgamated Club that are more onerous or materially adverse beyond those currently contained in Mollymook Bowling's Club Licence;
- (c) SJPBC being satisfied of the results of its due diligence under clause 3.10(a);
- (d) Mollymook Bowling being satisfied of the results of its due diligence under clause 3.10(b);
- (e) the Authority giving provisional approval of the Amalgamation Application under section 60(7) of the Liquor Act; and

- (f) the Authority transferring Mollymook Bowling's Club Licence to SJPBC pursuant to section 60(6) of the Liquor Act which transfer is to occur on Amalgamation Completion.
- 2.2 If the conditions precedent are not satisfied within 12 months of the date of this Memorandum then either party may terminate this Deed by notice given not less than 21 days to the other party.
- 3. EACH CLUB'S POSITION IN RELATION TO DIVISION 1A OF PART 2 OF THE REGISTERED CLUBS ACT AND SECTION 60 OF THE LIQUOR ACT 2007 AND THE AMALGAMATION**
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- 3.1 The proposed amalgamation will involve the continuation of SJPBC as the Amalgamated Club and the dissolution of Mollymook Bowling.
- 3.2 The Amalgamated Club and continuing club will be SJPBC.
- 3.3 The dissolving club will be Mollymook Bowling.
- 3.4 Upon Amalgamation Completion:
- (a) the Club Licence of Mollymook Bowling (No: LIQC300245292) will be transferred to SJPBC; and
  - (b) the Assets and Liabilities of Mollymook Bowling will be transferred to SJPBC.
- 3.5 The premises of the Amalgamated Club are proposed to be:
- (a) SJPBC's current premises at:
    - (i) St Johns Park;
    - (ii) Tuncurry;
    - (iii) Wallacia Bowling Club;
    - (iv) Wallacia Golf Club;
    - (v) Balmain Bowling Club; and
  - (b) the Mollymook Bowling Premises.
- 3.6 SJPBC agrees that prior to Amalgamation Completion it will:
- (a) invite all full bowling members of Mollymook Bowling to become full members of SJPBC as the Amalgamated Club; and
  - (b) at the meeting held by SJPBC to pass a resolution approving the Amalgamation in principle and authorising the making of the Amalgamation Application, ask the members of SJPBC to consider, and if thought fit, to pass a resolution to amend the constituent documents of SJPBC, (if considered necessary) with effect from Amalgamation Completion, to add the following new classes of membership:

- (i) "Mollymook Beach Bowling Life Members" and "Mollymook Beach Bowling Social Members", who will have the same rights and privileges as SJPBC Club members; and
  - (ii) "Mollymook Beach Bowling Junior Members", who will have the same rights and privileges as SJPBC Junior members.
- 3.7 Those persons who are Life members of Mollymook Bowling as at the date of this Memorandum will be identified as Mollymook Beach Bowling 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 Mollymook Bowling Premises.
- 3.8 The Amalgamation will be subject to the approval of:
  - (a) the ordinary members of each of Mollymook Bowling and SJPBC at separately convened General Meetings; and
  - (b) the Authority.
- 3.9 The process for the Amalgamation will be as follows:
  - (a) The parties entering this Memorandum.
  - (b) The members of Mollymook Bowling being asked to:
    - (i) approve the Amalgamation; and
    - (ii) approve the Clubs making the Amalgamation Application,at a general meeting of the ordinary members and life members of Mollymook Bowling.
  - (c) The members of SJPBC being asked to:
    - (iii) approve the Amalgamation; and
    - (iv) approve the Clubs making the Amalgamation Application,at a general meeting of the ordinary members and life members of SJPBC.
  - (d) The general meetings referred to in clauses 3.9(b) and (c) will be called and held in the manner referred to in clause 14 below.
  - (e) At the meeting of SJPBC referred to in 3.9(c) 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 give effect to clause 3.6(b).
  - (f) The Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 15 below.
  - (g) After the Order is made by the Authority all members of Mollymook Bowling, who are not already members of SJPBC, will be invited to become ordinary members of SJPBC.
  - (h) On Amalgamation Completion:

- (i) all of the Assets and Liabilities of Mollymook Bowling are transferred to SJPBC; and
  - (ii) all members of Mollymook Bowling who have accepted the invitation to become ordinary members of SJPBC will become members of the Amalgamated Club.
- (i) From Amalgamation Completion the Amalgamated Club will be available to all members of the Amalgamated Club.
  - (j) After Amalgamation Completion, SJPBC will continue as the body corporate of the Amalgamated Club.

### **3.10 Due Diligence**

- (a) SJPBC may, at its own expense, undertake a due diligence review of Mollymook Bowling's business and assets including its financial position and operations.
- (b) Mollymook Bowling may, at its own expense, undertake a due diligence review of SJPBC's business and assets including its financial position and operations.
- (c) Mollymook Bowling will, if required, provide to SJPBC a list of information (including, but not limited to, details of all Mollymook Bowling'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.

## **4. SJPBC'S UNDERTAKINGS**

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### **4.1 Following Amalgamation Completion SJPBC undertakes to:**

- (a) to provide lawn bowling at the Mollymook Bowling Premises for at least ten (10) years from the date of the Order;
- (b) offer continuing employment to all employees of Mollymook Bowling;
- (c) continue the Mollymook 'Garden and Bowling Green Volunteer Group' in recognition of the importance for the mental health and social interaction of this group not unlike a 'Mens Shed';
- (d) subject to obtaining the necessary approvals from local government and other relevant authorities, to spend a minimum of one million two hundred and fifty thousand dollars (\$1,250,000.00) in capital investment including renovations to the Mollymook Bowling Premises over the year following Amalgamation Completion; and
- (e) continue ongoing capital improvements to the Mollymook Bowling Premises as required from time to time.

## **5. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE DISSOLVING 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) OF THE REGISTERED CLUBS REGULATION]**

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- 5.1 The Real Property and the Mollymook Bowling Premises are owned by Mollymook Bowling.
- 5.2 The Amalgamated Club will operate from the following premises:
- (a) 93 Edensor Road, St Johns Park NSW 2176;
  - (b) 21 Parkes Street, Tuncurry NSW 2428;
  - (c) 1 Roma Avenue, Wallacia New South Wales 2745;
  - (d) 13 Park Road, Wallacia New South Wales 2745;
  - (e) 156 Darling Street, Balmain New South Wales 2041; and
  - (f) the Mollymook Bowling Premises.
- 5.3 The Board of Directors of SJPBC will be the governing body of the Amalgamated Club.
- 5.4 The SJPBC Chief Executive Officer will be the Chief Executive Officer of the Amalgamated Club.

#### **Bowling Greens**

- 5.5 Both SJPBC and Mollymook Bowling agree that:
- (a) SJPBC intends to provide lawn bowling at the Mollymook Bowling Premises for at least ten (10) years from the date of the Order; and
  - (b) after five (5) years from the date of the Order, the Amalgamated Club's Board may, following consultation with the Advisory Committee, review the operations of the Mollymook Bowling Premises if the Mollymook Bowling Premises are not Financially Viable.

#### **Advisory Committee**

- 5.6 SJPBC and Mollymook Bowling agree that, as and from the date of the Order, the Board of SJPBC shall form a committee (**Advisory Committee**) in accordance with the terms of clauses 5.7 to 5.14 below.
- 5.7 The initial Advisory Committee shall consist of:
- (a) the Chairperson;
  - (b) two (2) Vice-Chairpersons in office at the date of the Order; and
  - (c) one (1) Mollymook Beach Social member elected by the members of Mollymook Beach directors of Mollymook Bowling.
- 5.8 The initial Advisory Committee will sit until the first election of the Advisory Committee in 2025.
- 5.9 From the first election of the Advisory Committee in 2025, the Advisory Committee shall consist of four (4) members all of whom will be Mollymook Beach Bowling & Recreation Full Playing Members and shall comprise:

- (a) the Advisory Committee Chairperson who will be appointed by the Board of Directors of SJPBC after seeking Expressions of Interest from Mollymook Beach Bowling & Recreation Full Playing Members; and
  - (b) two (2) Mollymook Beach Bowling & Recreation Full Playing Members elected by Mollymook Beach Bowling & Recreation Full Playing Members of Mollymook Bowling in such manner as determined by the Board of SJPBC by way of By-Law
  - (c) one (1) Mollymook Beach Social member elected by the members of Mollymook Beach directors of Mollymook Bowling.
- 5.10 The position of Advisory Committee Chairperson will be open to Expressions of Interest every two (2) years and will be selected by the Board of SJPBC in accordance with the provisions of clause 5.9
- 5.11 Two (2) members will be elected by Mollymook Beach Bowling & Recreation Club Full Members from amongst the Mollymook Beach Bowling & Recreation Club Full Members every two (2) years.
- 5.12 One (1) member will be elected by the Mollymook Beach Social Members from amongst the Mollymook Beach Social Members every two (2) years.
- 5.13 The Advisory Committee will be required to meet monthly and forward any recommendations and progress reports to the SJPBC Board.
- 5.14 Subject at all times to the approval of the Board of SJPBC, it is envisaged that the Advisory Committee will:
- (a) assist with the management of bowls activities at the Mollymook Bowling Premises;
  - (b) make recommendations about the Mollymook Bowling Premises for consideration by the Board of SJPBC; and
  - (c) provide advice to the CEO and Board of the Amalgamated Club in relation to bowling activities at the Mollymook Bowling Premises.
- 5.15 The Advisory Committee:
- (a) is subject to the overall control and direction of the Board and management of the Amalgamated Club.
  - (b) will have no function in the governance or management of the Amalgamated Club or the Mollymook Bowling Premises; and
  - (c) may be wound up at any time if determined appropriate by the Board of the Amalgamated Club.

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

- 6.1 The Amalgamated Club will preserve and maintain the traditions and ethos of Mollymook Bowling at the Mollymook Bowling Premises.
- 6.2 The Amalgamated Club will maintain the appropriate facilities and amenities for responsible gaming and responsible service of alcohol, dining facilities and members' activities at the Mollymook Bowling Premises.

**7. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB – [CLAUSE 7(2)(C) OF THE REGISTERED CLUBS REGULATION]**

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- 7.1 SJPBC intends that the Amalgamated Club will continue to trade the Mollymook Bowling Premises for at least five (5) years from Amalgamation Completion.
- 7.2 From the fifth anniversary of Amalgamation Completion, SJPBC will continue to trade the Mollymook Bowling Premises on a year to year basis subject to the Mollymook Bowling Premises remaining Financially Viable.
- 7.3 It is the intention of SJPBC to operate the Amalgamated Club and Mollymook Bowling Premises in accordance with this clause 7.
- 7.4 The Amalgamated Club will trade from:
- (a) the current premises of SJPBC at:
    - (i) 93 Edensor Road, St Johns Park NSW 2176;
    - (ii) 21 Parkes Street, Tuncurry NSW 2428;
    - (iii) 1 Roma Avenue, Wallacia New South Wales 2745;
    - (iv) 13 Park Road, Wallacia New South Wales 2745;
    - (v) 156 Darling Street, Balmain New South Wales 2041; and
  - (b) the Mollymook Bowling Premises.
- 7.5 The future direction of the Amalgamated Club generally will be subject to the overall strategic plan of the Amalgamated Club and its finances.

**8. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED – [CLAUSE 7(2)(D) REGISTERED CLUBS REGULATION]**

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- 8.1 All current employees of Mollymook Bowling will initially be offered continuing employment by the Amalgamated Club.
- 8.2 Following Amalgamation Completion, the Mollymook Bowling 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.
- 8.3 As a part of the Amalgamation transition process, all Mollymook Bowling 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.
- 8.4 Mollymook Bowling 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.

- 8.5 Fundamental administrative functions including payroll, accounts, finance, marketing, gaming and human resources will be conducted from the SJPBC St Johns Park premises.
- 8.6 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 Mollymook Bowling.
- 8.7 SJPBC will recognise the amount of all employee entitlements, including amounts for accrued sick leave, annual leave and long service leave of those employees that accept an offer of employment with the Amalgamated Club.

**9. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE DISSOLVED CLUB – [CLAUSE 7(2)(E) OF THE REGISTERED CLUBS REGULATION]**

- (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**
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**Core Property**

- 9.1 The Real Property and the Mollymook Bowling Premises are “core property” as defined in section 41E of the Registered Clubs Act.

**Cash and Investments**

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

**Gaming Machine Entitlements**

- 9.3 The gaming machine entitlements held by the Mollymook Bowling upon amalgamation will be an Asset of the Amalgamated Club and will be transferred to the Amalgamated Club.
- 9.4 SJPBC expects and requires that the Mollymook Bowling will:
  - (a) be the holder of twenty eight (28) transferable gaming machine entitlements at the date of this Memorandum but will still be held by the Mollymook Bowling on Amalgamation Completion;
  - (b) will continue to also be the owner of twenty eight (28) gaming machines at Amalgamation Completion; and
  - (c) have a gaming machine threshold of twenty eight (28) at Amalgamation Completion.

**10. 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) OF THE REGISTERED CLUBS REGULATION]**

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- 10.1 The continuation of the Mollymook Bowling Premises after five (5) years from the date of the Order, is subject, on a year to year basis, to the Mollymook Bowling Premises remaining Financially Viable.
- 10.2 Despite clause 10.1, SJPBC is confident that it will be able to improve and operate the Mollymook Bowling Premises in a manner consistent with the requirements of clause 10.1 after that five (5) years.
- 10.3 If the Mollymook Bowling Premises are not Financially Viable after five (5) years, the Board of the Amalgamated Club will be required to consider all options for the Mollymook Bowling Premises which may include minimising clubhouse operating times and reducing operational expenses, provided that, there will remain the ability to play lawn bowls for a period of ten (10) years.
- 10.4 Accordingly, these are the risks to the core property that SJPBC and Mollymook Bowling acknowledge and agree.

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

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- 11.1 SJPBC and Mollymook Bowling have not made any agreement altering the requirements of section 17AI(1) of the Registered Clubs Act.
- 11.2 SJPBC and Mollymook Bowling have agreed that the Amalgamated Club will operate the Mollymook Bowling Premises for at least five (5) years from Amalgamation Completion.

**12. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE DISSOLVING CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE DISSOLVING CLUB- [CLAUSE 7(2)(F) OF THE REGISTERED CLUBS REGULATION]**

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- 12.1 SJPBC intends to continue to trade the Mollymook Bowling Premises indefinitely and in any case at least for a period of five (5) years after Amalgamation Completion.
- 12.2 The continuation of the Mollymook Bowling Premises after five (5) years from the date of the Order, is subject, on a year-to-year basis, to the Mollymook Bowling Premises remaining Financially Viable.
- 12.3 If the Mollymook Bowling Premises are not Financially Viable after five (5) years, the Board of the Amalgamated Club will be required to consider all options for the Mollymook Bowling Premises which may include minimising clubhouse operating times and reducing operational expenses, provided that, there will remain the ability for lawn bowls to be conducted for a period of ten (10) years.

12.4 Following the ten (10) year period referred to in clause 12.3, if the Mollymook Bowling Premises is not Financially Viable, the Board of the Amalgamated Club will be entitled to determine whether to cease trading and dispose of the Mollymook Bowling Premises.

12.5 For the purposes of clause 6(2)(f) of the Regulation:

- (a) the objects of the Mollymook Bowling will cease to have effect on dissolution or winding up of that club; and
- (b) on and from Amalgamation Completion, the objects of SJPBC will be the objects of the Amalgamated Club.

**13. 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) OF THE REGISTERED CLUBS REGULATION]**

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13.1 SJPBC intends to continue to trade the Mollymook Bowling Premises indefinitely and in any case for a period of at least five (5) years after Amalgamation Completion.

13.2 The continuation of the Mollymook Bowling Premises after five (5) years from the date of the Order, is subject, on a year-to-year basis, to the Mollymook Bowling Premises remaining Financially Viable.

13.3 If the Mollymook Bowling Premises are not operating to the requirement after five (5) years, the Board of the Amalgamated Club will be required to consider all options for the Mollymook Bowling Premises which may include minimising clubhouse operating times and reducing operational expenses, provided that, there will remain the ability to lawn bowls for a period of ten (10) years.

13.4 Following the ten (10) year period referred to in clause 13.3, if the Mollymook Bowling Premises is not Financially Viable, the Board of the Amalgamated Club will be entitled to determine whether to cease trading and dispose of the Mollymook Bowling Premises.

13.5 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.

**14. CALLING OF MEETINGS AND ADMISSION OF MOLLYMOOK BOWLING MEMBERS TO MEMBERSHIP OF SJPBC**

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14.1 Mollymook Bowling 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; and
- (b) approve the Clubs making the Amalgamation Application.

14.2 The meeting referred to in clause 14.1 must be held as soon as reasonably practicable after the date of this Memorandum.

14.3 SJPBC will call a general meeting of its ordinary 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) amending the Constitution of SJPBC as provided in clause 14.5.
- 14.4 The meeting referred to in clause 14.3 will be held as soon as reasonably practicable after Mollymook Bowling passes the resolution referred to in clause 14.1 (or at such prior time as may be determined by SJPBC in its absolute discretion).
- 14.5 At the general meeting of SJPBC referred to in clause 14.3 the members of SJPBC will be asked to consider and if thought fit pass a special resolution to amend the Constitution of SJPBC to insert new membership categories in conformity with clause 3.9(e) above.
- 14.6 The Board of SJPBC will, subject to the general meeting of SJPBC referred to in clause 14.3 passing the special resolution, introduce By-Laws to give effect to the provisions of clause 3.9(e).
- 14.7 All members of Mollymook Bowling who apply to become members of Mollymook Beach Bowling & Recreation Full Playing Members or Mollymook Beach Bowling & Recreation Club Members of SJPBC will, subject to meeting the membership eligibility criteria for those classes of membership, be admitted to membership of SJPBC in those classes of Ordinary membership.
- 14.8 Subject to:
  - (a) a person being a Life Member of Mollymook Bowling at the date of this Memorandum, those persons will be able to apply for Mollymook Beach Bowling & Recreation Life Membership of SJPBC; or
  - (b) meeting the membership eligibility criteria, all members of Mollymook Bowling will be able to apply for Mollymook Bowling Full Playing Membership or Mollymook Bowling Club Membership of SJPBC,in the manner referred to in clauses 14.9 and 14.10.
- 14.9 Prior to Amalgamation Completion, SJPBC will forward to each member of Mollymook Bowling, who is not already a member of SJPBC, a written invitation to become a member either a Mollymook Beach Bowling & Recreation Life Member, Mollymook Beach Bowling & Recreation Full Playing Member or Mollymook Beach Bowling & Recreation Club Member of SJPBC.
- 14.10 Any member of Mollymook Bowling who meets the relevant eligibility criteria, accepts the invitation and agrees in writing to be bound by the Constitution of SJPBC 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 Mollymook Beach Bowling & Recreation Life Membership, Mollymook Beach Bowling & Recreation Full Playing Membership or Mollymook Beach Bowling & Recreation Club Membership of SJPBC with effect from the date of Amalgamation Completion.
- 14.11 Subject to clause 14.12, the resolution which will be submitted to the meetings referred to in this clause 14 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 Mollymook Beach Bowling & Recreation Club Limited ABN 33 000 960 994, 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 of Mollymook Beach Bowling & Recreation Club Limited ABN 33 000 960 994; and*
  - (b) *the transfer of the club licence of Mollymook Beach Bowling & Recreation Club Limited ABN 33 000 960 994 to St Johns Park Bowling Club ACN 001 067 241; and*
2. *The making of an application to the Authority for the transfer of the club licence of Mollymook Beach Bowling & Recreation Club Limited ABN 33 000 960 994 to St Johns Park Bowling Club ACN 001 067 241 for the purposes of such amalgamation."*

14.12 The resolution referred to in clause 14.1 to be considered at the meeting of Mollymook Bowling may provide that it is subject to SJPBC passing the:

- (a) resolutions referred to in clauses 14.3; and
- (b) if necessary, the special resolution to amend the SJPBC Constitution as foreshadowed by clause 14.5 of this Memorandum.

## **15. AMALGAMATION APPLICATION TO THE AUTHORITY**

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- 15.1 As soon as reasonably practicable after the meetings referred to in clauses 14.1 and 14.3, Mollymook Bowling 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 14 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 Mollymook Bowling to SJPBC; and
- (h) such other documents requested by the lawyers for SJPBC to give effect to the Amalgamation Application.

15.2 SJPBC and its lawyers will prepare and file the Amalgamation Application. SJPBC will provide Mollymook Bowling with a copy of the Amalgamation Application.

Mollymook Bowling will co-operate with SJPBC and its lawyers and will provide all documents and information reasonably required for the preparation, lodgment and finalisation of the Amalgamation Application and will cause the approved Secretary of Mollymook Bowling to sign the Amalgamation Application if required to do so.

## **16. ACCESS TO RECORDS**

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16.1 From the date of this Memorandum and on a confidential basis, Mollymook Bowling will provide to SJPBC at all reasonable times access to such Records and Assets at and relating to the Real Property and Mollymook Bowling Premises and other information and material reasonably required by SJPBC, including for the purpose of any due diligence referred to in clause 3.10.

16.2 From the date of this Memorandum and on a confidential basis, SJPBC will provide to Mollymook Bowling at all reasonable times access to the SJPBC Records and other information and material reasonably required by Mollymook Bowling, including for the purpose of any due diligence referred to in clause 3.10.

## **17. WARRANTIES AND OPERATIONAL ARRANGEMENTS**

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17.1 Mollymook Bowling warrants to SJPBC that from the date of this Memorandum to the date of Amalgamation Completion, Mollymook Bowling 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 \$5,000.00 plus GST without the prior approval of SJPBC's CEO or their delegate;
- (b) maintain the Assets of Mollymook Bowling in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets of Mollymook Bowling insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (c) the Assets of Mollymook Bowling insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (d) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability;

- (e) ensure that Mollymook Bowling's Board or Board representative has regular discussions with SJPBC's CEO regarding the management of the Mollymook Bowling Premises with the object of:
    - (i) providing for an orderly transfer of the management and operations of Mollymook Bowling to SJPBC on the date of Completion of the Amalgamation; and
    - (ii) reducing losses, increasing profitability and achieving efficiencies and cost savings at the Mollymook Bowling Premises.
  - (f) provide the SJPBC CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Mollymook Bowling Premises;
  - (g) not do anything which may damage the goodwill of its business or that of SJPBC; and
  - (h) 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, create any Encumbrance or permit any Encumbrance to be created or grant an option over, or grant any interest in any of Mollymook Bowling'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; or
    - (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 Mollymook Bowling's Assets, and Mollymook Bowling must advise SJPBC of any solicitation by any third party in respect of any such discussion or negotiation.
- 17.2 Each of Mollymook Bowling's warranties contained in clause 17.1 remain in full force and effect notwithstanding Amalgamation Completion.
- 17.3 As an inducement to Mollymook Bowling to enter into this Memorandum, SJPBC represents and warrants as essential conditions that:
- (a) 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;

- (b) 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;
- (c) 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;
- (d) 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
- (e) SJPBC is in a position from its own financial resources to consummate the proposed Amalgamation on the terms set out in this Memorandum.

17.4 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 Amalgamation Completion if:

- (a) there is any material breach of any of Mollymook Bowling's warranties set out in clause 17.1;
- (b) Mollymook Bowling has provided information and Records to SJPBC as part of its due diligence review of Mollymook Bowling which are not true and correct in all respects or it is misleading in any respect (including without limitation, being misleading by the omission of information or Records); and/or
- (c) Mollymook Bowling has not disclosed all information and Records which would be reasonably required for SJPBC (as determined by SJPBC acting reasonably) to obtain a true and fair view of Mollymook Bowling's financial position and state of affairs as part of its due diligence review of Mollymook Bowling.

17.5 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, Mollymook Bowling may terminate this Memorandum and the Amalgamation at any time prior to Amalgamation Completion if there is any material breach of any of SJPBC's warranties set out in clause 17.3.

17.6 If, before Amalgamation Completion:

- (a) an event occurs which has or may have a material effect on the profitability of the Mollymook Bowling 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 Mollymook Bowling untrue or misleading;
- (c) any Claim of any nature is threatened or asserted by or against Mollymook Bowling; or
- (d) there is any material adverse change in the condition (financial or otherwise) or prospects of Mollymook Bowling or of its operations,

then Mollymook Bowling must within a reasonable time on becoming aware of the circumstances, give notice to SJPBC fully describing the circumstances.

- 17.7 Title to, property in and risk of Mollymook Bowling's Assets remain solely with Mollymook Bowling until such time as they are passed to the Amalgamated Club in accordance with clause 19.
- 17.8 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.
- 17.9 Subject to Mollymook Bowling complying with clauses 17.1 and 17.5, SJPBC warrants to Mollymook Bowling that from the date the Assets of Mollymook Bowling are transferred to SJPBC, SJPBC will:
- (a) accept full responsibility for Mollymook Bowling's Debts and Liabilities; and
  - (b) indemnify and keep indemnified the directors of Mollymook Bowling in respect of any Claims made against them by creditors of the Mollymook Bowling.

## **18. TERMINATION**

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- 18.1 This Memorandum may be terminated by either Mollymook Bowling or SJPBC if they are not satisfied with the outcome of the due diligence referred to in clause 3.10 of this Memorandum.
- 18.2 This Memorandum may be terminated by SJPBC if the members of Mollymook Bowling do not pass the resolutions referred to in clause 14.1 of this Memorandum.
- 18.3 This Memorandum may be terminated by Mollymook Bowling or SJPBC if the members of SJPBC do not pass the resolutions referred to in clause 14.3 of this Memorandum.
- 18.4 This Memorandum may be terminated by either party without cause on the giving of ten (10) business days' notice to the other party.
- 18.5 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.
- 18.6 The termination of this Memorandum on any ground specified in this clause 18 shall (except as specified in clause 17.4 and 17.5) 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.

## **19. AMALGAMATION COMPLETION**

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- 19.1 As soon as practicable after the Order, but subject to the Final Order, Mollymook Bowling must ensure the Assets, Debts and Liabilities of Mollymook Bowling are transferred to SJPBC Club (less the amount referred to in clause 20.2 for the purposes of liquidating Mollymook Bowling in the manner referred to in clause 20).
- 19.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 19.1 to occur on the date of the Final Order.

19.3 For the purposes of clause 19.1, Mollymook Bowling 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:

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

owned or entered into by the Mollymook Bowling.

19.4 The transfers and assignments referred to in clause 19.3 must be executed by Mollymook Bowling and/or Mollymook Bowling and held in escrow by SJPBC pending Completion of the Amalgamation.

## **20. DISSOLUTION OF MOLLYMOOK BOWLING**

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20.1 As soon as practicable after Amalgamation Completion, Mollymook Bowling must ensure that it is liquidated. In order to facilitate the liquidation, as soon as practical after Amalgamation Completion, the Mollymook Bowling Board must:

- (a) do all things necessary to liquidate Mollymook Bowling which may include calling a general meeting of Mollymook Bowling's members at which such members will consider and if thought fit, pass all the appropriate resolutions to:
  - (i) liquidate Mollymook Bowling;
  - (ii) appoint the Liquidator (approved by SJPBC) for the purpose of liquidation; and
  - (iii) approve of any remaining assets of the Mollymook Bowling after liquidation, being transferred to SJPBC.
- (b) thereafter permit Mollymook Bowling to be liquidated and after payments of any remaining debts and liabilities of Mollymook Bowling resulting from the liquidation, permit the Liquidator to transfer any remaining assets of the Mollymook Bowling to SJPBC.

20.2 For the purpose of clause 20.1(a)(ii), Mollymook Bowling agrees to indemnify Mollymook Bowling and SJPBC for the costs of the Liquidator and the liquidation of Mollymook Bowling.

20.3 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 20.

## **21. CONFIDENTIALITY**

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- 21.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 21.2 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.
- 21.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 21.4 This clause 21 survives completion of this Memorandum.

## **22. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM**

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- 22.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 22.2 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.
- 22.3 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.
- 22.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 22.2 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.
- 22.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 22.2 a party which has complied with the provisions of this clause 22 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.
- 22.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 22 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.

## **23. COSTS**

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

## **24. STAMP DUTY**

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- 24.1 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.
- 24.2 Despite the exemption from duty referred to in clause 24.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by SJPBC.

## **25. GENERAL**

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### **25.1 Further assurances**

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

### **25.2 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.

### **25.3 Counterparts**

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

### **25.4 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**

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This Memorandum is to be:

1. Made available to the ordinary members of the Mollymook Bowling and SJPBC at least 21 days before any meeting of the members of each club referred to in clause 14 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 14 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 Mollymook Bowling 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):**

DocuSigned by:  
*Geoff Rymer*  
7AA8E107F05948C...

Director

*27/11/2024 GEOFF RYMER*

Name of Director:

BLOCK LETTERS

DocuSigned by:  
*DM*  
DC7A8BC07A8B48D

~~\*Director/\*~~ Company Secretary

David Marsh

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

BLOCK LETTERS

\*please strike out as appropriate

**Executed as a deed by Mollymook Beach  
Bowling & Recreation Club Limited ABN 33  
000 960 994 in accordance with section 127 of  
the Corporations Act 2001 (Cth)**

DocuSigned by:  
*Alan Shapley*  
AECAB1103EA7487...

~~Director~~

*COMPANY SECRETARY*

Alan Shapley

Name of ~~Director~~ *COMPANY SECRETARY*

BLOCK LETTERS

DocuSigned by:  
*Craig Wise*  
AR09670EB80E49E

~~\*Director/\*~~ Company Secretary

Craig Wise

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

BLOCK LETTERS

\*please strike out as appropriate