

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

## **DATE:**

## **PARTIES:**

Tumut Bowling & Recreation Club Limited ABN 62 001 001 074 of 24-30 Richmond St  
Tumut ("**Club Tumut**")

and

Tumut & District RSL Club Limited ABN 88 001 020 695 of 63-65 Russell St Tumut  
("**RSL Club**")

## **BACKGROUND**

- A. Both Club Tumut and the RSL Club are registered clubs under the Registered Clubs Act each holding a club licence under the Liquor Act in NSW and propose to amalgamate.
- B. Both Club Tumut and RSL Club are located within the Tumut Shire Local Government Area.
- C. In accordance with clause 4(1) of the Regulation, by way of ClubsNSW Circular 16:139, the RSL Club called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres from the RSL Club.
- D. Club Tumut submitted an expression of interest in pursuing an amalgamation with the RSL Club.
- E. Subsequent to calling for expressions of interest the RSL Club ceased to trade and its licensed premises are now closed and will remain closed.
- F. Both Club Tumut and the RSL Club 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.
- G. 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.
- H. In accordance with clause 7(2) of the Regulation, the Memorandum of Understanding must state each club's position regarding the proposed amalgamation and include detail to address the requirements of 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.
- I. 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 RSL Club (the dissolving club) to Club Tumut (the continuing club).

J. Club Tumut and RSL Club enter into this Memorandum to state each club's position regarding the proposed amalgamation between them, as required by clause 6 of the Regulation.

## 1. DEFINITIONS

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### 1.1 Definitions

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

**Amalgamated Club** means Club Tumut 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 RSL Club's Licence to Club Tumut pursuant to sections 60(6) and (7) of the Liquor Act by RSL Club's Secretary and Club Tumut's CEO.

**Asset** includes chattels, stock in trade, plant, fixtures and fittings, real property, gaming machines and gaming machine entitlements, debtors, intellectual property rights and goodwill;

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

- (a) the assets and Club Licence of the RSL Club are transferred to Club Tumut; and
- (b) the liabilities of the RSL Club are paid by, or transferred to, Club Tumut.

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

**Corporations Act** means the *Corporations Act 2001 (Cth)*;

**Tumut & District RSL Club** means the RSL Club Ltd ABN 88 001 020 695 of 63-65 Russell St;

**Liquidator** means a liquidator to be:

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

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

**Club Tumut** means Tumut Bowling & Recreation Club Ltd ABN 62 001 001 074 of 24-30 Richmond Street, Tumut;

**Parent Club** means Club Tumut;

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

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

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

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- 2.1 The proposed amalgamation will involve the continuation of Club Tumut as the Parent/Amalgamated Club and the dissolution of the RSL Club.
- 2.2 The Parent Club and continuing club will be Club Tumut.
- 2.3 The dissolved club will be the RSL Club.
- 2.4 Upon Completion of the Amalgamation the Club Licence of the RSL Club will be transferred to Club Tumut.
- 2.5 Upon amalgamation the Assets and liabilities of the RSL Club will be transferred to Club Tumut.
- 2.6 The only premises of the Amalgamated Club are proposed to be Club Tumut situated at 24-30 Richmond St, Tumut.
- 2.7 Both Club Tumut and the RSL Club are in the “same area” as that term is defined in section 17AC(1) of the Registered Clubs Act.
- 2.8 Club Tumut proposes:
- (a) the full members of the RSL Club will be invited by Club Tumut to become Ordinary Members of Club Tumut as the Amalgamated Club; and
  - (b) at the meeting of Club Tumut to pass the resolution approving the amalgamation in principle and authorising an application to be made to the Independent Liquor and Gaming Authority to transfer the RSL Club’s Club Licence to Club Tumut, the members of Club Tumut will be asked to consider, and if thought fit, to pass a resolution to amend the constituent documents of Club Tumut (with effect from Completion of the Amalgamation) to add a class of members for identification purposes only under section 17AC of the Registered Clubs Act to be known as the “RSL Club Members.”
- 2.9 Those persons who are Life members of the RSL Club as at the date of this Memorandum of Understanding will be identified as RSL Life Members in the Amalgamated Club’s records.
- 2.10 The amalgamation will be subject to the approval of:
- (a) each club’s ordinary members at separately convened General Meetings; and
  - (b) the Independent Liquor and Gaming Authority.
- 2.11 The process for the Amalgamation will be as follows:
- (a) The parties entering into this Memorandum.
  - (b) The members of RSL Club and Club Tumut being asked to:
    - (i) approve the Amalgamation; and
    - (ii) approve the clubs making the Amalgamation Application,

at separate general meetings of the ordinary members and life members of each club. These meetings will be called and held in the manner referred to in clause 10 below.

- (c) At the meeting of Club Tumut referred to in (b) the members of Club Tumut will be asked to consider, and if thought fit, pass a special resolution to amend the Constitution of Club Tumut (with effect from Amalgamation Completion) to add a class of members (for identification purposes only under section 17AC of the Registered Clubs Act) to be known as “RSL Club Members”.
- (d) The Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 12 below.
- (e) After the Order is made by the Authority all members of RSL Club will be invited to become ordinary members of Club Tumut.
- (f) On Amalgamation Completion:
  - (i) All of the Assets of RSL Club are transferred to Club Tumut; and
  - (ii) All members of RSL Club who have accepted the invitation to become ordinary members of Club Tumut will become members of Club Tumut.
- (g) From Completion the Amalgamated Club will be available to all members of the Amalgamated Club.
- (h) After Amalgamation Completion, Club Tumut will continue as the body corporate of the Amalgamated Club.

#### 2.12 Due Diligence

- (a) RSL Club may, at its own expense, undertake a due diligence review of Club Tumut’s financial position.
- (b) Club Tumut may, at its own expense, undertake a due diligence review of RSL Club’s financial position and operations.
- (c) RSL Club will, if required, provide to Club Tumut a list of information (including, but not limited to, details of all RSL Club’s debts and liabilities) and will also provide reasonable assistance to Club Tumut in order for Club Tumut to properly carry out and complete the due diligence review.

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

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- 3.1 The RSL Club premises are closed and do not operate.
- 3.2 The Amalgamated Club will operate only from the Club Tumut premises at 24-30 Richmond Street, Tumut.
- 3.3 The Board of Directors of Club Tumut will be the governing body of the Amalgamated Club.

3.4 Club Tumut Chief Executive Officer will be the Chief Executive Officer of the Amalgamated Club.

3.5 Club Tumut proposes to form an advisory committee comprised of no more than three (3) former members to make recommendations regarding RSL core values, traditions & bowls administration.

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

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4.1 The Amalgamated Club will preserve and maintain the traditions and ethos of the RSL Club at the Amalgamated Club’s premises situated at 24-30 Richmond St.

4.2 The Amalgamated Club will maintain the appropriate facilities and amenities for responsible gaming and responsible service of alcohol, function and dining facilities and members’ activities including lawn bowls at the Amalgamated Club premises situated at 24-30 Richmond St.

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

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5.1 The Amalgamated Club will trade only from the current premises of Club Tumut.

5.2 The Amalgamated Club proposes that the lease of the premises of the RSL Club will terminate.

5.3 In relation to the future direction of the Amalgamated Club, Club Tumut intends to prepare a business and strategic plan for the future of the Amalgamated Club.

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

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6.1 RSL Club no longer trades and has no existing employees. Therefore, there is no requirement to protect the employees of RSL Club in this proposed amalgamation.

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

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

**7.1 Core Property**

7.2 RSL Club has no “core property” as defined in section 41(j) of the Registered Clubs Act.

### **Cash and Investments**

- 7.3 The cash and investments (if any) of RSL Club will form part of the Assets and will be transferred to the Amalgamated Club in accordance with this Memorandum.

### **Gaming Machine Entitlements**

- 7.4 The gaming machine entitlements held by the RSL Club upon amalgamation will be an Asset of the Amalgamated Club and will be transferred to the Amalgamated Club.
- 7.5 Club Tumut expects and requires that the RSL Club will:
- (a) be the holder of twenty one (21) transferable gaming machine entitlements at the date of this Memorandum of Understanding but will still be held by the RSL Club on Completion of the Amalgamation;
  - (b) will continue to also be the owner or lessee of twenty one (21) gaming machines at Completion of the Amalgamation; and
  - (c) have a gaming machine threshold of twenty one (21) at Completion of the Amalgamation (subject to reduction to zero when the gaming machine entitlements are transferred from the RSL Club to Club Tumut).

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

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- 8.1 RSL Club no longer trades from the licensed premises. Therefore, the Amalgamated Club will trade from the current Club Tumut premises only at 24-30 Richmond St Tumut.
- 8.2 For the purposes of clause 6(2)(f) of the Regulations:
- (a) the objects of the RSL Club will cease to have effect on dissolution or winding up of that Club; and
  - (b) on and from Completion of the Amalgamation, the objects of Club Tumut will be the objects of the Amalgamated Club.

## **9. 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)]**

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- 9.1 As noted above, Club Tumut will continue to trade from the current premises and RSL Club had ceased to trade prior to it entering this MOU.
- 9.2 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.

## **10. CALLING OF MEETINGS AND ADMISSION OF RSL CLUB MEMBERS TO MEMBERSHIP OF CLUB TUMUT**

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- 10.1 RSL Club 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.
- 10.2 The meeting referred to in clause 10.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 10.3 Club Tumut will call a general meeting of its ordinary members and life members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve in principle the Amalgamation in accordance with section 17AEB(d) of the Registered Clubs Act;
  - (b) approve the Clubs making the Amalgamation Application; and
  - (c) amending the Constitution of Club Tumut as provided in clause 2.11(c).
- 10.4 The meeting referred to in clause 10.3 will be held as soon as reasonably practicable after RSL Club passes the resolution referred to in clause 10.1 (or at such prior time as may be determined by Club Tumut in its absolute discretion).
- 10.5 At the general meeting of Club Tumut referred to in clause 10.3 the members of Club Tumut will be asked to consider and if thought fit pass a special resolution to amend the Constitution of Club Tumut to insert new membership class in conformity with clause 2.11(c) above.
- 10.6 All members of RSL Club who apply to become members of Club Tumut will be admitted to membership of Club Tumut.
- 10.7 All members of RSL Club will be able to apply for membership of Club Tumut in the manner referred to in paragraphs 10.8 and 10.9.
- 10.8 Prior to the Completion of the Amalgamation, Club Tumut will forward to each member of RSL Club, who is not already a member of Club Tumut, a written invitation to become a member of Club Tumut.
- 10.9 Any member of RSL Club who accepts the invitation and agrees in writing to be bound by the Constitution of Club Tumut will (subject to the requirements of Club Tumut's Constitution and the name of that person being displayed on the noticeboard of Club Tumut 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 Club Tumut) be elected by a resolution of the Board of Club Tumut to membership of Club Tumut with effect from the date of Completion of the Amalgamation.

## **11. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY**

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- 11.1 As soon as reasonably practicable after the meetings referred to in clauses 11.1 and 11.3, each Club must forward to the lawyers for Club Tumut such of the following documents relevant to it:
- (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 10 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) a true copy of the ClubsNSW Circular in which RSL Club called for expressions of interest; and
  - (f) a copy of the Expression of Interest submitted by Club Tumut to RSL Club.
- 11.2 Club Tumut and its lawyers will prepare and file the Amalgamation Application. Club Tumut will provide RSL Club with a copy of the Amalgamation Application.
- 11.3 RSL Club will co-operate with Club Tumut and the lawyers for Club Tumut and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the approved Secretary of RSL Club to sign the Amalgamation Application if required to do so.

## **12. ACCESS TO RECORDS**

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- 12.1 From the date of this Memorandum and on a confidential basis, RSL Club will provide to Club Tumut at all reasonable times access to the RSL Club records and Assets and other information and material reasonably required by Club Tumut, including for the purpose of any due diligence referred to in clause 2.12.

## **13. TERMINATION**

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- 13.1 This Memorandum may be terminated by Club Tumut if it is not satisfied with the outcome of the due diligence referred to in clause 2.12 of this Memorandum.
- 13.2 This Memorandum may be terminated by Club Tumut if the members of Club do not pass the resolutions referred to in clause 10.3 of this Memorandum.
- 13.3 This Memorandum may be terminated by Club Tumut if the members of RSL Club do not pass the resolutions referred to in clause 10.1 of this Memorandum.



- 13.4 This Memorandum is terminated immediately by either party if the Authority declines to approve the Amalgamation Application and the party reasonable determines that it is unlikely the Authority will grant the Amalgamation Application at any future date.
- 13.5 The termination of this Memorandum on any ground specified in this clause 13 shall 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.

## **14. DISSOLUTION OF THE RSL CLUB**

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- 14.1 As soon as practicable after Completion of the Amalgamation, the RSL Club must ensure that the RSL Club is liquidated. In order to facilitate the liquidation, as soon as practical after Completion of the Amalgamation, the RSL Club's Board must:
- (a) do all things necessary to liquidate the RSL Club including calling a general meeting of the RSL Club's members at which such members will consider and if thought fit, pass all the appropriate resolutions to:
    - (i) liquidate the RSL Club;
    - (ii) appoint the Liquidator for the purpose of liquidation; and
    - (iii) approve of any remaining assets of the RSL Club after liquidation, being transferred to Club Tumut.
  - (b) thereafter permit the RSL Club to be liquidated and after payments of any remaining debts and liabilities of the RSL Club resulting from the liquidation, permit the Liquidator to transfer any remaining assets of the RSL Club to Club Tumut.
- 14.2 For the purpose of clause 14.1(a)(ii), Club Tumut agrees to indemnify the RSL for the costs of the Liquidator and the liquidation to the sum of up to \$15,000.00.
- 14.3 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 14.

## **15. GENERAL**

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### **15.1 Further assurances**

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

### **15.2 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.

### 15.3 Counterparts

(a) A party may execute this Memorandum by signing any counterpart.

(b) All counterparts constitute one document when taken together.

### 15.4 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 RSL Club and Club Tumut at least 21 days before any meeting of the members of each club referred to in clause 10 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 10 of this Memorandum is held; and
3. Lodged with any application under section 60 of the Liquor Act 2007 to transfer the Club Licence held by the RSL Club to Club Tumut.

**EXECUTED BY:**

**CLUB Tumut**

Tumut Bowling & Recreation Club Limited  
ABN 62 001 001 074 pursuant to section 127(1) of the Corporations Act 2001 (Cth)

_____ Sign	_____ Sign
_____ Director / Secretary	_____ Director / Secretary
_____ Full Name	_____ Full Name

**RSL CLUB**

Tumut & District RSL Club Limited  
ABN 88 001 020 695 pursuant to section 127(1) of the Corporations Act 2001 (Cth)

_____ Sign	_____ Sign
_____ Director / Secretary	_____ Director / Secretary
_____ Full Name	_____ Full Name