

**MEMORANDUM OF UNDERSTANDING**

**Dated**  
*28 October 2020*

**PARTIES:**

**RAMSGATE RSL MEMORIAL CLUB LIMITED**  
**ABN 15 000 967 340**

**FINGAL BAY BOWLS SPORTS & RECREATION CLUB LIMITED**  
**ABN 72 003 065 085**

This Memorandum of Understanding is made on

## **BETWEEN**

**RAMSGATE RSL MEMORIAL CLUB LIMITED (ABN 15 000 967 340)** of Ramsgate Road & Chuter Avenue, Sans Souci, New South Wales 2219

**(Ramsgate RSL)**

and

**FINGAL BAY BOWLS SPORTS & RECREATION CLUB LIMITED (ABN 72 003 065 085)** of 100 Rocky Point Road, Fingal Bay New South Wales 2315

**(Fingal Bay Sports)**

## **BACKGROUND**

- (A) Ramsgate RSL and Fingal Bay Sports both operate registered clubs in New South Wales.
- (B) Ramsgate RSL called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of Ramsgate RSL by way of ClubsNSW Circular (Circular No: 20-065) published on 12 May 2020.
- (C) On 10 June 2020, Fingal Bay Sports submitted an expression of interest to Ramsgate RSL.
- (D) Fingal Bay Sports is 250 kilometres from Ramsgate RSL.
- (E) Ramsgate RSL has accepted the expression of interest from Fingal Bay Sports and, following further negotiation, Ramsgate RSL and Fingal Bay Sports have agreed to the terms set out in this Memorandum.
- (F) Ramsgate RSL and Fingal Bay Sports propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

## **1. DEFINITIONS AND INTERPRETATIONS**

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1.1 In this Memorandum unless the context otherwise requires:

- (a) **“Advisory Committee”** means the Advisory Committee referred to in clause 5.5.
- (b) **“Amalgamated Club”** mean the amalgamated registered club of Ramsgate RSL and Fingal Bay Sports, the corporate vehicle of which will be Ramsgate RSL;
- (c) **“Amalgamation”** means the amalgamation of the Clubs in accordance with this Memorandum;
- (d) **“Amalgamation Application”** means the provisional application for the transfer of Fingal Bay Sports’ Liquor Licence to Ramsgate RSL pursuant to Sections 60(6) and (7) of the Liquor Act by Ramsgate RSL and Fingal Bay Sports;

- (e) **"Assets"** means all of the goodwill, Land, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to Fingal Bay Sports at the time of Completion of the Amalgamation;
- (f) **"Authority"** means the Independent Liquor and Gaming Authority;
- (g) **"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;
- (h) **"Clubs"** means both Ramsgate RSL and Fingal Bay Sports;
- (i) **"Completion of the Amalgamation"** means the day on which:
  - (i) the Final Order is granted and Fingal Bay Sports' Liquor Licence is transferred to Ramsgate RSL; and
  - (ii) the Assets, Debts and Liabilities of Fingal Bay Sports are transferred to Ramsgate RSL, as referred to in clause 15.1;
  - (iii) Fingal Bay Sports' members have been invited to become members of Ramsgate RSL and those members of Fingal Bay Sports who make application for membership of Ramsgate RSL become members of the Amalgamated Club;
  - (iv) Ramsgate RSL takes over responsibility for the management and control of the Fingal Bay Sports Premises.
- (j) **"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;
- (k) **"Core Property"** means, for the purposes of the RCA, the Fingal Bay Sports Premises (including the bowling greens).
- (l) **"Corporations Act"** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder;
- (m) **"Deed of Loan"** means the Deed of Loan in the form as agreed between the parties prior to the date of this Memorandum.
- (n) **"Fingal Bay Sports Premises"** means Fingal Bay Sports' premises located at 100 Rocky Point Road, Fingal Bay New South Wales 2315 and comprising Lot 467 in Deposited Plan 726254;
- (o) **"Fingal Bay Sports' Secretary Manager"** means the individual who fulfils the Secretary or Secretary Manager's role at Fingal Bay Sports;
- (p) **"Debts"** means the accumulated debts of Fingal Bay Sports at the time of Completion of the Amalgamation;
- (q) **"EBITDARD"** means earnings before interest, taxes, depreciation, amortisation, rent and donations;

- (r) **“Encumbrance”** means any:
- (i) 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
  - (ii) 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
  - (iii) 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
  - (iv) 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 created by the Deed of Loan or General Security Deed.
- (s) **“Final Order”** means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby Fingal Bay Sports’ Liquor Licence will be transferred to Ramsgate RSL;
- (t) **“Gaming Machines Act”** means the Gaming Machines 2001 (NSW) and the Regulations made thereunder;
- (u) **“General Security Deed”** means the General Security Deed in the form as agreed between the parties prior to the date of this Memorandum.
- (v) **“GST” means** Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (w) **“Land”** means the real property comprising:
- (i) Lot 467 Deposited Plan 726254;
  - (ii) Lot 543 Deposited Plan 46853; and
  - (iii) Lot 544 Deposited Plan 46853.
- (x) **“Liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of Fingal Bay Sports (whatever description) at the time of Final Order;
- (y) **“Liquor Act”** means the Liquor Act 2007 (NSW) and the Regulations made thereunder;
- (z) **“Liquor Licence”** means the club licence issued to a registered club under the *Liquor Act*;
- (aa) **“Memorandum”** means this Memorandum of Understanding;
- (bb) **“Order”** means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (cc) **“Party”** means the respective management and Board of Directors of Fingal

Bay Sports and Ramsgate RSL;

- (dd) **“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 Fingal Bay Sports in the conduct of Fingal Bay Sports business including but not limited to corporate, accounting and statutory records;
- (ee) **“Regulations”** mean the Regulations to the RCA;
- (ff) **“RCA”** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder;
- (gg) **“Ramsgate RSL’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at Ramsgate RSL;
- (hh) **“Ramsgate RSL Premises”** means Ramsgate RSL’s premises located at Chuter Avenue and Ramsgate Road, Sans Souci, New South Wales 2219;
- (ii) **“Year”** means a period of twelve (12) months commencing on the anniversary of the date of the Final Order and concluding on the day immediately before the next anniversary date of the Final Order.

1.2 In this Memorandum unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (e) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (f) a reference to a Party to a document includes that Party’s successors, permitted assigns, administrators and substitutes;
- (g) an agreement on the part of 2 or more persons binds them jointly and severally;
- (h) a reference to a notice from, consent or approval of a Party and agreement between the Parties for the purposes of this Deed means a written notice, consent, approval or agreement;
- (i) mentioning anything after ‘include’, ‘includes’ or ‘including’ does not limit what else might be included; and
- (j) a reference to “dollars” or “\$” is to Australian currency.

## 2. EACH CLUB’S POSITION REGARDING THE PROPOSED AMALGAMATION

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2.1 Ramsgate RSL and the Fingal Bay Sports agree to amalgamate in accordance with

this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

- 2.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.
- 2.3 The amalgamation will be effected by the continuation of Ramsgate RSL and the dissolution of the Fingal Bay Sports.

### **Financial Accommodation**

- 2.4 To ensure the immediate financial viability of Fingal Bay Sports, both Clubs have entered into the Deed of Loan and General Security Deed which requires Ramsgate RSL to lend funds of up to \$1,000,000.00 to Fingal Bay Sports, to clear all Encumbrances on the Land and Assets, payout its creditors and provide operating capital.

### **Process for Amalgamation**

- 2.5 The process for the amalgamation will be as follows:
  - (a) The Clubs entering into this Memorandum; and
  - (b) The members of Fingal Bay Sports and Ramsgate RSL will be asked to approve the amalgamation at separate general meetings of the ordinary members of each club. These meetings will be called and held in the manner referred to in clause 13 below;
  - (c) The members of Ramsgate RSL will be asked to approve (by special resolution) amendments to Ramsgate RSL's Constitution in the manner provided for in clause 13.5 below.
  - (d) Once the approvals in paragraphs (b) and (c) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 14 below;
  - (e) After the Amalgamation Application is granted and on the date of the Final Order:
    - (i) The Assets, Debts and Liabilities will be transferred to Ramsgate RSL Club in the manner referred to in clause 16 below;
    - (ii) Subject to clause 13.7, all members of Fingal Bay Sports will, with their consent, be admitted as members of Ramsgate RSL and will be identified as a separate class of ordinary membership called "Fingal Bay Sports members". This will occur in accordance with the procedure set out in clause 13.5 below (that is, the category of membership will be inserted into Ramsgate RSL's Constitution pursuant to the Special Resolution referred to in that clause);
    - (iii) Employees of Fingal Bay Sports who are requisite to the needs of the Amalgamated Club after Completion of the Amalgamation will be offered employment with the Amalgamated Club and if those offers of employment are accepted, they will become employees of the Amalgamated Club;
    - (iv) Pursuant to the funds provided by Ramsgate RSL to Fingal Bay Sports under the Deed of Loan, Fingal Bay Sports will, prior to Completion of

the Amalgamation, payout all amounts owing on the Land and Assets so that the Land and Assets may be transferred on Completion to Ramsgate RSL free of any and all Encumbrances.

- (v) After Completion of the Amalgamation, Ramsgate RSL will continue as the body corporate of the Amalgamated Club;
- (f) From Completion of the Amalgamation, the Fingal Bay Sports Premises will become additional licensed premises of Ramsgate RSL and will be available to all members of the Amalgamated Club. The Fingal Bay Sports Premises will be operated in the manner set out in clauses 3, 4 and 5 below;
- (g) After Completion of the Amalgamation, Fingal Bay Sports will be liquidated or otherwise voluntarily deregistered in the manner referred to in clause 16 below.

### **Due Diligence**

- 2.6 Fingal Bay Sports may, at its own expense, undertake a due diligence review of Ramsgate RSL's financial position.
- 2.7 Ramsgate RSL may, at its own expense, undertake a due diligence review of Fingal Bay Sports' financial position and operations.
- 2.8 Each Club will, if required, provide a list of information (including, but not limited to, details of their Assets, Debts and Liabilities) and assistance to the other Club in order for the other Club to properly carry out and complete the due diligence review.

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

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- 3.1 The Fingal Bay Sports Premises will become additional premises of Ramsgate RSL.
- 3.2 The Amalgamated Club will operate and trade from the Ramsgate RSL Premises and the Fingal Bay Sports Premises.
- 3.3 The Board of Ramsgate RSL will be the Board of the Amalgamated Club.
- 3.4 Ramsgate RSL will take over responsibility and control of the Fingal Bay Sports Premises with effect from Completion of the Amalgamation.
- 3.5 For the purposes of the RCA:
  - (a) Ramsgate RSL's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and be responsible for the Fingal Bay Sports Premises; and
  - (b) Fingal Bay Sports' General Manager will be employed by Ramsgate RSL as the approved manager of the Fingal Bay Sports Premises under section 66 of the Liquor Act subject to and in accordance with clause 6.6.

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

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- 4.1 The traditions, amenities, culture, bowling facilities, bowling activities and memorabilia

of Fingal Bay Sports will be maintained by the Amalgamated Club at the Fingal Bay Sports Premises. For the avoidance of doubt, the parties acknowledge and agree that the memorabilia of the Fingal Bay Sports may be displayed in its present form or in an electronic form.

4.2 The Amalgamated Club will continue to support the community that was supported by Fingal Bay Sports (as at the date of this Memorandum) and it will explore opportunities to expand community support.

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

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

**Amalgamated Club Premises**

5.2 The Amalgamated Club will operate and trade from the Ramsgate RSL Premises and the Fingal Bay Sports Premises.

**Fingal Bay Sports Premises**

5.3 The Fingal Bay Sports Premises will continue to trade as and be promoted as "Fingal Bay Sports". However, in consultation with the Advisory Committee, the trading name of the Fingal Bay Sports Premises may change in the future.

5.4 Subject to clauses 10 and 11, Ramsgate RSL will:

- (a) maintain the Fingal Bay Sports Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Fingal Bay Sports Premises with all the facilities and amenities of a registered club; and
- (b) operate the Fingal Bay Sports Premises as a successful and well supported local based sporting and community club;
- (c) within a period of three (3) years after Amalgamation Completion undertake necessary capital works including refurbishment of dining, bar and gaming as well as outdoor spaces (expanding and upgrading playground area), at the Fingal Bay Sports Premises with a view to improving trading;
- (d) develop a strategic plan to incorporate capital works where necessary with the nature, budget and timeframe of the works to be determined by the Board of the Amalgamated Club in consultation with the Advisory Committee such that the Amalgamated Club can achieve the objective of becoming the local venue of choice in Fingal Bay and its surrounding areas;
- (e) undertake planning to encapsulate marketing, social media and community engagement for the Fingal Bay Sports Premises in conjunction with the Approved Manager and the Advisory Committee of the Fingal Bay Sports Premises;
- (f) seek to enhance the social facilities, services, amenities and activities at the Fingal Bay Sports Premises;



- (g) maintain and where possible enhance, the existing bowling activities at the Fingal Bay Sports Premises; and

maintain at least two (2) bowling greens at the Fingal Bay Sports Premises for a period of at least ten (10) years subject to the demand for bowls and the Amalgamated Club's strategic plan, with the synthetic green to be upgraded upon agreement between the Board of the Amalgamated Club and the Advisory Committee.

### **Advisory Committee**

5.5 The Board of the Ramsgate RSL will create the Advisory Committee in respect of the Fingal Bay Sports Premises and the following shall apply in respect of the Advisory Committee:

- (a) The Advisory Committee will initially be made up of:
  - (i) the Approved Manager of Fingal Bay Sports; and
  - (ii) the existing directors of Fingal Bay Sports who, as at the date of Completion of the Amalgamation, have given written consent to Ramsgate RSL to be members of the Advisory Committee,

#### **(First Advisory Committee);**

- (b) The First Advisory Committee shall hold office until the first election of the Advisory Committee. The first election of the Advisory Committee will be held on or before the date of Ramsgate RSL's Annual General Meeting in 2021. The exact date of the first election of the Advisory Committee will be determined by the Board of the Amalgamated Club;
- (c) With effect from the first election of the Advisory Committee, the Advisory Committee will comprise of five (5) members being:
  - (i) the Approved Manager of Fingal Bay Sports; and
  - (ii) four (4) Fingal Bay Sports members,elected in accordance with the terms set out in this MOU.
- (d) The Advisory Committee will have its own set of rules governing the roles, responsibilities and operations of the Advisory Committee which will be prepared by the Board of the Amalgamated Club;
- (e) The Advisory Committee will meet at such intervals as may be determined by the Board of the Amalgamated Club from time to time.
- (f) The Advisory Committee may make written recommendations to the Board and/or management of the Amalgamated Club regarding the following matters:
  - (i) the operations of the Fingal Bay Sports Premises; and
  - (ii) ClubGRANTS to be made by the Amalgamated Club that are attributable to the Fingal Bay Sports Premises;
  - (iii) membership matters at the Fingal Bay Sports Premises (including member disciplinary matters);
  - (iv) the operation of the bowling activities at Fingal Bay Sports.

- (g) The Advisory Committee will have such powers in the Amalgamated Club as are specifically delegated to it by authority of the Board of the Amalgamated Club, provided that it shall, at all times be subject to the overall control and direction of the Board and management of the Amalgamated Club.
- (h) The Advisory Committee will be provided regularly with an updated unaudited balance sheet in respect of the Fingal Bay Sports Premises, for use by the Advisory Committee only.
- (i) The Advisory Committee may be required to provide written reports to the Board of the Amalgamated Club.
- (j) The Advisory Committee will be elected biennially on such date or dates as may be determined by the Board of the Amalgamated Club in consultation with the Advisory Committee.
- (k) The Advisory Committee will be elected by Fingal Bay Sports members of the Amalgamated Club;
- (l) The Advisory Committee shall be in force and effect for as long as the Amalgamated Club trades from the Fingal Bay Sports Premises.
- (m) Ramsgate RSL's CEO (or his delegate) shall be entitled to attend and participate in all meetings of the Advisory Committee.
- (n) The Board of Ramsgate RSL will adopt By-laws which give effect to the matters set out in this clause.

### **Sub Club Activities**

- 5.6 Ramsgate RSL intends for the Amalgamated Club to create a men's bowling sub-club and a women's bowling sub-club to conduct and administer bowling at the Fingal Bay Sports Premises on behalf of the Amalgamated Club.
- 5.7 If, at the date of this Memorandum, there are any sub-clubs at Fingal Bay Sports (other than the bowls sub-clubs referred to above), the Board of the Amalgamated Club will allow those sub-clubs to continue to exist provided all members of those sub clubs become members of Ramsgate RSL.
- 5.8 It is intended that the Fingal Bay Sports sub-clubs will:
  - (a) have their own rules, committees and members; and
  - (b) be authorised to operate a bank account;
  - (c) continue using their existing names and insignia;
  - (d) elect their own committees;
  - (e) be eligible to affiliate with such bodies controlling the activity in which they engage on such terms and conditions (not inconsistent with the Constitution of the Ramsgate RSL or the RCA) as such controlling bodies may from time to time require; and
  - (f) be responsible for all relevant costs of conducting the sub-club including obtaining the necessary insurances.
- 5.9 The Amalgamated Club will allocate funds to each sub-club in such amount as

determined by the Board of the Amalgamated Club acting reasonably subject to the relevant sub-club providing an annual budget to the Board of the Amalgamated Club.

5.10 In addition to clause 5.9, the Amalgamated Club will also allocate an annual budget in relation to the bowling greens and bowling activities at the Fingal Bay Sports Premises. The annual budget will be determined by the Board of the Amalgamated Club after discussions with the bowling sub-clubs and the Advisory Committee. The annual budget will cover:

- (a) all relevant insurances applicable to the bowling sub-clubs and their activities; and
- (b) all relevant trophies, prizes and prize money for bowling competitions and events and the recoument of competition fees;
- (c) all relevant costs for the maintenance and repair of the bowling greens.

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

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6.1 As part of the Amalgamation, Fingal Bay Sports will be wound up/liquidated. As part of the winding up/liquidation of Fingal Bay Sports, the employment of all Fingal Bay Sports' employees by Fingal Bay Sports would otherwise come to an end.

6.2 Prior to the Completion of the Amalgamation and subject to clause 6.6 below, Ramsgate RSL will undertake a review of the staffing requirements at the Fingal Bay Sports Premises and it will only make offers of employment to those employees of Fingal Bay Sports that are requisite to the needs of the Amalgamated Club after Completion of the Amalgamation.

6.3 The offers of employment:

- (a) will be effective from the Completion of the Amalgamation; and
- (b) will, subject to clause (c) below, be on the same terms and conditions presently offered by Ramsgate RSL to employees of Ramsgate RSL in similar roles;
- (c) may result in some employees of Fingal Bay Sports being offered different roles with the Amalgamated Club and/or having different titles, duties, responsibilities, hours of work and times of work with the Amalgamated Club.

6.4 Any employee of Fingal Bay Sports who receives and accepts an offer of employment with Ramsgate RSL will receive continuity of employment and their accrued entitlements will be honoured by Ramsgate RSL.

6.5 Any employee of Fingal Bay Sports who does not receive an offer of employment from Ramsgate RSL or who receives but does not accept an offer of employment with Ramsgate RSL will be paid their full entitlements when their employment with Fingal Bay Sports comes to an end.

6.6 Subject to Fingal Bay Sports' Secretary Manager accepting the offer of employment from the Amalgamated Club, Fingal Bay Sports' Secretary Manager will be employed on the same remuneration by the Amalgamated Club as the Approved Manager of the Fingal Bay Sports Premises for a period of at least twelve (12) months subject to terms of employment. Clauses 6.3(a), 6.3(c), 6.4 and 6.5 shall apply to the offer of

employment to Fingal Bay Sports' Secretary Manager under this clause.

**7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF FINGAL BAY SPORTS:**

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1. ANY CORE PROPERTY;
  2. ANY CASH OR INVESTMENTS;
  3. ANY POKER MACHINE ENTITLEMENTS  
[Regulations – Clause 7(2) (e)]
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**Core Property**

- 7.2 Fingal Bay Sports will transfer the Core Property to Ramsgate RSL and Ramsgate RSL will retain the Core Property of the Fingal Bay Sports and operate the Amalgamated Club in the manner referred to in clause 5.

**Cash and Investments**

- 7.3 The cash and investments (if any) of the Fingal Bay Sports will be transferred (in accordance with clause 16) to the general reserves of the Amalgamated Club.

**Gaming Machine Entitlements**

- 7.4 Fingal Bay Sports has forty (40) gaming machine entitlements and those gaming machine entitlements will be retained at Fingal Bay Sports Premises after the Completion of the Amalgamation.
- 7.5 Ramsgate RSL Club will, after it has assessed the performance of the gaming machine installation of Fingal Bay Sports and consider and review the viability of increasing or decreasing the number of gaming machines, after consultation with the Advisory Committee, including by transferring additional gaming machine entitlements from or to its other premises. Ramsgate RSL shall ensure that it maintains the gaming machines to a high standard and replaces them as and when reasonably required so they are as up to date as possible together with purchasing new bases. Ramsgate RSL shall otherwise ensure that it modernises and improves the gaming machine area at the Fingal Bay Sports premises.

**8. RISKS OF NOT PRESERVING FINGAL BAY SPORTS' CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED  
[REGULATIONS – CLAUSE 7(2) (E1)]**

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- 8.1 Prior to transfer of the Core Property of Fingal Bay Sports on Completion, as set out in clause 7.2 above, Fingal Bay Sports will payout the current loan amounts secured against the relevant Land from the funds being provided by Ramsgate RSL under the Loan Agreement, so that the Land will be transferred to Ramsgate RSL free from any Encumbrance.
- 8.2 Subject to clauses 9, 10 and 11, the Amalgamated Club will not dispose of the Core Property of Fingal Bay Sports.
- 8.3 The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the Core Property of Fingal Bay Sports are those set out in clause 10.4.
- 8.4 If the risks (or any of them) in clause 10.4 are realised during the first five (5) years after the Completion of the Amalgamation, clause 8.1 and section 17A1 of the RCA will prevent the Amalgamated Club from disposing the Core Property.
- 8.5 If the risks (or any of them) in clause 10.4 are realised after the first five (5) years after Completion of the Amalgamation, the Amalgamated Club will use its best

endeavours to find ways to address those risks so that the disposal of Core Property will be considered only after all other ways have been exhausted and provided the disposal is in accordance with the RCA.

**9. DISPOSAL OF FINGAL BAY SPORTS' MAJOR ASSETS [REGULATIONS – CLAUSE 7(2)(E2)]**

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9.1 For the purposes of the RCA, the 'major assets' of Fingal Bay Sports is the Core Property.

9.2 Subject to clauses 8, 10 and 11 of this Memorandum, the Amalgamated Club will not dispose of the major assets of Fingal Bay Sports during the first five (5) years after Completion of the Amalgamation.

9.3 The effect of section 17A1 of the Registered Clubs Act is to restrict Ramsgate RSL as the Amalgamated Club from selling or leasing ("disposal") any of the major assets of Fingal Bay Sports Club for 5 years after the amalgamation unless the Independent Liquor and Gaming Authority ("ILGA") approve the disposal. The ILGA can only approve the disposal if firstly the disposal is necessary to ensure the financial viability of the amalgamated club and if a majority of the members of Fingal Bay Sports Club- as at the completion of the amalgamation-approve the disposal at a meeting where only those members can attend and vote.

9.4 The term 'major asset' means the Core Property of Fingal Bay Sports ("the Club House land"). Therefore the Club House land cannot be disposed of without the approval of the Fingal Bay Sports members at any time during 5 years after completion of the amalgamation and also subject to clause 10 below.

9.5 However Fingal Bay Sport Club's other land is non-core property and therefore is not a major asset of Fingal Bay Sports Club and will not have the 5 year protection.

**10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE FINGAL BAY SPORTS OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE FINGAL BAY SPORTS [REGULATIONS – CLAUSE 7(2) (F)]**

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10.1 Ramsgate RSL does not intend to:

- (a) cease trading from the Fingal Bay Sports Premises; or
- (b) substantially change the objects of the Fingal Bay Sports Premises; or
- (c) cease the bowling activities conducted at the Fingal Bay Sports Premises.

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

10.3 However, for the purposes of clause 7(2) (f) of the Regulations, Ramsgate RSL and Fingal Bay Sports are required to agree to the matters set out in clause 10.4.

10.4 For the purposes of clause 7(2)(f) of the Regulations, Ramsgate RSL and Fingal Bay Sports have agreed that the Amalgamated Club would either cease trading from, change the objects of or cease the bowling activities at the Fingal Bay Sports Premises in the following circumstances:

- (a) subject to clauses 10.7 to 10.12 and 11, if it is not financially viable for the Amalgamated Club to continue to trade from or continue the bowling activities

at the Fingal Bay Sports Premises; or

- (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
- (c) upon the lawful order of any government authority;
- (d) if the Fingal Bay Sports Club Premises are destroyed or partially destroyed by fire, floods, storms etc such that it is not lawful for a licensed club to be operated at the Fingal Bay Sports Club Premises and any resulting insurance claim is not sufficient to re-instate or re-build an operational club house at the Fingal Bay Sports Club Premises.

10.5 For the purposes of clauses 10 and 11 and subject to clause 10.6 below, the Fingal Bay Sports Premises will not be financially viable if, in any two (2) consecutive years period (commencing after the five (5) year period referred to in clause 11.4), the EBITDARD percentage for the Fingal Bay Sports Premises is ten per cent (10%) or less in each year with such EBITDARD percentage to be determined by an independent company auditor (**the Minimum EBITDARD**).

10.6 For the purposes of clauses 10.4(a) and 10.5:

- (a) Ramsgate RSL must prepare separate financial reports for the Fingal Bay Sports Premises.
- (b) Ramsgate RSL must not knowingly or wilfully do anything or omit doing anything which adversely impacts upon the Fingal Bay Sports Premises' ability to achieve the Minimum EBITDARD.
- (c) If Ramsgate RSL wishes to cease trading from the Fingal Bay Sports Premises:
  - (i) Ramsgate RSL must engage an independent third party (and not Ramsgate RSL's auditor or accountant) to prepare a report on the EBITDARD of the Fingal Bay Sports Premises; and
  - (ii) Ramsgate RSL can only cease trading from the Fingal Bay Sports Premises if the report (which is to be made publicly available) declares that the Fingal Bay Sports Premises did not achieve the Minimum EBITDARD in two (2) consecutive years.

#### **Cessation of Trade after first five (5) years from the Completion of the Amalgamation**

10.7 If the Amalgamated Club wishes to cease trading from the Fingal Bay Sports Premises after the first five (5) years from the Completion of the Amalgamation for the reason set out in clause 10.4(a) of this Memorandum (which deals with the financial viability of the Fingal Bay Sports Premises) the Amalgamated Club must first make an offer (**De-Amalgamation Offer**) to the Advisory Committee (as representatives of the Fingal Bay Sports Premises) for a de-amalgamation between the Amalgamated Club and the Fingal Bay Sports Premises (**New Fingal Bay Sports Club**) (**De-amalgamation**).

10.8 As part of the De-Amalgamation,

- (a) the New Fingal Bay Sports Club must satisfy the Amalgamated Club that:
  - (i) it has made arrangements for the New Fingal Bay Sports Club to pay to Ramsgate RSL an amount equal to:

- (1) the amount provided by Ramsgate RSL to Fingal Bay Sports under the Deed of Loan;
  - (2) the total amount of all trading losses (if any) of the Fingal Bay Sports Premises for each financial year, or part thereof, from Completion of the Amalgamation to the date of De-amalgamation;
  - (3) pay all fees and duties in respect of any de-amalgamation (including legal fees and stamp duty); and
  - (4) pay to Ramsgate RSL such amount:
    - (A) as determined by an independent company auditor selected by the Board of Ramsgate RSL, representing the cost of any capital works undertaken on the Fingal Bay Sports Premises including, but not limited to, capital works referred to in clause 5.4(c), less depreciation, since Completion of the Amalgamation; and
    - (B) as determined by a registered property valuer selected by the Board of Ramsgate RSL, representing the market value of any development owned by the Amalgamated Club and located on any part of the Land not otherwise disposed.
- (b) the Amalgamated Club must transfer the following assets to the New Fingal Bay Sports Club:
- (i) the club licence for the Fingal Bay Sports Premises; and
  - (ii) unencumbered title to Lot 467 in Deposited Plan 726254 (being the land upon which the Fingal Bay Sports Premises is located) and any improvements on that land,;
  - (iii) unencumbered title to any other Land not otherwise disposed;
  - (iv) forty (40) gaming machine entitlements and comparable gaming machines;
  - (v) the cash reserves of Fingal Bay Sports which were transferred to the Amalgamated Club as part of the Amalgamation;
  - (vi) any personal property which was owned by Fingal Bay Sports (as at the date of this Memorandum) and transferred to the Amalgamated Club as part of the Amalgamation.

10.9 As a consequence of Clause 10.8 above the Amalgamated Club shall not be able to dispose of the land referred to in clause 10.8(b)(ii) at any time until the Amalgamated Club is able to cease trading from the Fingal Bay Sports Premises in accordance with the provisions set out in Clause 10.10 below. For the avoidance of doubt, this clause does not prevent the Amalgamated Club from transferring any land to New Fingal Bay Sports Club pursuant to a De-amalgamation.

10.10 The Amalgamated Club can immediately cease trading from the Fingal Bay Sports

Premises and not proceed with the De-amalgamation if:

- (a) The Advisory Committee does not accept De-amalgamation Offer within one (1) month of the date of the De-amalgamation Offer; or
- (b) The Advisory Committee and the Amalgamated Club acting reasonably do not enter into an agreement for the De-amalgamation on terms acceptable to the Amalgamated Club within two (2) months of the date of the De-amalgamation Offer;
- (c) The Advisory Committee does not satisfy the Amalgamated Club that New Fingal Bay Sports Club and the Fingal Bay Sports Club Premises will be financially viable after the De-amalgamation within three (3) months of the date of the De-amalgamation Offer;
- (d) The members of the Amalgamated Club do not approve the De-amalgamation within three (3) months of the date of the De-amalgamation Offer;
- (e) The members of New Fingal Bay Sports Club do not approve the De-amalgamation within four (4) months of the date of the De-amalgamation Offer;
- (f) The Authority does not approve the De-amalgamation;
- (g) The De-amalgamation is not completed within twelve (12) months of the date of the De-amalgamation Offer (or such longer period acceptable to the Amalgamated Club).

10.11 Notwithstanding anything contained in this Memorandum, the Amalgamated Club may temporarily cease trading from the Fingal Bay Sports Club Premises from the date of the De-amalgamation Offer until the completion of the proposed De-amalgamation.

**11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE FINGAL BAY SPORTS PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE FINGAL BAY SPORTS PREMISES  
[REGULATIONS – CLAUSE 7(2) (G)]**

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- 11.1 Ramsgate RSL does not intend to cease trading from the Fingal Bay Sports Premises. Ramsgate RSL intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 10.
- 11.2 The objects of Ramsgate RSL will become the objects of Fingal Bay Sports with effect from Completion of the Amalgamation.
- 11.3 However, for the purposes of clause 7(2) (g) of the Regulations, Ramsgate RSL and Fingal Bay Sports are required to agree to the matters set out in clause 11.4.
- 11.4 For the purposes of clause 7(2)(g) of the Regulations, Ramsgate RSL and Fingal Bay Sports have agreed that the Amalgamated Club will continue:
  - (a) to trade from the Fingal Bay Sports Premises;
  - (b) the activities at the Fingal Bay Sports Premises (including bowling activities),



for as long as it remains financially viable but for at least five (5) years, (except in the circumstances referred to in clauses 10.4(b) to (d) inclusive).

## **12. BINDING EFFECT OF MEMORANDUM**

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- 12.1 Ramsgate RSL and the Fingal Bay Sports agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

## **13. CALLING OF MEETINGS AND ADMISSION OF FINGAL BAY SPORTS MEMBERS TO MEMBERSHIP OF RAMSGATE RSL**

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

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

- 13.3 Ramsgate RSL will call a general meeting of the ordinary members of Ramsgate RSL for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.

- 13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the date of this Memorandum.

- 13.5 In addition to the resolution referred to in clause 13.4, Ramsgate RSL will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, on a special resolution to amend the Constitution of Ramsgate RSL to give effect to the following:

- (a) Subject to clause 13.7, all members of Fingal Bay Sports who apply to become members of Ramsgate RSL will be admitted to membership of Ramsgate RSL.
- (b) Subject to clause 13.7, all members of Fingal Bay Sports will be able to apply for membership of Ramsgate RSL in the manner referred to in this clause 13.5.
- (c) As soon as practicable after the Order, Ramsgate RSL will forward to each member of Fingal Bay Sports, who is not already a member of Ramsgate RSL, a written invitation to become a member of Ramsgate RSL.
- (d) Any member of Fingal Bay Sports who accepts the invitation and agrees in writing to be bound by the Constitution of Ramsgate RSL will (subject to the name of that person being displayed on the noticeboard of Ramsgate RSL 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 Ramsgate RSL) be elected by a resolution of the Board of Ramsgate RSL to membership of Ramsgate RSL with effect from the date of Completion of the Amalgamation.
- (e) Fingal Bay Sports' members who are admitted to membership of Ramsgate RSL will be identified as a separate class of ordinary membership called the "Fingal Bay Sports Members" but may transfer to any other class of membership of Ramsgate RSL for which they are eligible to join.
- (f) Fingal Bay Sports Members will have the same rights as "Associate members" under the Constitution of Ramsgate RSL.

- 13.6 In addition to the special resolution referred to in clause 5, Ramsgate RSL will, at the

meeting referred to in clause 13.3, submit to those members eligible to attend and vote, on a further special resolution to amend the Constitution of Ramsgate RSL to provide that:

- (a) any person who is a member of Fingal Bay Sports as at the date of the Memorandum shall not be eligible to stand for or be elected or appointed to the Board of Ramsgate RSL for at least five (5) years after Completion of the Amalgamation provided that this restriction shall not apply to persons who were members of Ramsgate RSL before the date of this Memorandum; and
- (b) any person who has been a director of Fingal Bay Sports at any time shall not be eligible to stand for or be elected or appointed to the Board of Ramsgate RSL for at least five (5) years after Completion of the Amalgamation
- (c) any person who, at Completion of the Amalgamation, is a Life member of Fingal Bay Sports will:
  - (i) not become a Life member of the Amalgamated Club; and
  - (ii) continue to be recognised as a Life member of Fingal Bay Sports but only in respect of the Fingal Bay Sports Premises;
  - (iii) only be required to pay to the Amalgamated Club the minimum annual subscription required by the RCA (\$2.00 plus GST).

13.7 Notwithstanding anything contained in this Memorandum, any member of Fingal Bay Sports who, at Completion of the Amalgamation, is then:

- (a) refused admission to or being turned out of the Ramsgate RSL Premises; or
- (b) suspended from Ramsgate RSL pursuant to Ramsgate RSL's Constitution;
- (c) expelled from Ramsgate RSL pursuant to Ramsgate RSL's Constitution;

shall not be entitled to apply for and/or be admitted to membership of Ramsgate RSL (as the Amalgamated Club).

13.8 Notwithstanding anything contained in this Memorandum, any member of Ramsgate RSL who, at Completion of the Amalgamation, is then:

- (a) refused admission to or being turned out of the Fingal Bay Sports Premises; or
- (b) suspended from Fingal Bay Sports pursuant to Fingal Bay Sports' Constitution;
- (c) expelled from Fingal Bay Sports pursuant to Fingal Bay Sports' Constitution;

shall only be entitled to attend at and use the facilities at the Ramsgate RSL Premises and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at the Fingal Bay Sports Premises until such time as:

- (d) the person is again permitted to enter Fingal Bay Sports Premises; or
- (e) the period of suspension has been served.

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

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14.1 Ramsgate RSL and its lawyers will prepare and file the Amalgamation Application.

14.2 Fingal Bay Sports will co-operate with Ramsgate RSL and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application.

## 15. **WARRANTIES AND OPERATIONAL ARRANGEMENTS**

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15.1 Fingal Bay Sports warrants to Ramsgate RSL that from the date of this Memorandum to the date of Completion of the Amalgamation, Fingal Bay Sports 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 five thousand dollars (\$5,000.00) plus GST without the prior approval of the Ramsgate RSL's CEO or his delegate;
- (b) maintain the Assets of Fingal Bay Sports 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 Fingal Bay Sports insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (c) carry on its operations with normal and prudent practice;
- (d) provide the Ramsgate RSL's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Fingal Bay Sports;
- (e) not knowingly or intentionally do anything which may damage the goodwill of its business or that of the Ramsgate RSL;
- (f) not without the prior written consent of the Ramsgate RSL:
  - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
  - (ii) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;
  - (iii) dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of Fingal Bay Sports' Assets (including without limitation its real property or poker machine entitlements);
  - (iv) employ any employee (other than a casual employee);
  - (v) terminate the employment of any employee (other than a casual employee);
  - (vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
  - (vii) seek to borrow or borrow money from any third party;
  - (viii) increase the level of debt of Fingal Bay Sports beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of Fingal Bay Sports; or

- (ix) notify Ramsgate RSL of any of the circumstances referred to clause 15.5 within a reasonable time on becoming aware of the relevant circumstances;
  - (x) engage in discussions or negotiations with anyone other than the Ramsgate RSL Club concerning the sale of all or any part of Fingal Bay Sports' Assets (otherwise than as permitted under (iii) above), and Fingal Bay Sports must advise Ramsgate RSL Club of any solicitation by any third party in respect of any such discussion or negotiation.
- 15.2 Each of Fingal Bay Sports' warranties contained in clause 15.1 remains in full force and effect notwithstanding Completion of the Amalgamation.
- 15.3 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, Ramsgate RSL may terminate this Memorandum and the amalgamation at any time prior to Completion of the Amalgamation if there is any material breach of any of Fingal Bay Sports' warranties set out in clause 15.1.
- 15.4 Ramsgate RSL's CEO and Fingal Bay Sports' Secretary Manager will have regular discussions about the management and operations of Fingal Bay Sports with the object of:
- (a) providing for an orderly transfer of the management and operations of Fingal Bay Sports to Ramsgate RSL on the date of Completion of the Amalgamation; and
  - (b) achieving efficiencies and cost savings in Fingal Bay Sports;
  - (c) implementing operational changes in preparation for Completion of the Amalgamation.
- 15.5 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
- (a) anything is identified by the Subject Club (including without limitation, undisclosed Liabilities or undisclosed agreements with third parties) or anything arises in respect of the Subject Club which has or may have a material adverse effect on the Amalgamated Club;
  - (b) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
  - (c) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
  - (d) any Claim of any nature is threatened or asserted by or against the subject Club; or
  - (e) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,
- then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.
- 15.6 Title to, property in and risk of Fingal Bay Sports' Assets remain solely with Fingal Bay Sports until such time as they are passed to the Amalgamated Club in accordance with

clause 15.1.

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

**16. DISSOLUTION OF THE FINGAL BAY SPORTS AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO RAMSGATE RSL**

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16.1 Fingal Bay Sports must ensure the Assets, Debts and Liabilities of Fingal Bay Sports are transferred to the Ramsgate RSL (less an amount sufficient for the purposes of any liquidation of the Fingal Bay Sports).

16.2 The parties acknowledge that it is intended for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order wherever possible. However, the parties acknowledge that the transfer of some Assets, Debts and Liabilities may occur after the date of the Final Order.

16.3 For the purposes of clause 16.1, Fingal Bay Sports must do all things necessary and execute all documents to cause all of the Assets of Fingal Bay Sports to be transferred to or assigned to the Ramsgate RSL. Such transfers and assignments will without limitation be in respect of:

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

owned or entered into by Fingal Bay Sports.

16.4 The transfers and assignments referred to in clause 16.3 must be executed by Fingal Bay Sports and held in escrow by the Ramsgate RSL pending Completion of the Amalgamation.

16.5 As soon as practicable after Completion of the Amalgamation but not before Fingal Bay Sports has transferred all of its Assets, Debts and Liabilities to Ramsgate RSL, Fingal Bay Sports must ensure the Fingal Bay Sports is either voluntarily deregistered or liquidated.

16.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 16.

**17. ACCESS TO RECORDS**

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17.1 From the date of this Memorandum, Fingal Bay Sports will provide to Ramsgate RSL at all reasonable times access to the Fingal Bay Sports Premises, Records and other information and material reasonably required by Ramsgate RSL (including for the purpose of any due diligence referred to in clause 2.6).

17.2 From the date of this Memorandum, Ramsgate RSL will provide to Fingal Bay Sports

at all reasonable times access to Records and other information and material reasonably required by Fingal Bay Sports for the purposes of the due diligence referred to in clause 2.5).

## **18. CONFIDENTIALITY**

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- 18.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 18.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.
- 18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 18.4 This clause 18 survives completion of this Memorandum.

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

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- 19.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 19.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.
- 19.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.
- 19.4 If the parties do not within seven (7) days of the receipt of the notice referred to in clause 19.2 or any extended period agreed in writing between the parties as to:
  - (a) the dispute resolution technique or procedures to be adopted;
  - (b) the timetable for steps in those procedures; and
  - (c) the selection and compensation of an independent person required for such dispute resolution technique or procedures,

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

- 19.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 19.2 a party which has complied with the provisions of this clause 19 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.
- 19.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 is to settle the dispute concerned. Neither party may use any information or documents obtained through any

dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

## 20. COSTS

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

## 21. STAMP DUTY

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

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

## 22. GENERAL

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

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

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

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

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

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

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

## 23. TERMINATION

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23.1 Ramsgate RSL may terminate this Memorandum:

- (a) at any time until the date of the meeting of Fingal Bay Sports referred to in clause 13.1, without penalty, by giving written notice to Fingal Bay Sports if the due diligence review undertaken by it on Fingal Bay Sports (as referred to in clause 2.6) is not satisfactory to the Board of Ramsgate RSL. The Board of Ramsgate RSL can waive this requirement at any time.

- (b) at any time, without penalty, by giving written notice to Fingal Bay Sports if Fingal Bay Sports breaches any warranty contained in clause 15.1;
- (c) at any time after the date of the meeting of Fingal Bay Sports referred to in clause 13.1, without penalty, by giving written notice to Fingal Bay Sports if Fingal Bay Sports has:
  - (i) provided information and Records to Ramsgate RSL as part of its due diligence review of Fingal Bay Sports 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
  - (ii) not disclosed all information and Records which would be reasonably required for Ramsgate RSL (as determined by Ramsgate RSL acting reasonably) to obtain a true and fair view of Fingal Bay Sports' financial position and state of affairs as part of its due diligence review of Fingal Bay Sports;
- (d) at any time after the date of the meeting of Fingal Bay Sports referred to in clause 13.1 without penalty, by giving written notice to Fingal Bay Sports if:
  - (i) Fingal Bay Sports issues a notice to Ramsgate RSL in accordance with clause 15.5; and
  - (ii) Ramsgate RSL, acting reasonably, determines that the circumstance referred to in sub paragraph (i) above will or may result in liability exceeding an amount which is acceptable to Ramsgate RSL.

23.2 Fingal Bay Sports may terminate this Memorandum within thirty (30) days of the date of this Memorandum, without penalty, by giving written notice to Ramsgate RSL if the due diligence review undertaken by it on Ramsgate RSL (as referred to in clause 2.5) is not satisfactory to the Board of Fingal Bay Sports. The Board of Fingal Bay Sports can waive this requirement at any time.

23.3 If:

- (a) the members of Fingal Bay Sports have not passed the resolution referred to in clause 13.1 within six (6) months of the date of this Memorandum; or
- (b) the members of Ramsgate RSL have not passed the resolutions referred to in clauses 13.3 and 13.5 within six (6) months of the members of Fingal Bay Sports passing the resolution referred to in clause 13.1,

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

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

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

23.6 If this Memorandum is terminated in accordance with this clause 23 the Amalgamation



terminates.

## 24. NOTICES

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24.1 A notice, approval, consent or other communication to a person relating to this Memorandum must be in writing and executed by duly authorised persons.

24.2 If the notice is to Ramsgate RSL then it must be addressed as follows:

- (a) **Name:** Ramsgate RSL Memorial Club Limited
- (b) **Attention:** David Moorcroft
- (c) **Address:** Ramsgate Road & Chuter Avenue, Sans Souci, New South Wales 2219
- (d) **Email:** David.Moorcroft@ramsgatersl.com.au

24.3 If the notice is to Fingal Bay Sports then it must be addressed as follows:

- (a) **Name:** Fingal Bay Bowls Sports & Recreation Club Limited
- (b) **Attention:** Dean Noble
- (c) **Address:** 100 Rocky Point Road, Fingal Bay New South Wales 2315
- (d) **Email:** Dean@Fingalbaysportsclub.Com.Au

24.4 Notice is sent by the sender and received by the receiver:

- (a) if the notice is hand delivered, upon delivery to the receiving party; or
- (b) if the notice is sent by email, upon the successful completion of the relevant transmission;
- (c) if the notice is sent by pre-paid registered mail within Australia, two (2) business days after the registration of the notice of posting.

## 25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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

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

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

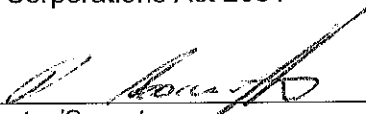
## 27. NOTES

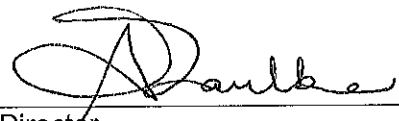
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27.1 This Memorandum is to be:

- (a) made available to the ordinary members of Fingal Bay Sports and Ramsgate RSL at least 21 days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.
- (b) made available for inspection on the premises of each club and on the website of each club for at least 21 days before any meeting as referred to in paragraph (a) of these Notes is held.
- (c) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by Fingal Bay Sports to Ramsgate RSL.

Executed by **RAMSGATE RSL** )  
**MEMORIAL CLUB LIMITED (ABN 15** )  
**000 967 340)** pursuant to Section 127 of )  
the Corporations Act 2001 )

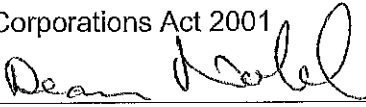
  
 \_\_\_\_\_  
 Director/Secretary

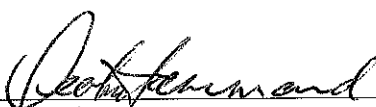
  
 \_\_\_\_\_  
 Director

David Moorcroft  
 Name of Director/Secretary

SALLIANNE ROBYN FAULKNER  
 Name of Director

Executed by **FINGAL BAY BOWLS** )  
**SPORTS & RECREATION CLUB** )  
**LIMITED (ABN 72 003 065 085)** )  
pursuant to Section 127 of the )  
Corporations Act 2001 )

  
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 Director/Secretary

  
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 Director

Dean Noble  
 Name of Director/Secretary

GEORGE WILLIAM HAMMOND  
 Name of Director