

MEMORANDUM OF UNDERSTANDING BETWEEN PROPOSED AMALGAMATING CLUBS

DATE:

PARTIES:

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
(**"SJPBC"**)

and

Wallacia Bowling & Recreation Club Ltd ABN 20 000 172 789 of Roma Avenue, Wallacia NSW 2746
(**"Wallacia Bowling"**)

BACKGROUND

- A. Both SJPBC and Wallacia Bowling are registered clubs under the Registered Clubs Act each holding a Club Licence under the Liquor Act in NSW and propose to amalgamate.
- B. Wallacia Bowling is located in the Penrith Local Government Area.
- C. SJPBC is located in the Fairfield Local Government Area.
- D. By way of ClubsNSW circular 14-163 dated the 23rd December 2014 Wallacia Bowling called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres from Wallacia Bowling.
- E. SJPBC submitted an expression of interest in pursuing an amalgamation with Wallacia Bowling.
- F. Both SJPBC and Wallacia Bowling are proposing to amalgamate in accordance with the provisions of the Liquor Act and Registered Clubs Act, including any amendments made to these Acts, and subject to the approval of their respective members, the approval of the Independent Liquor and Gaming Authority and the other matters set out in this document.
- G. In accordance with regulation 6(1) of the Registered Clubs Regulation, if 2 or more registered clubs are proposing to amalgamate, the clubs must enter into a memorandum of understanding with respect to the proposed amalgamation.
- H. In accordance with the Registered Clubs Regulation, the memorandum of understanding must state each club's position regarding the proposed amalgamation and include detail to address the requirements of clause 6(2). 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 Wallacia Bowling (the dissolving club) to SJPBC (the continuing club).
- J. SJPBC and Wallacia Bowling enter into this Memorandum to state each club's position regarding the proposed amalgamation between them, as required by clause 6 of the Regulation.
- K. Completion of the proposed amalgamation is conditional on the two clubs agreeing and signing the proposed Deed of Amalgamation and subject to any conditions precedent stated in that Deed of Amalgamation being satisfied and each club pending signing such a Deed of Amalgamation remains free to act as it chooses exclusively in its own interest as it sees fit, in determining whether to proceed to a Deed of Amalgamation.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

Amalgamated Club means SJPBC as the parent/continuing club after Amalgamation Completion.

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 Wallacia Bowling's Club Licence to SJPBC pursuant to sections 60(6) and (7) of the Liquor Act by Wallacia Bowling's Secretary and SJPBC's CEO.

Amalgamation Completion means the day on which all of:

- (a) the Assets and Club Licence of Wallacia Bowling are transferred to SJPBC; and
- (b) the Liabilities are paid by, assumed by or transferred to, SJPBC.

Assets means the Real Property and Wallacia Bowling's Premises and all of the goodwill, personal property, plant, equipment, fixtures and fittings, stock in trade, intellectual property, twelve (12) gaming machines and twelve (12) gaming machine entitlements, cash at hand and cash at bank.

Authority means the Independent Liquor & Gaming Authority.

Claim means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature which the Clubs become aware of prior to the Amalgamation Completion.

Clubs means both Wallacia Bowling and SJPBC.

Club Licence means a club licence granted or held by a registered club under the Liquor Act.

Corporations Act means the Corporations Act 2001 (Cth).

Debts means the accumulated debts of Wallacia Bowling.

Final Order means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby Wallacia Bowling's Club Licence will be transferred to SJPBC.

Financially viable means the trading at Wallacia Bowling Premises is deemed financially viable after assessment by an independent company auditor or accountant appointed by the Amalgamated Club for this purpose.

Gaming Machines Act means the Gaming Machines Act 2001 (NSW) and its Regulations.

Liabilities means all liabilities, obligations, losses, damages, outgoing, costs and expenses of Wallacia 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 Wallacia Bowling who do not accept employment with SJPBC.

Liquor Act means the Liquor Act 2007 (NSW).

Memorandum means this Memorandum of Understanding.

Order means the provisional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act.

Parent Club means SJPBC.

Real Property means Wallacia Bowling land located at Roma Avenue, Wallacia NSW 2176 being Lots 44-53 in DP 21083 contained in Folio Identifiers 44/21083, 45/21083, 46/21083, 47/21083, 48/21083, 49/21083, 50/21083, 51/21083, 52/21083, 53/21083.

Records means all original and copy records, brochures and catalogues, registers of members, documents, books, files, accounts, plans and correspondence belonging to Wallacia Bowling 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 Johns Park Bowling Club Limited ABN 65 823 421 682 of 93 Edensor Road, St Johns Park NSW 2176.

Wallacia Bowling means Wallacia Bowling & Recreation Club Ltd ABN 20 000 172 789 of Roma Avenue, Wallacia NSW 2746.

Wallacia Bowling Premises means the building comprising the licensed premises of Wallacia Bowling located on the Real Property and known as Roma Avenue, Wallacia NSW 2746.

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 Memorandum 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 CLUBS POSITION IN RELATION TO DIVISION 1A OF RCA AND SECTION 60 OF THE LIQUOR ACT 2007 AND THE AMALGAMATION

- 2.1 The Amalgamation will be effected by the continuation of SJPBC and the eventual dissolution of Wallacia Bowling.
- 2.2 The parent club and continuing club will be SJPBC.
- 2.3 The dissolved club will be Wallacia Bowling.
- 2.4 The process for the Amalgamation will be as follows:
 - (a) The parties entering into this Memorandum.
 - (b) The members of Wallacia Bowling and SJPBC 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 11.1 below.
 - (c) SJPBC, at its own expense, undertaking a due diligence review of Wallacia Bowling's financial position and operations, to be completed within fourteen

days of the approval of the members meeting of Wallacia Bowling referred to in clause 2.4(b).

- (d) at the meeting of SJPBC referred to in (b) the members of SJPBC will be asked to consider, and if thought fit, pass a special resolution to amend the constituent documents of SJPBC (with effect from Amalgamation Completion) to add two classes of members (including for identification purposes only under section 17AC of the Registered Clubs Act) to be known as:
 - (i) "Wallacia Bowling Full Playing Members" having the same rights and privileges as SJPBC Full Playing members (except the right to nominate or second any person for election to the Board, be elected or appointed to the Board of SJPBC or take part in any reward or payment scheme applicable to selected SJPBC Full Playing members); and
 - (ii) "Wallacia Bowling Club Members", respectively having the same rights and privileges as SJPBC Club members.
- (e) include provisions that will give effect to the establishment of the Wallacia Bowling Advisory Committee and its terms of operation set out below:
 - (i) The Board of SJPBC will create an Advisory Committee in respect of Wallacia Bowling Premises consisting of a three (3) members all of whom will be Wallacia Bowling 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 Wallacia Bowling Full Playing Members; and
 - (B) the President of the Wallacia Bowling men's bowling sub-club; and
 - (C) one Wallacia Bowling Full Playing Member elected by the members of Wallacia Bowling in such manner as determined by Board of SJPBC by By-Law.
 - (ii) The position of Advisory Committee Chairperson will be open to Expressions of Interest every two (2) years in line with the SJPBC Board Elections and will be selected by the Board of SJPBC.
 - (iii) The Advisory Committee will be required to meet monthly and forward any recommendations and progress reports to the SJPBC Board.
 - (iv) The Advisory Committee will make recommendations about the Wallacia Bowling Premises for consideration by the Board of SJPBC but will have no function in the governance or management of the Amalgamated Club or the Wallacia Bowling Premises.
- (f) The Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 12 below.
- (g) After the Order is made by the Authority:

- (i) all members of Wallacia Bowling will be invited to become ordinary members of SJPBC with Wallacia Bowling Life Members and Bowling Members becoming Wallacia Bowling Full Playing Members of SJPBC and Wallacia Bowling Multiple Members and Social Members becoming Wallacia Bowling Club Members of SJPBC and with the notation of SJPBC's records to show those Wallacia Bowling Full Playing Members who were formerly Life Members of Wallacia Bowling, with effect from the date of Amalgamation Completion; and
 - (ii) all employees of Wallacia Bowling will be offered employment on the same terms as they would have in equivalent positions at SJPBC. Their employment with SJPBC will take effect from the date of Completion of the Amalgamation with SJPBC, and if they accept, will be employed by SJPBC with full recognition of past service and all entitlements arising out of past service with Wallacia Bowling. This offer of employment will be made in accordance with the procedure set out in clause 6 below.
- (h) On Amalgamation Completion:
- (i) All of the Assets of Wallacia Bowling are transferred to SJPBC.
 - (ii) All members of Wallacia Bowling who have accepted the invitation to become Wallacia Bowling Full Playing Members and Wallacia Bowling Club Members of SJPBC will become members of SJPBC in those classes of membership.
 - (iii) All employees of Wallacia Bowling who have accepted employment with SJPBC will become employees of SJPBC.
 - (iv) SJPBC will pay, assume or accept the transfer to it, of all of the Liabilities.
- (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.

2.5 Those persons who are Life members of Wallacia Bowling as at the date of this Memorandum will be identified as Life members in respect of the Wallacia Bowling premises in the Amalgamated Club's records. SJPBC will provide for Wallacia Bowling's Life members in accordance with clause 7 of the current Articles Of Association of Wallacia Bowling.

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 – [REGULATION 6 (2) (A)]

3.1 The Wallacia Bowling Premises and facilities will become the premises of the Amalgamated Club.

3.2 The Amalgamated Club will operate from three (3) premises being;

- (a) SJPBC's Premises at St Johns Park and at Tuncurry; and
 - (b) the Wallacia Bowling Premises.
- 3.3 The Wallacia Premises will be operated under the business name "*Club Wallacia*" and where considered appropriate marketing material will contain a statement that the Wallacia Premises is "*a division of SJPBC*"
- 3.4 For the purposes of the Registered Clubs Act, SJPBC's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and SJPBC will appoint a Supervisor/Manager pursuant to section 66 of the Liquor Act to the Wallacia Bowling Premises.
- 3.5 The Board of SJPBC will be the governing body of the Amalgamated Club.

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

- 4.1 The Amalgamated Club will preserve and maintain the traditions and ethos of Wallacia Bowling at the Amalgamated Club's premises situated at Roma Avenue, Wallacia.
- 4.2 The Amalgamated Club will maintain the appropriate social facilities and amenities for responsible gaming and responsible service of alcohol, function and dining facilities and members' activities at the Amalgamated Club premises situated at Roma Avenue, Wallacia.
- 4.3 With regard to the sport of lawn bowls and the bowling members of Wallacia Bowling, SJPBC proposes that it will:-
- (a) allocate a reasonable annual budget for bowling green renovations, to meet the Wallacia Bowling's requirements.
- 4.4 SJPBC agrees to commit to providing donations, grants and support to the Wallacia Bowling community in kind and in amounts not less than those provided to the community by Wallacia Bowling at the date of this Memorandum.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB – [REGULATION 6 (2) (C)]

- 5.1 SJPBC proposes that the Amalgamated Club will continue to trade the premises of Wallacia Bowling for at least ten (10) years from Amalgamation Completion subject to the Wallacia Premises being financially viable at 5, 7 and 9 years from Amalgamation Completion.
- 5.2 Subject to clause 5.1, the Club will continue to trade the premises of Wallacia Bowling after ten (10) years from Amalgamation Completion on a year to year basis subject to the Wallacia Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
- 5.3 It is the intention of SJPBC to operate the Amalgamated Club and Wallacia Bowling Premises in accordance with this clause 5.

Amalgamated Club Premises

- 5.4 SJPBC will operate the Amalgamated Club from SJPBC's St Johns Park and Tuncurry Premises and the Wallacia Bowling Premises.

Wallacia Bowling Premises

- 5.5 With regard to the Wallacia Bowling Premises, SJPBC undertakes to:-

Advance \$200,000 for the purpose of paying down Wallacia's debts immediately following Amalgamation Completion. Wallacia acknowledges that SJPBC has already advanced \$100,000 to Wallacia to:

- (i) pay out the overdraft with ANZ Bank of \$50,000; and
 - (ii) to immediately assist Wallacia's cash (\$50,000).
- (b) Invest in the vicinity of \$300,000 on upgrading the clubhouse facilities over the first 12 months following Amalgamation Completion. SJPBC currently anticipates the refurbishment would include:
- (i) refurbishment of all areas within the current footprint where required.
 - (ii) improved outdoor and indoor gaming areas;
 - (iii) improved office facilities;
 - (iv) the reintroduction of a TAB facility; and
 - (i) increased floor space within Clubhouse.
- (c) SJPBC believes that the outside of the Wallacia Bowling clubhouse should also be given a fresh makeover. Members will be given access to facilities as required where practical during normal trading. During upgrade works, clubhouse and facility access will be affected.
- (d) Installation of a new gaming / membership system at an estimated cost of \$50,000 within a reasonable period after the Amalgamation Completion.
- (e) Allocate an amount of \$100,000 (budgeted poker machine replacement plan) over the first two (2) years to ensure Wallacia Bowling's poker machine installation remains competitive.
- (f) Provide a contingency amount of \$50,000 in the first year following Amalgamation Completion to replace miscellaneous capital items as required such as computer servers and bowling green equipment.
- (g) Provide ongoing annual financial capital investment (including gaming installation) as required beyond the first two (2) years estimated at \$450,000
- (h) Provide a \$50,000 cash donation each year for ten (10) years from Amalgamation Completion.
- (i) Use its best endeavours to operate the Wallacia Bowling Premises profitably, and to grow the business of the Wallacia Bowling Premises as contemplated in this Memorandum.

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

- 6.1 All current employees of Wallacia Bowling will initially be offered continuing employment by the Amalgamated Club.
- 6.2 The Wallacia 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.
- 6.3 As a part of the amalgamation transition process, all Wallacia 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.
- 6.4 Wallacia Bowling staff will be given access to the SJPBC group staff rewards programme, collective union agreement, if requested and agreed, as well as the in-house training department.
- 6.5 Fundamental administrative functions including payroll, accounts, finance, marketing, gaming and human resources will be conducted from the SJPBC St Johns Park premises. There will be no St Johns Park premises cost allocation to Wallacia Bowling.
- 6.6 Employees that do not accept any 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 Wallacia Bowling.

7. INTENTIONS REGARDING THE ASSETS OF THE DISSOLVED CLUB – [REGULATION 6 (2) (E)]

- 1. ANY CORE PROPERTY;**
 - 2. ANY CASH OR INVESTMENTS;**
 - 3. ANY POKER MACHINE ENTITLEMENTS**
-

Core Property

- 7.1 'Core Property of Wallacia Bowling' means, for the purposes of the Registered Clubs Act, the Real Property and the Wallacia Bowling Premises.
- 7.2 SJPBC intends to retain the Real Property of Wallacia Bowling as is (save for the renovation/refurbishment detailed herein) to enable the business to continue to operate.
- 7.3 SJPBC acknowledges that the membership of the Amalgamated Club will be required to pass the necessary resolutions in relation to the disposal of any Real Property of Wallacia Bowling to comply with sections 17A1 and 41J of the Registered Clubs Act.

Cash and Investments

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

Gaming Machine Entitlements

- 7.5 SJPBC expects and requires that, as at Amalgamation Completion, Wallacia Bowling will:
- (a) be the holder of twelve (12) transferable gaming machine entitlements;
 - (b) be the owner or lessee of twelve (12) gaming machines, and;
 - (c) have a gaming machine threshold of twelve (12).
- 7.4 SJPBC intends to retain all twelve (12) poker machine entitlements at the Wallacia Bowling premises.
- 7.6 SJPBC intends to review the poker machine entitlements at Wallacia Bowling Premises and determine the appropriate number required at Wallacia Bowling Premises. If, as part of the review, SJPBC determines that the Wallacia Bowling Premises requires more poker machine entitlements, SJPBC intends to adjust the number of poker machine entitlements accordingly.

8. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE DISSOLVED CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE DISSOLVED CLUB– [REGULATION 6 (2) (F)]

- 8.1 SJPBC does not intend to cease trading from Wallacia Bowling Premises.
- 8.2 SJPBC intends to continue to trade the premises of Wallacia Bowling for at least a period of ten (10) years following Amalgamation Completion. After the period of five (5) years, seven (7) years and nine (9) years, SJPBC will conduct a review in a fair and reasonable manner to determine whether the Wallacia Premises remain financially viable and will continue to trade the premises of Wallacia Bowling for as long as trading of the premises is financially viable or as otherwise approved by the members of the Amalgamated Club.
- 8.3 Subject to clause 8.2, the Club will continue to trade the premises of Wallacia Bowling after ten (10) years from Amalgamation Completion on a year to year basis subject to the Wallacia Premises returning a financial result of not less than fifteen percent (15%) Earnings Before Interest, Taxes, Depreciation, Amortization (EBITDA).
- 8.4 For the purposes of clause 6(2)(f) of the Regulations:
- (a) the objects of Wallacia 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.
- 8.5 For the purposes of clause 6(2)(f) of the Regulations, SJPBC and Wallacia Bowling agree that the Amalgamated Club may cease trading from or change the objects of the Wallacia Bowling Premises in the following circumstances:
- (a) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;

- (b) upon the lawful order of any government authority;
- (c) if the Wallacia Bowling Premises are destroyed or partially destroyed by fire, flood, storm etc, except where appropriate insurance cover is available to reinstate the Wallacia Bowling Premises or where it is otherwise economically viable to do so;

8.6 The corporate entity of Wallacia Bowling is to be liquidated and dissolved after Amalgamation Completion and after effectuation of the DOCA at the cost of the Amalgamated Club.

9. AN AGREED PERIOD OF TIME BEFORE ANY ACTION REFERRED TO IN REGULATION 6 (2) (F) CAN BE UNDERTAKEN BY THE AMALGAMATED CLUB– [REGULATION 6 (2) (G)]

- 9.1 SJPBC intends to continue to trade the premises of Wallacia Bowling indefinitely and in any case for a period of five (5) years after Amalgamation Completion. After the period of five (5) years, SJPBC will continue to trade the premises of Wallacia Bowling for as long as trading of the Wallacia Bowling Premises remains financially viable as determined under clause 8.2 or as otherwise referred to in clause 8.4.
- 9.2 For the purposes of clause 6(2)(g) of the Regulations, SJPBC and Wallacia Bowling have agreed that the Amalgamated Club will continue to trade from Wallacia Bowling Premises and that the objects of the Amalgamated Club will be the objects of SJPBC for as long as it remains financially viable.
- 9.3 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. BINDING EFFECT OF MEMORANDUM

- 10.1 SJPBC and Wallacia Bowling agree that this Memorandum is binding on them and for that purpose is executed as a Deed. However, in the case of any inconsistency between any Recitals and any other provision in this Memorandum, the recitals prevail to the extent of the inconsistency.

11. CALLING OF MEETINGS AND ADMISSION OF WALLACIA BOWLING MEMBERS TO MEMBERSHIP OF SJPBC

- 11.1 Wallacia 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 Association; and
 - (b) approve the Clubs making the Amalgamation Application.
- 11.2 The meeting referred to in clause 11.1 must be held as soon as reasonably practicable after the date of this Memorandum.

- 11.3 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 Association;
 - (b) approve the Clubs making the Amalgamation Application; and
 - (c) amending the Constitution of SJPBC as provided in clause 11.5.
- 11.4 The meeting referred to in clause 11.3 will be held as soon as reasonably practicable after Wallacia Bowling passes the resolution referred to in clause 11.1 (or at such prior time as may be determined by SJPBC in its absolute discretion).
- 11.5 At the general meeting of SJPBC referred to in clause 11.3 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 2.4(d) above.
- 11.6 The Board of SJPBC will, subject to the general meeting of SJPBC referred to in clause 11.3 passing the special resolution, introduce By-Laws to give effect to the provisions of clause 2.4(e).
- 11.7 All members of Wallacia Bowling who apply to become members Wallacia Bowling Full Playing Members or Wallacia Bowling 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.
- 11.8 Subject to meeting the membership eligibility criteria, all members of Wallacia Bowling will be able to apply for Wallacia Bowling Full Playing Membership or Wallacia Bowling Club Membership of SJPBC in the manner referred to in paragraphs 11.9 and 11.10.
- 11.9 Prior to the Completion of the Amalgamation, SJPBC will forward to each member of Wallacia Bowling, who is not already a member of SJPBC, a written invitation to become a member either a Wallacia Bowling Full Playing Member or Wallacia Bowling Club Member of SJPBC.
- 11.10 Any member of Wallacia Bowling who 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 Wallacia Bowling Full Playing Membership or Wallacia Bowling Club Membership of SJPBC with effect from the date of Completion of the Amalgamation.

12. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 12.1 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 SJPBC the following documents:
- (a) a true copy of the notice of the meeting at which the resolution was passed; and

- (b) a true copy of the minutes of the meeting which will include the number of members present at the meeting and whether or not the resolution was passed.
- 12.2 SJPBC and its lawyers will prepare and file the Amalgamation Application. SJPBC will provide Wallacia Bowling with a copy of the Amalgamation Application.
- 12.3 Wallacia Bowling will co-operate with SJPBC and the lawyers for SJPBC 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 Wallacia Bowling to sign the Amalgamation Application if required to do so.

13. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- 13.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 13.2 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.
- 13.3 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.
- 13.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 13.2 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.
- 13.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 13.2, the party which has given notice 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.
- 13.6 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.

14. COSTS

- 14.1 SJPBC and Wallacia Bowling will pay their own respective costs of and in relation to the preparation, execution and completion of this Memorandum.

15. STAMP DUTY

- 15.1 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.
- 15.2 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 SJPBC.

16. TERMINATION

- 16.1 This Memorandum may be terminated by SJPBC if the members of SJPBC do not pass the resolutions referred to in clause 11.3 of this Memorandum.
- 16.2 This Memorandum may be terminated by SJPBC if the members of Wallacia Bowling do not pass the resolutions referred to in clause 11.1 of this Memorandum.
- 16.3 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.

17. GENERAL

17.1 Further assurances

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

17.2 Entire agreement

This Memorandum is:

- (a) the entire agreement between the parties in relation to the proposed amalgamation of the parties; and
- (b) supersedes all previous agreements.

17.3 Counterparts

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

17.4 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.

18. LIMITATIONS AND EXCLUSIONS

18.1 SJPBC acknowledges that:

- (a) SJPBC when entering into this Memorandum has not relied on any statement, inducement or representation made by or on behalf of Wallacia Bowling in relation to anything material to Wallacia Bowling or the proposed Amalgamation;
- (b) if the Amalgamation proceeds then SJPBC will accept the Assets and the Liabilities on an "as is, where is, how is" basis in every case whether more or less;
- (c) the materials that have been provided by or on behalf of Wallacia Bowling to SJPBC in connection with the Assets, the Liabilities or otherwise in relation to Wallacia Bowling, have been provided to facilitate due diligence action by SJPBC and SJPBC relies and will continue to rely exclusively on its own investigations and not upon any description in this Memorandum or any other document provided by or on behalf of Wallacia Bowling; and
- (d) any condition or warranty that might otherwise be implied by law into this Memorandum is excluded to the fullest extent permitted by law.

19. WARRANTIES

As an inducement to SJPBC to enter into this Memorandum, Wallacia represents and warrants as essential conditions that:

- (a) Wallacia Bowling 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 Wallacia Bowling 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 Wallacia Bowling or of any agreement, arrangement, commitment, understanding or restriction of any kind to which Wallacia Bowling is a party or by which Wallacia Bowling is bound nor any law;
- (d) there are no Claims (for amounts in aggregate in excess of \$5,000) or investigations pending or threatened by or against Wallacia Bowling of any nature;
- (e) Wallacia Bowling has prior to the date of this Memorandum disclosed to SJPBC, in writing, everything that might reasonably be material to the

decision by the members of SJPBC whether or not to approve of the proposed Amalgamation in principle;

- (f) Wallacia Bowling is in a position from its own financial resources to consummate the proposed Amalgamation on the terms set out in this Memorandum and needs no finance or approval from any financier or other third party.

20. RECORDS

- (a) Despite anything to the contrary elsewhere in this Memorandum Wallacia Bowling will retain the books and records that it is required by law to maintain in relation to its corporate affairs including its records maintained to meet the requirements of the Corporations Act 2001 Cth or the requirements of any taxation legislation, after Amalgamation Completion (**Statutory Records**).
- (b) Wallacia Bowling agrees to give SJPBC any assistance as and when reasonably required by SJPBC with respect to any legal proceedings instigated by or against SJPBC in connection with any right, title, interest or power accruing to SJPBC as a consequence of Amalgamation including to the extent reasonably necessary providing access to the Statutory Records and for so long as those Statutory Records remain in existence, SJPBC will authorise any liquidator of Wallacia Bowling to honour this commitment.
- (c) SJPBC will give Wallacia Bowling and any liquidator of Wallacia Bowling any assistance as and when reasonably required by either of them with respect to any enquiry, threat or actual or potential legal proceedings by or against Wallacia Bowling, including access to review and copy such of the Records as are in the possession or control of SJPBC from time to time.
- (d) SJPBC agrees to retain all of the Records for at least five years after the date of de-registration of Wallacia Bowling subject to section 262A of the Income Tax Assessment Act 1936 Cth.

NOTES

This Memorandum is to be:

1. Made available to the ordinary members of Wallacia Bowling and SJPBC at least twenty one (21) days before any meeting of the members of each club 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 twenty one (21) days before any meeting as referred to in paragraph 1 of these Notes is held; and
3. Lodged with any application under section 60 of the Liquor Act 2007 to transfer the Club Licence to SJPBC.

St John's Park
Bowling Club Ltd
ABN 65 823 421 682

(WALL REIN)

Shane P. Powell
Sign Sign

Director / Secretary

Annette Snowden Paul Norris
Full Name Full Name

**The Wallacia Bowling &
Recreation Club Ltd
ABN 20 000 172 789**

pursuant to section 127(1) of the Corporations Act 2001 (Cth)

Sign Danny Kelly

[illegible]Director / ~~Secretary~~

~~Director~~ / Secretary

Danny Henry
Full Name

Dr. Mary

Full Name