

MEMORANDUM OF UNDERSTANDING

DATED:

PARTIES:

**COROWA R S L CLUB LTD
(ACN 001 066 628)**

AND

**HOWLONG COUNTRY GOLF CLUB LIMITED
(ACN 001 023 516)**

PIGOTT STINSON

Tel +61 2 8251 7777
Email partners@pigott.com.au
Web www.pigott.com.au

Level 3, 10 Barrack St
Sydney NSW 2000

GPO Box 3380
Sydney NSW 2001

Liability limited by a scheme approved
under Professional Standards Legislation
ABN 82 680 297 642

Associated Firm - Melbourne McKean Park

This Memorandum of Understanding is made on.

BETWEEN

COROWA R S L CLUB LTD (ACN 001 066 628) of 30 Betterment Parade, Corowa NSW 2646 (**Corowa R S L Club**).

and

HOWLONG COUNTRY GOLF CLUB LIMITED (ACN 001 023 516) of 186 Golf Club Drive, Howlong NSW 2643 (**Howlong Golf Resort referred to in this Memorandum as Howlong Country Golf Club**).

BACKGROUND

- (A) The Corowa R S L Club and the Howlong Country Golf Club operate as registered clubs in the Federation Shire in the Riverina district of NSW.
- (B) On 21 August 2023 Corowa RSL Club called for expressions of interest in amalgamation from clubs within a radius of fifty (50) kilometres of the Corowa RSL Club by way of Clubs NSW Circular 23-137.
- (C) Howlong Country Golf Club submitted an expression of interest to Corowa RSL Club.
- (D) Corowa RSL Club has accepted the expression of interest from the Howlong Country Golf Club and, following further negotiation, the Corowa R S L Club and the Howlong Country Golf Club have agreed to the terms set out in this Memorandum.
- (E) The Corowa R S L Club and the Howlong Country Golf Club 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

1.1 In this Memorandum unless the context otherwise requires:

- (a) **“Amalgamated Club”** mean the registered club from the amalgamation of the Corowa R S L Club and the Howlong Country Golf Club , the corporate vehicle of which will be the Corowa R S L Club;
- (b) **“Amalgamation”** means the amalgamation of the Clubs in accordance with this Memorandum;
- (c) **“Amalgamation Application”** means the application by the Clubs for the transfer of the Howlong Country Golf Club’s Liquor Licence to the Corowa R S L Club pursuant to Sections 60(6) and (7) of the Liquor Act;
- (d) **“Assets”** means all of the goodwill, land, WAL’s, buildings, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines, contracts, agreements and all other property, tangible or intangible belonging to the Howlong Country Golf Club as at the Completion of the Amalgamation;
- (e) **“Authority”** means the Independent Liquor and Gaming Authority;

- (f) **“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;
- (g) **“ClubGRANTS”** means the ClubGRANTS scheme established under the Gaming Machine Tax Act 2001 for the granting of a rebate of gaming machine tax levied on registered clubs for expenditure on community development and support;
- (h) **“Clubhouse”** means the clubhouse building located at the Howlong Country Golf Club Premises;
- (i) **“Clubs”** means the Corowa R S L Club and the Howlong Country Golf Club ;
- (j) **“Completion of the Amalgamation”** means the day on which the Final Order is granted.
- (k) **“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;
- (l) **“Corowa R S L Club’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at the Corowa R S L Club;
- (m) **“Corowa R S L Club Premises”** means the Corowa R S L Club’s premises located at 30 Betterment Parade, Corowa NSW 2646;
- (n) **“Corporations Act”** means the Corporations Act 2001 and its associated regulations;
- (o) **“Debts”** means the accumulated debts of the Howlong Country Golf Club at the time of Completion of the Amalgamation;
- (p) **“Final Order”** means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby the Howlong Country Golf Club ’s Liquor Licence is transferred to the Corowa R S L Club;
- (q) **“Force majeure event”** means an event which is beyond the reasonable control of a party and includes but is not limited to:
 - (i) an act of God;
 - (ii) a breakdown or destruction of plant and equipment;
 - (iii) a shortage of or inability to secure fuel, power, material or labour;
 - (iv) a flood, earthquake, rockfall or landslide;
 - (v) a government act or regulation including but not limited to, exchange control by government having jurisdiction over the parties effected;
 - (vi) a blockade, riot, civil insurgence, act of terrorism or war;
 - (vii) lightning, fire or explosion; or
 - (viii) epidemic or quarantine restriction;

- (r) **“Golfing Sub Club Committee”** means the committee formed pursuant to Rule 5.5.
- (s) **“GST”** means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (t) **“Howlong Country Golf Club Premises”** means the Howlong Country Golf Club 's premises located at 186 Golf Club Drive, Howlong NSW 2643 and comprising Clubhouse, Motel, Golf Course, Bowling Greens and Croquet Greens;
- (u) **“Liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of the Howlong Country Golf Club (whatever description) as at Completion of the Amalgamation;
- (v) **“Liquor Act”** means the Liquor Act 2007 (NSW) and its associated regulations;
- (w) **“Liquor Licence”** means the club licence issued to a registered club under the *Liquor Act*;
- (x) **“Memorandum”** means this Memorandum of Understanding;
- (y) **“Order”** means the provisional approval of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (z) **“Party”** includes the management and Board of Directors of the Howlong Country Golf Club and the Corowa R S L Club respectively;
- (aa) **“Records”** means all originals and copies of documents, records, sales brochures and catalogues, lists of clients, books, files, accounts, plans and correspondence belonging to or used by the Howlong Country Golf Club in the conduct of the Howlong Country Golf Club 's business including but not limited to corporate, accounting and statutory records;
- (bb) **“Regulations”** mean the Regulations to the RCA;
- (cc) **“RCA”** means the Registered Clubs Act 1976 and its associated regulations;

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 two (2) or more persons bind 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

- 2.1 The Corowa R S L Club and the Howlong Country Golf Club 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 the Corowa R S L Club and the dissolution of the Howlong Country Golf Club .

Process for Amalgamation

- 2.4 The process for the amalgamation will be as follows:
 - (a) The Clubs will enter into this Memorandum.
 - (b) The members of the Howlong Country Golf Club and the Corowa R S L Club 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 the Corowa R S L Club will be asked to approve (by special resolution) amendments to the Corowa R S L Club's Constitution in the manner provided for in clause 13.5 below.
 - (d) Once the approvals in paragraphs (b) to (c) inclusive have been obtained, the Amalgamation Application will then be made to the Authority. 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 of the Howlong Country Golf Club will be transferred to the Corowa R S L Club in the manner referred to in clause 16 below;
 - (ii) all eligible members of the Howlong Country Golf Club will, with their consent, be admitted as members of the Corowa R S L Club and will be identified as a separate class of ordinary membership called "Howlong Country Golf Club 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 the Corowa R S L Club's Constitution pursuant to the Special Resolution referred to in that clause);
 - (iii) employees of the Howlong Country Golf Club who have accepted an offer of employment from the Corowa R S L Club will become employees of the Amalgamated Club in accordance with clause 6.
 - (f) After Completion of the Amalgamation, the Corowa R S L Club will continue as the body corporate of the Amalgamated Club.

- (g) From Completion of the Amalgamation, the Howlong Country Golf Club Premises will become additional licensed premises of the Corowa R S L Club and will be available to all members of the Amalgamated Club. The Howlong Country Golf Club Premises will be operated in the manner set out in clause 3, clause 4, clause 5 and clause 6 below.
- (h) After Completion of the Amalgamation, the Howlong Country Golf Club will be liquidated or otherwise voluntarily deregistered in the manner referred to in clause 16 below.

Due Diligence

- 2.5 The Howlong Country Golf Club may, at its own expense, undertake a due diligence review of the Corowa R S L Club's financial position and operations.
- 2.6 The Corowa R S L Club may, at its own expense, undertake a due diligence review of the Howlong Country Golf Club's financial position and operations.
- 2.7 Each Club will, if required by the other, 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 HOWLONG COUNTRY GOLF CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE HOWLONG COUNTRY GOLF CLUB PREMISES AND FACILITIES **[Regulations – Clause 7(2)(a)]**

- 3.1 The Howlong Country Golf Club Premises will become additional premises of the Corowa R S L Club.
- 3.2 The Amalgamated Club will operate and trade from the Corowa R S L Club Premises and the Howlong Country Golf Club Premises.
- 3.3 The Corowa R S L Club will take over responsibility and control of the Howlong Country Golf Club Premises with effect from Completion of the Amalgamation.
- 3.4 The Board of the Corowa R S L Club will be the Board of the Amalgamated Club.
- 3.5 The Corowa R S L Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- 3.6 Within seven (7) days of Completion of the Amalgamation, Corowa R S L Club's board will appoint one (1) director of Howlong Country Golf Club (selected by the Board of Corowa R S L Club) as a director of Corowa R S L Club to fill the casual vacancy pursuant to Rule 80 of Corowa R S L Club's Constitution.

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)]**

- 4.1 The traditions, amenities, culture, and golf facilities and activities and memorabilia of the Howlong Country Golf Club will be maintained by the Amalgamated Club at the Howlong Country Golf Club Premises. For the avoidance of doubt, the honour boards at the Howlong Country Golf Club Premises may be displayed in their present form or electronically (or a combination of both).
- 4.2 The Amalgamated Club will continue to support the community organisations that were

supported by the Howlong Country Golf Club (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)]

- 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, the Corowa R S L Club will operate the Amalgamated Club and the Howlong Country Golf Club Premises in accordance with this clause 5.

Amalgamated Club Premises

- 5.2 The Amalgamated Club will operate and trade from the Corowa R S L Club Premises and the Howlong Country Golf Club Premises.

Howlong Country Golf Club Premises

- 5.3 The Howlong Country Golf Club Premises will trade as and be promoted as “The Howlong Golf Resort” and will be promoted as being part of the Corowa R S L Club corporate brand.
- 5.4 Subject to clauses 10 and 11, the Corowa R S L Club intends to:
- (a) maintain the Howlong Country Golf Club Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Howlong Country Golf Club Premises with the usual facilities and amenities of a registered club;
 - (b) operate the Howlong Country Golf Club Premises as a successful and well supported local based social, sporting and community club;
 - (c) undertake improvements to the Howlong Country Golf Club Premises and facilities (including the Clubhouse, and surrounding areas) as and when deemed necessary by the Board of the Amalgamated Club in its absolute discretion. The timeframe, nature and budget for those improvements will be determined by the Board of the Amalgamated Club in its absolute discretion;
 - (d) improve trading at the Howlong Country Golf Club Premises;
 - (e) maintain and where possible enhance, the social facilities, services, amenities and activities at the Howlong Country Golf Club Premises;
 - (f) maintain the existing bowls, golf & croquet activities and facilities at the Howlong Country Golf Club Premises.

Sport of Bowls, Golf & Croquet

- 5.5 Corowa RSL Club will allow the current sporting sub clubs operating at Howlong Country Golf Club to form Sub Clubs within the Amalgamated Club
- 5.6 The current committees of the Sub Clubs, at the completion of the amalgamation, will form the initial Sub-club Committees of the Amalgamated Club.
- 5.7 The Sub Club Committees will be responsible for the organisation and administration of the sport of bowls, golf and croquet at the Amalgamated Club and provide advice to the Board of Directors of the Amalgamated Club on all matters related to the sport of bowls, golf and croquet.

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED
[Regulations – Clause 7(2) (d)]

- 6.1 As part of the Amalgamation, the Howlong Country Golf Club will be wound up/liquidated. As part of the winding up/liquidation of the Howlong Country Golf Club and but for the following paragraphs of this clause 6, the employment of all the Howlong Country Golf Club 's employees by the Howlong Country Golf Club would otherwise come to an end.
- 6.2 Prior to the Completion of the Amalgamation, the Corowa R S L Club will offer employment to each of the Howlong Country Golf Club 's employees which is similar to the employment offered to each employee by the Howlong Country Golf Club .
- 6.3 Each offer of employment, if accepted, will be effective from the Completion of the Amalgamation and they will be on the same terms and conditions presently offered by the Corowa R S L Club to employees of the Corowa R S L Club in the same role provided that it does not result in any employee of the Howlong Country Golf Club receiving lesser benefits than they presently receive from the Howlong Country Golf Club .
- 6.4 Any employee of the Howlong Country Golf Club who accepts an offer of employment with the Corowa R S L Club will receive continuity of employment and their accrued entitlements as employees of the Howlong Country Golf Club will be carried over and be honoured by the Corowa R S L Club.
- 6.5 Any employee of the Howlong Country Golf Club who does not accept an offer of employment with the Corowa R S L Club will be paid their full entitlements by the Howlong Country Golf Club when their employment with the Howlong Country Golf Club comes to an end.
- 6.6 Each employee of the Corowa R S L Club will continue to be employed by the Amalgamated Club after the Completion of the Amalgamation, subject to the current terms and conditions of employment between each of those employees and the Corowa R S L Club.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE HOWLONG COUNTRY GOLF CLUB :
1. ANY CORE PROPERTY;
2. ANY CASH OR INVESTMENTS;
3. ANY GAMING MACHINE ENTITLEMENTS
[Regulations – Clause 7(2)(e)]

Core Property

- 7.1 For the purposes of the RCA, the Howlong Country Golf Club Premises is the “core property” of the Howlong Country Golf Club .
- 7.2 Subject to this Memorandum, the Corowa R S L Club will retain the core property of the Howlong Country Golf Club and operate the Amalgamated Club in the manner referred to in clause 5.
- 7.3 The Corowa RSL Club will, within five (5) years of completion of the amalgamation prepare a Building Master Plan in relation to the Howlong Country Golf Club Premises and the golf course.

Cash and Investments

- 7.4 The cash and investments (if any) of the Howlong Country Golf Club will be transferred (in accordance with clause 16) to the general reserves of the Amalgamated Club.

Gaming Machine Entitlements

7.5 The Howlong Country Golf Club has 64 gaming machine entitlements at the Howlong Country Golf Club Premises.

7.6 The ownership of those 64 gaming machine entitlements will be transferred to the Corowa R S L Club with effect from the Completion of the Amalgamation.

8. RISKS OF NOT PRESERVING THE HOWLONG COUNTRY GOLF CLUB 'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED [Regulations – Clause 7(2) (E1)]

8.1 Subject to clauses 9, 10 and 11 and the RCA, the Amalgamated Club will not dispose of the core property of the Howlong Country Golf Club during the first five (5) years after Completion of the Amalgamation.

8.2 The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the core property of the Howlong Country Golf Club are those set out in clause 10.4.

8.3 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, clause 9.2 and section 17A1 of the RCA will prevent the Amalgamated Club from disposing the core property.

8.4 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 THE HOWLONG COUNTRY GOLF CLUB 'S MAJOR ASSETS [Regulations – Clause 7(2) (E2)]

9.1 For the purposes of the RCA, the Howlong Country Golf Club Premises (including the Clubhouse, Golf Course, Bowling Greens, Croquet Court and Motel) are the “core property” of the Howlong Country Golf Club .

9.2 Subject to clauses 9, 10 and 11 of this Memorandum, the Amalgamated Club will not dispose of the major assets of the Howlong Country Golf Club during the first five (5) years after Completion of the Amalgamation.

10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE HOWLONG COUNTRY GOLF CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE HOWLONG COUNTRY GOLF CLUB [Regulations – Clause 7(2)(F)]

10.1 The Corowa R S L Club does not intend to:

- (a) cease trading from the Howlong Country Golf Club Premises; or
- (b) cease the bowls, golf and croquet activities conducted at the Howlong Country Golf Club Premises.

However, the objects of the Howlong Country Golf Club will, in effect from Completion of the Amalgamation, be subsumed by and will become objects of the Corowa R S L Club.

10.2 The Corowa R S L Club 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, the Corowa R S L Club and the Howlong Country Golf Club 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, the Corowa R S L Club and the Howlong Country Golf Club have agreed that the Amalgamated Club would either cease trading from or cease the bowls, golf and croquet activities at the Howlong Country Golf Club Premises in any of the following circumstances:
- (a) if, after the first five (5) years after Completion of the Amalgamation, the Board of the Amalgamated Club determines that it is not financially viable (as determined by clause 10.5) to continue to trade from or continue the bowls, golf and croquet activities at the Howlong Country Golf Club Premises; or
 - (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming or registered clubs; or
 - (c) upon the lawful order of any government authority; or
 - (d) if the premises were destroyed or partially destroyed by fire, floods, storms or it is not possible to trade from the Howlong Country Golf Club Premises due to any Force Majeure event.
- 10.5 For the purposes of clauses 10 and 11, the Howlong Country Golf Club Premises will not be financially viable if, in any year (commencing after the five (5) year period referred to in clause 10.4), the EBITDARD percentage for the Howlong Country Golf Club Premises is less than ten per cent (10%) in that year with such EBITDARD percentage to be determined by an independent company auditor (**the Minimum EBITDARD**).
- 10.6 (a) Notwithstanding anything else contained in this MOU, at any time after completion of the Amalgamation, the Board of the Amalgamated Club wants to cease trading from the Howlong Country Golf Club Premises, the Board must forward a written offer to the sporting Sub-Club Committees for a de-amalgamation of the clubs (**De-Amalgamation**). The following shall apply in respect of the De-Amalgamation:
- (i) As part of the De-Amalgamation, the Amalgamated Club must transfer the following assets to the new company formed as the corporate vehicle of Howlong Country Golf Club for the purposes of the De-Amalgamation which is to be known as HCGC **No 2**):
 - (1) the club licence for the Howlong Country Golf Club Premises; and
 - (2) The land located at 186 Golf Club Drive Howlong and other core property.
 - (3) the 64 gaming machine entitlements and comparable gaming machines held by and transferred to the Amalgamated Club as part of the Amalgamation;
 - (4) any personal property at the Howlong Country Golf Club Premises at the completion of the De-Amalgamation;
 - (5) the improvements and renovations to the Howlong Country Golf Club Premises as set out in this MOU (including without limitation, gaming hardware).
 - (ii) The Amalgamated Club can immediately cease trading from the Howlong Country Golf Club Premises and not proceed with the De-amalgamation if:

- (1) The necessary members resolutions for the De-Amalgamation are not obtained by the Clubs;
- (2) The De-Amalgamation is not approved by the Authority;
- (3) HCGC No 2 or the Chairperson of the Golf Sub Club Committee notifies the Amalgamated Club in writing that it no longer wishes to proceed with the De-Amalgamation each party shall be responsible for its own costs associated with the de-amalgamation.

11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE HOWLONG COUNTRY GOLF CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE HOWLONG COUNTRY GOLF CLUB PREMISES
[Regulations – Clause 7(2)(G)]

- 11.1 The Corowa R S L Club does not intend to cease trading from the Howlong Country Golf Club Premises, and 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 the Howlong Country Golf Club will become the objects of the Corowa R S L Club with effect from Completion of the Amalgamation.
- 11.3 However, for the purposes of clause 7(2)(g) of the Regulations, the Corowa R S L Club and the Howlong Country Golf Club 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, the Corowa R S L Club and the Howlong Country Golf Club have agreed that the Amalgamated Club will continue:
 - (a) to trade from the Howlong Country Golf Club Premises;
 - (b) to continue the activities at the Howlong Country Golf Club Premises (including bowls, golf and croquet activities),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

- 12.1 The Corowa R S L Club and the Howlong Country Golf Club agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

13. CALLING OF MEETINGS AND ADMISSION OF HOWLONG COUNTRY GOLF CLUB MEMBERS TO MEMBERSHIP OF THE COROWA R S L CLUB

- 13.1 The Howlong Country Golf Club will call a general meeting of the ordinary members of the Howlong Country Golf Club 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 but in any event within five (5) months of the date of this Memorandum.
- 13.3 The Corowa R S L Club will call a general meeting of the ordinary members of the Corowa R S L Club 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, the Corowa R S L Club 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 the Corowa R S L Club to give effect to the following:
- (a) Any member of the Howlong Country Golf Club who, at Completion of the Amalgamation, has been:
 - (i) suspended from the Corowa R S L Club;
 - (ii) expelled from the Corowa R S L Club,shall not be eligible to apply for and/or be admitted to membership of the Corowa R S L Club.
 - (b) All eligible members of the Howlong Country Golf Club who apply to become members of the Corowa R S L Club will, subject to the Amalgamated Club's Constitution, be admitted to membership of the Corowa R S L Club.
 - (c) All eligible members of the Howlong Country Golf Club will be able to apply for membership of the Corowa R S L Club in the manner referred to in paragraphs (d) to (h) inclusive of this clause 13.5.
 - (d) A member of the Howlong Country Golf Club will not be required to be proposed or seconded for membership of the Corowa R S L Club.
 - (e) As soon as practicable after the Order, the Corowa R S L Club will forward to each member of the Howlong Country Golf Club, who is not already a member of the Corowa R S L Club, a written invitation to become a member of the Corowa R S L Club.
 - (f) Any member of the Howlong Country Golf Club who accepts the invitation and agrees in writing to be bound by the Constitution of the Corowa R S L Club will, subject to the Amalgamated Club's Constitution and the requirements of the RCA being satisfied, be elected by a resolution of the Board of the Corowa R S L Club to membership of the Corowa R S L Club with effect from the date of Completion of the Amalgamation.
 - (g) The Howlong Country Golf Club's members who are admitted to membership of the Corowa R S L Club will be identified as a separate class called the "Howlong Country Golf Club Members" but may transfer to any other class of membership of the Corowa R S L Club for which they are eligible to join. Howlong Country Golf Club Members will have the same membership rights as Club members under the Corowa Club's Constitution.
 - (h) Any person who, at Completion of the Amalgamation, is a Life member of the Howlong Country Golf Club will:
 - (i) not become a Life member of the Amalgamated Club; and
 - (ii) continue to be recognised as a Life member of the Howlong Country Golf Club but only in respect of the Howlong Country Golf Club Premises.
 - (i) Any person who:
 - (i) is an employee of Howlong Country Club Premises; or

- (ii) has been an employee of Howlong Country Club Premises,
shall not be eligible for election to the Board of the Amalgamated Club.

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- 14.1 The Corowa R S L Club and its lawyers will prepare and file the Amalgamation Application.
- 14.2 The Howlong Country Golf Club will co-operate with the Corowa R S L Club and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application, including the notices of meeting and the minutes of the meetings referred to in clause 13.1.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

- 15.1 The Howlong Country Golf Club warrants to the Corowa R S L Club that from the date of this Memorandum to the date of Completion of the Amalgamation, the Howlong Country Golf Club 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 two thousand dollars (\$2,000.00) plus GST without the prior approval of the Corowa R S L Club's CEO or his delegate;
 - (b) maintain the Assets 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 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 using best endeavours to reduce losses, increase profitability, and use best endeavours to maintain and increase the value of the Assets;
 - (d) provide the Corowa R S L Club's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of the Howlong Country Golf Club ;
 - (e) not do anything which may damage the goodwill of its business or that of the Corowa R S L Club;
 - (f) not without the prior written consent of the Corowa R S L Club:
 - (i) enter into, terminate or alter any term of any 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 the Assets (including without limitation any gaming machine entitlements);
 - (iv) employ any person;
 - (v) terminate the employment of any 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 the Howlong Country Golf Club beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of the Howlong Country Golf Club ; or
 - (ix) engage in discussions or negotiations with anyone other than the Corowa R S L Club concerning an amalgamation or the sale or disposal of all or any part of the Assets,
- (g) must advise the Corowa R S L Club of any solicitation by any third party to participate in any such discussion or negotiation concerning an amalgamation or the sale or disposal of all or any part of the Assets.
- 15.2 Each of the Howlong Country Golf Club 's warranties contained in clause 15.1 remains in full force and effect notwithstanding Completion of the Amalgamation.
- 15.3 The Corowa R S L Club's CEO and the Howlong Country Golf Club 's Board will have regular discussions about the management and operations of the Howlong Country Golf Club with the object of:
- (a) providing for an orderly transfer of the management and operations of the Howlong Country Golf Club to the Corowa R S L Club on the date of Completion of the Amalgamation; and
 - (b) achieving efficiencies and cost savings in the Howlong Country Golf Club ;
 - (c) implementing operational changes in preparation for Completion of the Amalgamation.
- 15.4 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
- (a) 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;
 - (b) 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;
 - (c) any Claim of any nature is threatened or asserted by or against the subject Club; or
 - (d) 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.
- 15.5 Title to, property in and risk of the Howlong Country Golf Club 's Assets remain solely with the Howlong Country Golf Club until such time as they are passed to the Amalgamated Club in accordance with clause 16.

16. DISSOLUTION OF THE HOWLONG COUNTRY GOLF CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO THE COROWA R S L CLUB

- 16.1 Prior to the Completion of the Amalgamation, the Howlong Country Golf Club must do all things necessary to enable the Corowa R S L Club to be the bona fide occupier of the Howlong Country Golf Club Premises on Completion of Amalgamation.
- 16.2 As soon as practicable after the Order, but subject to the Final Order, the Howlong Country Golf Club must ensure the Assets, Debts and Liabilities of the Howlong Country Golf Club are transferred to the Corowa R S L Club (less an amount sufficient for the purposes of any liquidation of the Howlong Country Golf Club in the manner referred to in clause 16.5). The parties acknowledge that it is proposed for the transfer of the Assets, Debts and Liabilities referred to in clause 16.1 to occur on the date of the Final Order wherever possible.
- 16.3 For the purposes of clause 16.2, the Howlong Country Golf Club must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to the Corowa R S L Club with effect from the date of Final Order wherever possible. Such transfers and assignments will without limitation be in respect of:
- (a) all real property of the Howlong Country Golf Club Premises; and
 - (b) all contract rights including without limitation hire purchase agreements and existing service agreements in respect of the Howlong Country Golf Club Premises (including the agreements with the current greenkeeper and caterer (if any));
 - (c) all intellectual property rights (including business names);
 - (d) all physical assets, furniture and fittings and stock in trade,
- owned or entered into by the Howlong Country Golf Club .
- 16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Howlong Country Golf Club before Completion of the Amalgamation and be given to and be held in escrow by the Corowa R S L Club pending Completion of the Amalgamation.
- 16.5 The Howlong Country Golf Club must ensure that the Assets are transferred to the Corowa R S L Club free of charges, security interests and encumbrances of any other nature to enable the Corowa R S L Club to become the absolute and beneficial owner of those Assets with effect from Completion of the Amalgamation.
- 16.6 After the Corowa R S L Club has advised the Howlong Country Golf Club that it is satisfied that all matters related to the Amalgamation have been completed, the Howlong Country Golf Club must, as soon as reasonably practicable, ensure the Howlong Country Golf Club is either voluntarily deregistered or liquidated and any surplus Assets (if any) are transferred to the Corowa R S L Club after such deregistration or liquidation.
- 16.7 Each of the parties warrants to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 16.

17. ACCESS TO RECORDS

- 17.1 From the date of this Memorandum, the Howlong Country Golf Club will provide to the Corowa R S L Club at all reasonable times access to the Howlong Country Golf Club Premises, Records and other information and material reasonably required by the Corowa R S L Club (including for the purpose of any due diligence referred to in clause 2.6).
- 17.2 From the date of this Memorandum, the Corowa R S L Club will provide to the Howlong

Country Golf Club at all reasonable times access to Records and other information and material reasonably required by the Howlong Country Golf Club for the purposes of the due diligence referred to in clause 2.5).

18. CONFIDENTIALITY

- 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

- 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

20.1 Except where otherwise provided in this Memorandum, each party shall pay its own costs of and in relation to the preparation, execution and completion of this Memorandum.

21. STAMP DUTY

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 the Corowa R S L Club.

22. GENERAL

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

23.1 The Corowa R S L Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Howlong Country Golf Club if:

(a) the due diligence review undertaken by it on the Howlong Country Golf Club (as referred to in clause 2.6) is not satisfactory to the Board of the Corowa R S L Club. The Board of the Corowa R S L Club can waive this requirement at any time.

(b) the Howlong Country Golf Club breaches any warranty contained in clause 15.1.

23.2 If:

(a) the members of the Howlong Country Golf Club have not passed the resolution

referred to in clause 13.1 within six (6) months of the date of this Memorandum or such other later date agreed by the parties in writing; or

- (b) the members of the Corowa R S L Club have not passed the resolutions referred to in clauses 13.3 and 13.5 within six (6) months of the members of the Howlong Country Golf Club passing the resolution referred to in clause 13.1 or such other later date agreed by the parties,

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

- 23.3 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.
- 23.4 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.
- 23.5 If this Memorandum is terminated in accordance with this clause 23 the Amalgamation terminates.

24. NOTICES

- 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 the Corowa R S L Club, then it must be addressed as follows:
 - (a) **Name:** Corowa R S L Club Limited
 - (b) **Attention:** CEO
 - (c) **Address:** 30 Betterment Parade, Corowa NSW 2646
 - (d) **Email:** peter@clubcorowa.com.au
- 24.3 If the notice is to the Howlong Country Golf Club , then it must be addressed as follows:
 - (a) **Name:** The Howlong Country Golf Club Ltd
 - (b) **Attention:** President
 - (c) **Address:** 186 Golf Club Drive, Howlong NSW 2643
 - (d) **Email:**
- 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 post, two (2) business days after the notice is posted.

25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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

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

27.1 Before this Memorandum was executed, the Clubs each displayed notices to members which are required under section 17AE of the RCA and clause 4(5) of the Regulations.

27.2 This Memorandum is to be:

- (a) made available to the ordinary members of the Howlong Country Golf Club and the Corowa R S L Club 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.
- (b) 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 (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 the Howlong Country Golf Club to the Corowa R S L Club.

[the remainder this page is left intentionally blank]

Executed by **COROWA R S L CLUB**)
LTD pursuant to Section 127 of the)
Corporations Act 2001

Director/Secretary

Director

Name of Director/Secretary

Name of Director

Executed by **THE HOWLONG**)
COUNTRY GOLF CLUB LTD pursuant)
to Section 127 of the Corporations Act)
2001

Director / Secretary

Director / Secretary

Name of Director/Secretary

Name of Director/Secretary