

## MEMORANDUM OF UNDERSTANDING

**Date:**

**Parties:** TOCUMWAL GOLF CLUB LTD

TOCUMWAL BOWLS CLUB LIMITED

# Memorandum of Understanding

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## Memorandum Of Understanding

### BETWEEN

Tocumwal Golf Club Ltd [ACN 001 088 302] of Barooga Road, Tocumwal NSW 2714 (“Tocumwal Golf Club”).

### AND

Tocumwal Bowls Club Limited [ACN 073 057 351] of Adams Street, Tocumwal NSW 2714 (“Tocumwal Bowls Club”).

### BACKGROUND

- a) The Tocumwal Golf Club operates a licensed Club in New South Wales and is incorporated pursuant to the *Corporations Act 2001*.
- b) The Tocumwal Bowls Club operates a licensed Club in New South Wales and is incorporated pursuant to the *Corporations Act 2001*.
- c) The Tocumwal Bowls Club and the Tocumwal Golf Club have similar objects and purposes and are both community based, non-profit registered clubs which operate for the benefit of members.
- d) The members of both the Tocumwal Golf Club and Tocumwal Bowls Club are drawn from the same community.
- e) The Tocumwal Bowls Clubs is financial and has explored its options to ensure the long term future of the licensed club, whether operating from its existing premise or relocating to another site.
- f) The Tocumwal Golf Club submitted a proposal to the Tocumwal Bowls Club which proposes an amalgamation of the two clubs in accordance with the Terms and Conditions set out in this MOU.
- g) After exploring a number of alternative options, the Tocumwal Bowls Club accepted the Tocumwal Golf Club’s amalgamation proposal.
- h) The Tocumwal Golf Club and the Tocumwal Bowls Club agree to amalgamate the two Clubs in accordance with this MOU.

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## 1. DEFINITIONS AND INTERPRETATION

1.1. In this Memorandum Of Understanding unless the context otherwise requires:

**“Amalgamated Club”** means the amalgamated club to be known as Tocumwal Golf and Bowls Club Limited following the amalgamation (the corporate vehicle of which will be the current Tocumwal Golf Club) with the Tocumwal Golf and Bowls Club licensed premises being the agreed location for the conduct of the sports of golf and bowls;

**“Amalgamated Club secretary”** means the person appointed as the company secretary of the Amalgamated Club;

**“amalgamation”** means the amalgamation of the Clubs in accordance with this MOU;

**“Amalgamated Club’s licensed premises”** means the proposed Tocumwal Golf and Bowls Club’s licensed premises being the current Tocumwal Golf Club licensed premises;

**“asset”** means all of the goodwill, land, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines and all other property, tangible or intangible belonging to the Tocumwal Bowls Club at the time of Completion;

**“business day”** means a day on which trading banks are open for general banking business in New South Wales, excluding a Saturday, Sunday or public holiday;

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

**“Clubs”** means both the Tocumwal Golf Club and the Tocumwal Bowls Club;

**“Completion”** means the date referred to in clause 3.4;

**“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;

**“Constitution of the Amalgamated Club”** means the Constitution of the Tocumwal Golf and Bowls Club Limited following the amalgamation;

**“Corporations Act”** means the *Corporations Act 2001* (Cth) (as amended) and any regulation made under that act;

**“debts”** means the accumulated debts of the Tocumwal Bowls Club at the time of Completion;

**“deregister”** and **“deregistration”** means the deregistration of Tocumwal Bowls Club’s registration as a company under the Corporations Act.

**“land”** means the land and includes all buildings and improvements on the land;

**“liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of whatever description including in respect of any claim;

**“MOU”** means this Memorandum of Understanding between the Tocumwal Golf Club and the Tocumwal Bowls Club;

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**“ordinary resolution”** means a resolution that may be passed by a simple majority (being at least 50%) of members present and entitled to vote at a general meeting;

**“records”** means all original and copy records, sales brochures and catalogues, list of clients, documents, books, files, accounts, plans and correspondence belonging to or used by the Tocumwal Bowls Club in the conduct of the Tocumwal Bowls Club’s business including but not limited to corporate accounting and statutory records;

**“relevant authority”** means any person, authority, instrumentality, government, council or body having jurisdiction, rights, powers, duties or responsibilities in respect of the subject matter including, for the purposes of the amalgamation and Liquor Licensing;

**“Schedule”** means a schedule to this MOU;

**“special resolution”** means a special resolution that is passed at a general meeting of the Club of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and is passed by a majority of at least 75% of members entitled to vote who are in attendance and vote in person at the meeting;

**“Tocumwal Bowls Club’s advisors”** means any accountant, consultant, solicitor or firm retained by the Tocumwal Bowls Club from time to time;

**“Tocumwal Bowls Club secretary”** means the person appointed as company secretary of the Tocumwal Bowls Club in accordance with the Corporations Act;

**“Tocumwal Bowls Club’s licensed premises”** means the Tocumwal Bowls Club’s licensed premises located at Adams Street, Tocumwal NSW;

**“Tocumwal Golf Club’s advisors”** means any accountant, consultant, solicitor or firm retained by the Tocumwal Golf Club from time to time;

**“Tocumwal Golf Club secretary”** means the person appointed as company secretary of the Tocumwal Golf Club in accordance with the Corporations Act;

**“Tocumwal Golf Club’s licensed premises”** means the current Tocumwal Golf Club’s premises located at Barooga Road, Tocumwal NSW;

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- 1.2 In this MOU 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 form, consent or approval of a party and agreement between the parties for the purposes of this MOU 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.

## **TERMS AND CONDITIONS OF THE AMALGAMATION**

### **2. DUE DILIGENCE**

- 2.1. The Tocumwal Golf Club may, at its expense, undertake a due diligence review of the Tocumwal Bowls Club's operations and financial position.
- 2.2. The Tocumwal Bowls Club will, if required, provide a list of information (including, but not limited to, details of all assets, debts and liabilities) and assistance to the Tocumwal Golf Club in order for the Tocumwal Golf Club to properly carry out and complete the due diligence review.
- 2.3. From the date of this MOU, the Tocumwal Bowls Club will provide the Tocumwal Golf Club at all reasonable times, access to the Tocumwal Bowls Club's records for the purposes of the due diligence referred to in this clause 2.
- 2.4. The Tocumwal Golf Club may terminate this MOU at any time within 30 day after the date of this MOU, without penalty, by giving written notice to the Tocumwal Bowls Club if the due diligence review undertaken by it on the Tocumwal Bowls Club (as referred to in this clause 2) indicates to the Board of the Tocumwal Golf Club that the net financial position of the Tocumwal Bowls Club is materially less than the net financial position represented by the Board of the Tocumwal Bowls Club to the Board of the Tocumwal Golf Club prior to the date of this MOU.

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## 3. CONDITIONS THAT SHALL BE MET TO COMPLETE AMALGAMATION

- 3.1. Completion of the amalgamation in accordance with this MOU is subject to and conditional on:
- a) The Tocumwal Bowls Club passing special resolutions (generally in accordance with the special resolutions set out in Schedule 1) approving:
    - i. Subject to Completion, the Board of the Tocumwal Bowls Club distributing all of Tocumwal Bowls Club's assets to the Amalgamated Club; and
    - ii. Subject to Completion the Board of the Tocumwal Bowls Club deregistering the Tocumwal Bowls Club's company registration.
  - b) The Tocumwal Golf Club passing special resolutions (generally in accordance with the special resolutions set out in Schedule 2) so that, with effect from Completion, its Constitution is amended:
    - i. To recognise Life Members of the Tocumwal Bowls Club as Life Members of the Amalgamated Club;
    - ii. To recognise membership of the Tocumwal Bowls Club as membership of the Amalgamated Club in respect of any other member right or entitlement (including qualification for Life Membership of the Amalgamated Club); and
    - iii. To provide for the special appointment of the bowls President to the Board of the Amalgamated Club.
  - c) The Amalgamated Club inviting, subject to Completion, all members of the Tocumwal Bowls Club (in the manner referred to in clause 12) to become members of the Amalgamated Club and, subject to Completion, admitting any member of the Tocumwal Bowls Club who accepts that invitation to membership of the Amalgamated Club.
  - d) The Amalgamated Club offering, subject to Completion, employment (in the manner referred to in clause 11) to all employees of the Tocumwal Bowls Club who are employees of the Tocumwal Bowls Club at the date of Completion and, subject to Completion, employing the employees of the Tocumwal Bowls Club who accept that offer.
  - e) The assets, debts and liabilities of the Tocumwal Bowls Club being transferred to the Amalgamated Club (in the manner referred to in clause 10).
- 3.2. Subject to clause 18.1, if any of the conditions set out in clause 3.1 are not fulfilled (or, if not fulfilled, have not been waived) within two (2) years of the date of this MOU, either party may terminate this MOU without penalty by written notice to the other.

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- 3.3. Each of the parties warrants to the other it will co-operate in respect of the conditions set out in clause 3.1 and will do all that is reasonably necessary to assist each other to satisfy the conditions set out in clause 3.1, including signing all necessary documents and giving all necessary approvals or authorisations. However, the obligation imposed by this clause 3.3 does not require either party to waive any of the conditions set out in clause 3.1.
- 3.4. Completion of the amalgamation will occur on the date on which all of the conditions under clause 3.1 are fulfilled (or, if not fulfilled, waived).

## 4. INTENTIONS REGARDING TOCUMWAL BOWLS CLUB LICENSED PREMISES

- 4.1. Subject to the necessary approvals being obtained from the Relevant Authorities, the terms and conditions set out in this MOU and the terms and conditions set out in any direction or order made by a relevant authority, it is the intention of the Tocumwal Golf Club for the following to occur in respect of the Tocumwal Bowls Club licensed premises:

### **Trading from Tocumwal Bowls Club licensed premises and Tocumwal Golf Club licensed premises**

- a) The Amalgamated Club intends to trade as a Licensed Club from the Amalgamated Club's licensed premises. The members of the Amalgamated Club will have access to the Amalgamated Club's licensed premises;

### **Facilities and Amenities Provided at the Tocumwal Bowls Club licensed premises**

- b) The Amalgamated Club will relocate the Tocumwal Bowls Club facilities to the Amalgamated Club licensed premises as soon as bowling greens are constructed and ready for play;

### **History, Traditions, Memorabilia and Community Support**

- c) The traditions and history of the Tocumwal Bowls Club will be preserved and promoted by the Amalgamated Club;
- d) The existing memorabilia (including honour boards and trophies) will be retained and displayed at the Amalgamated Club's licensed premises;
- e) The Amalgamated Club will continue to provide the activities currently provided by the Tocumwal Bowls Club to its members with such activities to include; but not be limited to:
- i. Tocumwal Bowls Club Bowling Teams;
  - ii. Tocumwal Bowls Club Bowling Events.

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## 5. APPLICATION PROCESS

- 5.1. As soon as reasonably practicable after the passing of the special resolutions of members referred to in clauses 3.1(b) and 3.1(a) each Club must forward to the other Club (or their respective advisors), the notice of the meeting and the minutes of the meeting at which the special resolutions of members referred to in clauses 3.1(b) and 3.1(a) were passed.
- 5.2. As soon as reasonably practicable after receiving any correspondence from a relevant authority regarding the applications each Club (or their respective advisors) must provide a copy of that correspondence to the other Club (or their respective advisors).
- 5.3. Each of the parties warrants to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the applications referred to in clause 5.2.

## 6. HOW THE AMALGAMATION WILL BE EFFECTED

The amalgamation will be effected by:

- a) The Clubs obtaining all necessary approvals from the relevant Authorities in respect of the application;
- b) The members, employees, assets, debts and liabilities of the Tocumwal Bowls Club being transferred to the Amalgamated Club (in accordance with the Terms and Conditions set out in this MOU);
- c) After the matters referred to in clauses 6(a) and 6(b) have been completed, the Tocumwal Bowls Club will be deregistered as a company in accordance with the appropriate provisions of the Corporations Act;
- d) The Tocumwal Golf Club will continue trading and will be the corporate vehicle of the Amalgamated Club.

## 7. NAME OF THE AMALGAMATED CLUB

The Amalgamated Club will be known as the "Tocumwal Golf and Bowls Club Limited".

## 8. BOARD AND MANAGEMENT OF AMALGAMATED CLUB

- 8.1. Until such time as the next election is due to be held, the Board of the Tocumwal Golf Club will be the Board of the Amalgamated Club.
- 8.2. The Board of the Amalgamated Club will be elected in accordance with the Constitution of the Amalgamated Club.



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- 8.3. Management of the current Tocumwal Golf Club will be responsible for management of the Amalgamated Club's licensed premises.

## 9. TRANSFER OF ADMINISTRATION AND RECORDS OF THE TOCUMWAL BOWLS CLUB TO THE TOCUMWAL GOLF CLUB

- 9.1. From the date on which the members of the Tocumwal Bowls Club pass the special resolutions referred to in clause 3.1(a) or the members of the Tocumwal Golf Club pass the special Resolutions referred to in clause 3.1(b) (whichever is the later), the Tocumwal Bowls Club will assist the Tocumwal Golf Club to prepare for the administration of the Tocumwal Bowls Club licensed premises including but not limited to ensuring the Tocumwal Golf Club and the Tocumwal Golf Club's advisors are provided, at all reasonable times, with access to:

- a) The Tocumwal Bowls Club licensed premises;
- b) The records; and
- c) All other information and material reasonably required by the Tocumwal Golf Club or the Tocumwal Golf Club's advisors.

- 9.2. The Tocumwal Bowls Club will assist the Tocumwal Golf Club at all reasonable times to transfer the administration of the Tocumwal Bowls Club licensed premises and the records of the Tocumwal Bowls Club from the Tocumwal Bowls Club to the Amalgamated Club's licensed premises so that, from Completion, the Amalgamated Club has complete control of the administration of the Tocumwal Bowls Club licensed premises.

## 10. TRANSFER OF TOCUMWAL BOWLS CLUB ASSETS, DEBTS AND LIABILITIES TO TOCUMWAL GOLF AND BOWLS CLUB AND DEREGISTRATION OF THE TOCUMWAL BOWLS CLUB

- 10.1. Subject to Completion, the Tocumwal Bowls Club must ensure its Board of Directors transfers:

- a) The assets of the Tocumwal Bowls Club (less an amount sufficient for the purposes of the deregistration of the company); and
- b) The debts and liabilities of the Tocumwal Bowls Club, to the Amalgamated Club.

- 10.2. The parties acknowledge that it is proposed for the transfer of the assets referred to in clause 10.1(a) and the debts and liabilities referred to in clause 10.1(b) to occur on the date of the Completion.

- 10.3. Before Completion, the Tocumwal Bowls Club will pay out such of the debts and liabilities referred to in clause 10.1(b) to occur on the date of the Completion.

- 10.4. As soon as reasonably practicable after Completion, the Board of Directors of the Tocumwal Bowls Club must:

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- i Transfer any remaining assets of the Tocumwal Bowls Club to the Amalgamated Club; and
- ii Apply for the deregistration the Tocumwal Bowls Club as a company.

10.5. 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 10.

## 11. THE TOCUMWAL BOWLS CLUB'S EMPLOYEES AND CONTRACTORS

11.1. For the purposes of clause 3.1(e):

- a) Subject to the Completion, the Amalgamated Club will offer employment to all employees of the Tocumwal Bowls Club who are employees of the Tocumwal Bowls Club at the date of Completion;
- b) The employment referred to in clause 11.1(a) will be on the same terms and conditions offered to employees of the Amalgamated Club provided it does not result in any employee of the Tocumwal Bowls Club receiving lesser benefits or entitlements than those currently received;
- c) The employment referred to in clause 11.1(a) will commence from the date of Completion;
- d) Subject to verification of the Amalgamated Club, the Amalgamated Club will accept the documented entitlements of the Tocumwal Bowls Club's employees who accept the offer of employment referred to in clause 11.1 (a).

## 12. ADMISSION OF THE TOCUMWAL BOWLS CLUB MEMBERS TO MEMBERSHIP OF THE AMALGAMATED CLUB

Subject to the provisions contained in clause 3.1(b)(ii) and this clause 12, for the purposes of clause 3.1(c):

12.1. The Amalgamated Club will forward to each member of the Tocumwal Bowls Club a written invitation to become a member of the Amalgamated Club and a form of agreement in or to the same effect as schedule 3.

12.2. Any member of the Tocumwal Bowls Club who accepts the invitation and agrees to be a member of the Amalgamated Club by completing, signing and returning to the Amalgamated Club the agreement referred to in schedule 3 to clause 12.1 shall, subject to Completion, be elected to membership of the Amalgamated Club.

12.3. Tocumwal Bowls Club Members who are:

- a) Life Members will be admitted as Life Members of the Amalgamated Club;
- b) Full Bowling Members will, subject to clause 12.6, be admitted as Full Members of the Amalgamated Club;

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- c) Junior Bowling Members will be admitted as Junior Member of the Amalgamated Club; and
- d) Social Members will, subject to clause 12.6, be admitted as Social Members of the Amalgamated Club;  
  
But may transfer to any other class of membership of the Amalgamated Club for which they have necessary qualifications.

12.4. Tocumwal Full Bowling Club members who become Full Members of the Amalgamated Club shall be entitled to:

- a) Stand for and be elected to the Board of the Amalgamated Club; and
- b) Vote in the election of the Board of the Amalgamated Club;
- c) The rights and privileges of a Full Member under the Constitution of the Amalgamated Club.

12.5. Tocumwal Bowls Club members who become Social Members of the Amalgamated Club shall:

- a) Not be entitled to stand for or be elected to the Board of the Amalgamated Club;
- b) Not to be entitled to vote in the election of the Board of the Amalgamated Club;
- c) Only be entitled to the right and privileges of Social Members under the Constitution of the Amalgamated Club.

12.6. Tocumwal Bowls Club members who are existing members of the Tocumwal Golf Club:

- a) Will remain in their exiting category of membership with the Amalgamated Club;
- b) Will retain their existing rights and entitlements of membership of the Amalgamated Club;
- c) Will be noted in the Amalgamated Club's register of members as being former Tocumwal Bowls Club Social Members or Tocumwal Bowls Club Full Bowling Members as the case may be;
- d) Will, if they were Tocumwal Bowls Club Full Bowling Members, be noted in the Amalgamated Club's register of members as having the right and entitlements referred to in clauses 12.4 above.

12.7. Tocumwal Bowls Club Members who are Life Members of the Tocumwal Bowls Club and are admitted to Life Membership in accordance with clauses 3.1(b)(i) and 12.3(a) will be noted in the Amalgamated Club's register of members as:

- a) Being a former Tocumwal Bowls Club Life Members as the case may be; and
- b) Having the rights and entitlements referred to in clauses 12.4 above.

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## 13. THE TOCUMWAL BOWLS CLUB'S WARRANTIES

- 13.1. The Tocumwal Bowls Club warrants to the Tocumwal Golf Club that from the date of this MOU to Completion:
- a) It will carry on its business in the usual and ordinary course in a diligent manner and will not incur any single debt or liability over the sum of \$2,000.00 without the prior written approval of the Tocumwal Golf Club secretary.
  - b) It will not, without prior written approval of the Tocumwal Golf Club secretary:
    - I. Enter into, terminate or materially alter any term of any material contract, arrangement or understanding in relation to its operations or otherwise;
    - II. Sell, convey, transfer, assign, mortgage, charge, give in exchange, dispose of, let, manage or otherwise deal with its assets other than as expressly permitted in this MOU;
    - III. Employ any new employee, other than a casual employee;
    - IV. Terminate the employment of any employee (other than a casual employee) or alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit);
    - V. Borrow or seek to borrow any money or increase the level of its current debts and liabilities.
  - c) The Tocumwal Bowls Club and its members will use their best endeavours to do nothing which may damage the goodwill of the Tocumwal Golf Club's business; and
  - d) It will keep the assets insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured and provide a copy of the certificate of currency to the Tocumwal Golf Club.

## 14. THE TOCUMWAL GOLF CLUB'S WARRANTIES

- 14.1. Subject to the Tocumwal Bowls Club complying with clause 13 of this MOU, the Tocumwal Golf Club warrants to the Tocumwal Bowls Club that from the date the assets of the Tocumwal Bowls Club are transferred that the Amalgamated Club will:
- a) Accept full responsibility for the Tocumwal Bowls Club's debts and liabilities;
  - b) Indemnify and keep indemnified the directors of the Tocumwal Bowls Club in respect of any claims made against them by creditors of the Tocumwal Bowls Club, for a period of six (6) years from the date of Completion; and
  - c) Utilise the funds of the Tocumwal Bowls Club and transferred or realised to the Amalgamated Club for the construction of two bowling greens and associated infrastructure at the Amalgamated Club's licensed premises with any surplus to be applied generally for the benefit of the Amalgamated Club or its members.

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- 14.2. Subject to the Tocumwal Bowls Club complying with clause 13 of this MOU, the Tocumwal Golf Club warrants to the Tocumwal Bowls Club that, provided the members of the Tocumwal Bowls Club pass the special resolutions referred to in clause 3.1(a), the Tocumwal Golf Club will provide to the Tocumwal Bowls Club such reasonable financial assistance as is required to assist the Tocumwal Bowls Club to remain solvent until Completion or termination of this MOU (whichever is earlier).
- 14.3. Subject to the Tocumwal Bowls Club complying with clause 13 of this MOU, the Amalgamated Club will maintain in accordance with the Liquor Act a premises of the Amalgamated Club at the current Tocumwal Bowls Club's licensed premises for the purpose of providing a bowling green for members until the construction of two bowling greens has been completed at the Amalgamated Club's licensed premises.

## 15. COSTS

- 15.1. Each party shall pay its own costs of and in relation to the preparation execution and Completion of this MOU.

## 16. STAMP DUTY

- 16.1. The parties acknowledge and agree that any duty payable by either party under the *Duties Act 2000* (NSW) to bring into effect the provisions of MOU will be paid by the Tocumwal Golf Club.

## 17. CONFIDENTIALITY

- 17.1. A party must not make public, available or disclose to any other person or organisation any confidential information relating to the other party without the prior written approval of the other party.
- 17.2. Each party must take all reasonable steps to ensure its employees and agents, subcontractors or consultants, do not make public, available or disclose the other party's confidential information.
- 17.3. A party must, on demand, return to the other, any documents supplied by the other in connection with this MOU.
- 17.4. This clause survives termination and Completion of the MOU.

## 18. TERMINATION

Without limiting the various rights of termination set out in this MOU:

- 18.1. If:
- a) The members of the Tocumwal Bowls Club do not pass the special resolutions referred to in clause 3.1(a) within (6) months of the date of this MOU; or

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- b) The members of the Tocumwal Golf Club have not passed the special resolutions referred to in clause 3.1(b) within (6) months of the date on which the members of the Tocumwal Bowls Club pass the special resolutions referred to in clause 3.1(a);

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

- 18.2. Either party may terminate this MOU at any time, without penalty, by giving written notice to the other if there are amendments or alterations to any law as a result of which the relationship established by this MOU would be in breach of the provisions of a law.
- 18.3. Without limiting its other rights, and notwithstanding any other provision of this MOU, a party may terminate this MOU by giving written notice to the other if the other continues to be in breach of any term of this MOU after it has been given written notice by the first party specifying the breach complained of and requiring its remedy within the seven (7) days (or such longer period contained in the notice) and the breach complained of has not been remedied within that period.
- 18.4. Without limiting its other rights, and notwithstanding any other provision of this MOU, a party may terminate this MOU at any time by giving written notice to the other party if the other party is in breach of any of its warranties contained in this MOU.
- 18.5. If this MOU is rescinded or terminated prior to Completion, the Tocumwal Golf Club must transfer, assign or otherwise return to the Tocumwal Bowls Club and the Tocumwal Bowls Club must accept the transfer, assignment or return of all the assets, debts, liabilities, records and other documents and material which were transferred to the Tocumwal Golf Club in accordance with this MOU.

## 19. NOTICES

- 19.1. All notices and consents required or permitted to be given under this MOU must be in writing and given by personal service, pre-paid postage or facsimile transmission at the addresses of the parties set out in this MOU or to such address as such party may designate to the other by written notice. Any notice sent by post is deemed to have been received by the party to whom it is addressed on the day which in the normal course of post it would have been delivered.

## 20. GENERAL

- 20.1. This MOU constitutes the whole and entire agreement between the parties and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this MOU is of no force or effect.
- 20.2. If any provision of this MOU is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of separate enforcement are and continue to be valid and enforceable in accordance with their terms.
- 20.3. Neither party may assign this MOU or any benefit under it without the prior written consent of the other.

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- 20.4. 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 MOU.
- 20.5. This MOU is governed by, and is to be construed in accordance with, the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

## 21. RESOLUTION OF DISPUTES ARISING UNDER THIS MOU

- 21.1. A party may not commence any court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 21.2. A party claiming a dispute has arisen under or in relation to this MOU must give written notice to the other party specifying the nature of the dispute.
- 21.3. 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 determination or other techniques agreed by them.
- 21.4. If the parties do not agree within seven (7) days of receipt of the notice referred to in clause 21.2 (or any further period agreed in writing by them) as to:
- a) The dispute resolution technique and procedures to be adopted;
  - b) The timetable for all steps in those procedures; and
  - c) The selection and compensation of the independent person required for such technique;

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.

- 21.5. If the dispute is not resolved within 21 days after notice is given under subclause 21.2, a party which has complied with the provisions of this clause may in writing 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.
- 21.6. The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute concerned. Neither party may use any information or document obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute concerned.

## 22. PROCESS FOR VARYING MOU

- 22.1. No variation or waiver of any provision of this MOU is of any force or effect unless 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.

# Memorandum of Understanding

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22.2. No failure, delay, relaxation or indulgence on the part of either party in exercising any power or right conferred on that party by this MOU 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 MOU.

**The Parties have confirmed their commitment to this MOU as follows:**

Signed for and on behalf of **TOCUMWAL GOLF CLUB LTD**

\_\_\_\_\_  
Signature of a Director/Secretary

\_\_\_\_\_  
Signature of a Director/Secretary

\_\_\_\_\_  
Print Name of the Director/Secretary

\_\_\_\_\_  
Print Name of the Director/Secretary

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Date signed

Signed for and on behalf of **TOCUMWAL BOWLS CLUB LIMITED**

\_\_\_\_\_  
Signature of a Director/Secretary

\_\_\_\_\_  
Signature of a Director/Secretary

\_\_\_\_\_  
Print Name of the Director/Secretary

\_\_\_\_\_  
Print Name of the Director/Secretary

\_\_\_\_\_  
Date signed

\_\_\_\_\_  
Date signed



# Memorandum of Understanding

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## Schedule 1

### TOCUMWAL BOWLS CLUB

#### **Special Resolution 1:**

“That the Memorandum of Association of the Tocumwal Bowls Club Limited be amended to allow for the following provision: Each member of the Club undertakes to contribute to the assets of the Club, in the event of the same being wound up while he is a member, or within one (1) year after he ceases to be a member, for payment of any debts and liabilities of the Club contracted before he ceases to be a member, and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding Two Dollars (\$2.00).”

Explanatory notes to be read in conjunction with Special Resolution 1:

This clause is a requirement for amalgamation to proceed. The members’ guarantee on winding up should be the same for both clubs. For the avoidance of doubt, the wording for the members’ guarantee from the Tocumwal Golf Club constitution has been adopted.

The board of the club has endorsed the proposed changes.

A special resolution must be passed as a whole and cannot be amended from the floor of the meeting or divided into two or more separate resolutions. The majority required for passing of a special resolution is seventy-five per cent (75%) of members present and voting at the meeting.

#### **Special Resolution 2:**

“That the members hereby approve the amalgamation of the Tocumwal Bowls Club Limited with the Tocumwal Golf Club Limited in accordance with the Memorandum Of Understanding between the Tocumwal Bowls Club Limited and the Tocumwal Golf Club Ltd (which has been made available to members) AND THAT the members direct the Board to transfer all of the Tocumwal Bowls Club’s assets, debts and liabilities in accordance with the Memorandum Of Understanding AND THAT the members hereby RESOLVE to wind up the Club and direct the Board to deregister the Tocumwal Bowls Club Limited as a company under the Corporations Act 2001, as soon as practicable after Completion of the amalgamation (as defined in the Memorandum Of Understanding).”

Explanatory notes to be read in conjunction with Special Resolution 2:

A special resolution must be passed as a whole and cannot be amended from the floor of the meeting or divided into two or more separate resolutions. The majority required for passing of a special resolution is seventy-five per cent (75%) of members present and voting at the meeting.

#### **Ordinary Resolution 1:**

“The members hereby approve the sale the club’s core property located at 5 Adams Street, Tocumwal in accordance with the requirements of the Registered Club Act.”

Explanatory notes to be read in conjunction with Ordinary Resolution 1:

Core property of the club means any real property owned or occupied by the club that comprises the premises of the club, or any facility provided by the club for the use of its members and their guests.

The club must not dispose of any core property of the club unless the property has been valued by a registered valuer, and the disposal has been approved at a general meeting of the ordinary members of the club at which a majority of the votes cast supported the approval, and any sale is by way of public auction or open tender conducted by an independent real estate agent or auctioneer.

The purpose of presenting this resolution is to expedite the sale process to allow for the establishment of new greens as quickly as possible.

# Memorandum of Understanding

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## Schedule 2

### TOCUMWAL GOLF CLUB

#### **Special Resolution 1:**

“That the Constitution in the possession of the chairperson of the meeting and signed for identification by the Club Secretary be adopted as the Club’s Constitution in substitution for and to the exclusion of the current Club Constitution AND THAT the board of directors be increased to nine members with the positions of golf club Captain and bowls club President being special appointments to the board for the first three years.”

Explanatory notes to be read in conjunction with Special Resolution 1:

The new Constitution will include only such changes as required in the Memorandum Of Understanding to fulfil the obligation between our club and the Tocumwal Bowls Club Limited. The majority of paragraphs from the old Constitution have been retained in the new Constitution.

An important change will be the increase in the board to nine members. The board will comprise a Chairperson, a Deputy Chairperson, a Treasurer and six other Directors. At the first three elections, the golf captain and bowls president will be special appointments to the board in accordance with the Registered Clubs Act. The three year trial of special appointments will continue if successful. The positions on the board will be determined at the first board meeting following an election. The change to the structure of the board meets best practice guidelines and is in line with that of other modern and successful clubs.

The changes will also include recognising Life Members of the Tocumwal Bowls Club as Life Members of our club and recognise service to the Tocumwal Bowls Club as service contributed to the amalgamated club.

The purpose of adopting a new Constitution rather than amending the old Constitution is to allow for consecutive numbering of paragraphs, and to arrange paragraphs in a more logical order.

The board of the club has endorsed the proposed changes. A copy of the new Constitution is available from the Secretary of the club.

A special resolution must be passed as a whole and cannot be amended from the floor of the meeting or divided into two or more separate resolutions. The majority required for passing of a special resolution is seventy-five per cent (75%) of members present and voting at the meeting.

#### **Special Resolution 2:**

“The members hereby approve a change in the company name to Tocumwal Golf and Bowls Club Limited, and that towards the implementation of such change, the members also approve the required amendments to the club's Constitution (as tabled).”

Explanatory notes to be read in conjunction with Special Resolution 2:

The board of the club has endorsed the proposed change. A copy of the amendments is available from the Secretary of the Club.

A special resolution must be passed as a whole and cannot be amended from the floor of the meeting or divided into two or more separate resolutions. The majority required for passing a special resolution is seventy-five per cent (75%) of members present and voting at the meeting.

#### **Special Resolution 3:**

“That the members hereby approve the amalgamation of the Tocumwal Golf Club Ltd with the Tocumwal Bowls Club Limited in accordance with the Memorandum Of Understanding between the Tocumwal Golf Club Ltd and the Tocumwal Bowls Club Limited (which has been made available to members in the Memorandum Of Understanding)”.

# Memorandum of Understanding

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## SCHEDULE 3

### Membership Acceptance

I, \_\_\_\_\_  
*Print Name*

hereby agree to be a member of the Amalgamated Club which will be a registered company known as Tocomwal Golf and Bowls Club Limited and I agree to be bound by the Constitution and Rules of that Club.

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

### Additional Information

Postal Address: \_\_\_\_\_

Email: \_\_\_\_\_

Phone numbers: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

Occupation: \_\_\_\_\_