

## **MEMORANDUM OF UNDERSTANDING**

**Dated**

*13<sup>th</sup> March 2024*

**PARTIES:**

**RAMSGATE RSL MEMORIAL CLUB LIMITED**

**ABN 15 000 967 340**

**BAY STREET 4145 LIMITED**

**ABN 48 001 286 228**

**TRADING AS ROCKDALE R S L SUB-BRANCH CLUB**

This Memorandum of Understanding is made on

## **BETWEEN**

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

(Ramsgate RSL)

and

**BAY STREET 4145 LIMITED (ABN 48 001 286 228) TRADING AS ROCKDALE R S L SUB-BRANCH CLUB** of 45 Bay Street, Rockdale, New South Wales, 2216

(Rockdale RSL)

## **BACKGROUND**

- (A) Ramsgate RSL and Rockdale RSL both operate registered clubs in New South Wales.
- (B) Ramsgate RSL called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of Ramsgate RSL by way of ClubsNSW Circular (Circular No: 21-198) published on 28 September 2021.
- (C) On 20 December 2023, Rockdale RSL submitted an expression of interest to Ramsgate RSL by email.
- (D) Rockdale RSL is within 50 kilometres of Ramsgate RSL.
- (E) Ramsgate RSL has accepted the expression of interest from Rockdale RSL and, following further negotiation, Ramsgate RSL and Rockdale RSL have agreed to the terms set out in this Memorandum.
- (F) Ramsgate RSL and Rockdale RSL propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

## **1. DEFINITIONS AND INTERPRETATIONS**

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1.1 In this Memorandum unless the context otherwise requires:

- (a) **“Amalgamated Club”** means the amalgamated registered club of Ramsgate RSL and Rockdale RSL, the corporate vehicle of which will be Ramsgate RSL;
- (b) **“Amalgamation”** means the amalgamation of the Clubs in accordance with this Memorandum;
- (c) **“Amalgamation Application”** means the provisional application for the transfer of Rockdale RSL’s Liquor Licence to Ramsgate RSL pursuant to Sections 60(6) and (7) of the Liquor Act by Ramsgate RSL and Rockdale RSL;
- (d) **“Assets”** means all of the Land, goodwill, personal property, equipment,

stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to Rockdale RSL at the time of 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) **“Clubs”** means both Ramsgate RSL and Rockdale RSL;
- (h) **“Completion of the Amalgamation”** means the day on which:
  - (i) the Final Order is granted and Rockdale RSL’s Liquor Licence is transferred to Ramsgate RSL; and
  - (ii) the Assets, Debts and Liabilities of Rockdale RSL are transferred to Ramsgate RSL, as referred to in clause 15.1; and
  - (iii) Rockdale RSL’s members have been invited to become members of Ramsgate RSL and those members of Rockdale RSL who make application for membership of Ramsgate RSL become members of the Amalgamated Club.
- (i) **“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;
- (j) **“Core Property”** has the same meaning as in the RCA.
- (k) **“Corporations Act”** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder;
- (l) **“Debts”** means the accumulated debts of Rockdale RSL at the time of Completion of the Amalgamation;
- (m) **“Encumbrance”** means any:
  - (i) security granted for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); or
  - (ii) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
  - (iii) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
  - (iv) third party right or interest or any right arising as a consequence of the

enforcement of a judgment,

or any agreement to create any of them or allow them to exist other than any Encumbrance created by the Deed of Loan or General Security Deed.

- (n) **“Final Order”** means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby Rockdale RSL’s Liquor Licence will be transferred to Ramsgate RSL;
- (o) **“Gaming Machines Act”** means the Gaming Machines 2001 (NSW) and the Regulations made thereunder;
- (p) **“GST” means** Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (q) **“Land”** means the vacant land located at 41 Bay Street, Rockdale, New South Wales comprising Folio: Auto Consol 4573-80 (Lots 1-2/DP1019049) and any other real property of which Rockdale RSL is the registered proprietor.
- (r) **“Liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of Rockdale RSL (whatever description) at the time of Final Order;
- (s) **“Liquor Act”** means the Liquor Act 2007 (NSW) and the Regulations made thereunder;
- (t) **“Liquor Licence”** means the club licence issued to a registered club under the *Liquor Act*;
- (u) **“Memorandum”** means this Memorandum of Understanding;
- (v) **“Order”** means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (w) **“Party”** means the respective management and Board of Directors of Rockdale RSL and Ramsgate RSL;
- (x) **“Ramsgate RSL’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at Ramsgate RSL;
- (y) **“Ramsgate RSL Premises”** means Ramsgate RSL’s main premises located at Chuter Avenue and Ramsgate Road, Sans Souci, New South Wales 2219;
- (z) **“Records”** means all original and copy records, sales brochures and catalogues, lists of clients, documents, books, files, accounts, plans and correspondence belonging to or used by Rockdale RSL in the conduct of Rockdale RSL business including but not limited to corporate, accounting and statutory records;
- (aa) **“RCA”** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder;
- (bb) **“Regulations”** mean the Regulations to the RCA;
- (cc) **“Year”** means a period of twelve (12) months commencing on the anniversary of the date of the Final Order and concluding on the day immediately before the next anniversary date of the Final Order.

1.2 In this Memorandum unless the context otherwise requires:

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

## **2. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION**

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- 2.1 Ramsgate RSL and Rockdale RSL 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 enhance the existing facilities and amenities of Ramsgate and provide facilities and amenities to the Rockdale RSL members.
- 2.3 The amalgamation will be effected by the continuation of Ramsgate RSL and the dissolution of Rockdale RSL.

### **Process for Amalgamation**

- 2.4 The process for the amalgamation will be as follows:
  - (a) The Clubs entering into this Memorandum; and
  - (b) The members of Rockdale RSL and Ramsgate RSL will be asked to approve the amalgamation at separate general meetings of the ordinary members of each club. These meetings will be called and held in the manner referred to in clause 13 below;
  - (c) The members of Ramsgate RSL will be asked to approve (by special resolution) amendments to Ramsgate RSL's Constitution in the manner provided for in clause 13.5 below.

- (d) Once the approvals in paragraphs (b) and (c) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 14 below;
- (e) After the Amalgamation Application is granted and on the date of the Final Order:
  - (i) The Assets, Debts and Liabilities will be transferred to Ramsgate RSL Club in the manner referred to in clause 16 below;
  - (ii) Subject to clause 13.7, all members of Rockdale RSL will, with their consent, be admitted as members of Ramsgate RSL and will be identified as a separate class of ordinary membership called "Rockdale RSL members". This will occur in accordance with the procedure set out in clause 13.5 below (that is, the category of membership will be inserted into Ramsgate RSL's Constitution pursuant to the Special Resolution referred to in that clause);
  - (iii) After Completion of the Amalgamation, Ramsgate RSL will continue as the body corporate of the Amalgamated Club;
- (f) From Completion of the Amalgamation, Ramsgate RSL's premises will become available to all members of the Amalgamated Club.
- (g) After Completion of the Amalgamation, Rockdale RSL will be liquidated or otherwise voluntarily deregistered in the manner referred to in clause 16 below.

## **Due Diligence**

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

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

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- 3.1 Rockdale RSL no longer has premises.
- 3.2 The Amalgamated Club will operate and trade from the:
  - (a) the Ramsgate RSL Premises;
  - (b) Fingal Bay premises at 100 Rocky Point Road, Fingal Bay;
  - (c) Engadine RSL premises at 1029 Old Princes Highway, Engadine; and
  - (d) Heathcote Services & Citizens Club premises at 24 Oliver Street, Heathcote.

- 3.3 The Board of Ramsgate RSL will be the Board of the Amalgamated Club.
- 3.4 For the purposes of the RCA Ramsgate RSL's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.

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

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- 4.1 Rockdale RSL has ceased to trade and no longer has premises.
- 4.2 There are no traditions, amenities, culture, facilities, activities and memorabilia of Rockdale RSL to be maintained by the Amalgamated Club.

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

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

**Amalgamated Club Premises**

- 5.2 Rockdale RSL has ceased to trade and no longer has premises. However, the Amalgamated Club is willing to consider the future use or development of the Land by the Amalgamated Club or some other entity (including the possible construction of a registered club on the Land) subject to:
- (a) receiving recommendations from the Strategy Committee (see clause 5.4 below) supporting such use or development of the Land;
  - (b) the Amalgamated Club being satisfied, in its absolute discretion, that such future use or development is financially viable and sustainable for the Amalgamated Club; and
  - (c) obtaining all relevant approvals from necessary authorities.
- 5.3 Following amalgamation, the Amalgamated Club will:
- (a) operate and trade from:
    - (i) the Ramsgate RSL Premises;
    - (ii) Fingal Bay premises at 100 Rocky Point Road, Fingal Bay;
    - (iii) Engadine RSL premises at 1029 Old Princes Highway, Engadine; and
    - (iv) Heathcote Services & Citizens Club premises at 24 Oliver Street, Heathcote.
  - (b) maintain all the premises of the Amalgamated Club and carry on the business of a licensed registered club under the RCA and the Liquor Act at all of its premises with all the facilities and amenities of a registered club; and
  - (c) develop a strategic plan to incorporate capital works where necessary with

the nature, budget and timeframe of the works to be determined by the Board of the Amalgamated Club such that the Amalgamated Club has the prospect of achieving the objective of becoming the local venue of choice in each of the communities in which it operates premises; and

- (d) undertake planning to encapsulate marketing, social media and community engagement for each of the communities in which it operates premises.

### **Strategy Committee**

5.4 The Board of the Ramsgate RSL will create a Strategy Committee in respect of the Land and the following shall apply in respect of the Strategy Committee:

- (a) The Strategy Committee will be made up of:
  - (i) the Chief Executive Officer and Chief Financial Controller of Ramsgate RSL; and
  - (ii) the existing directors of Rockdale RSL who wish to participate.
- (b) The Strategy Committee will meet at such intervals as may be determined by the Chief Executive Officer of the Amalgamated Club from time to time.
- (c) The Strategy Committee will consider and make recommendations to the Board and management of the Amalgamated Club regarding strategies for the future use or development of the Land by the Amalgamated Club or some other entity (including the possible construction of a registered club on the Land) or the disposal of the Land.
- (d) The Strategy Committee will have no powers to make decisions or bind the Amalgamated Club in relation to the use, development or disposal of the Land and shall, at all times, be subject to the overall control and direction of the Board and management of the Amalgamated Club.

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

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6.1 Rockdale RSL has ceased to trade, no longer has premises and has no employees.

### **7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF ROCKDALE RSL:**

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

7.2 Rockdale RSL no longer has Core Property.

#### **Cash and Investments**

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

#### **Gaming Machine Entitlements**



7.4 Rockdale RSL has eighty one (81) gaming machine entitlements and those gaming machine entitlements will be transferred to Ramsgate RSL as part of the Amalgamation.

7.5 Ramsgate RSL will, after it has assessed the performance of the gaming machine installations at its various premises, consider and review the viability of increasing or decreasing the number of gaming machines at each premises, including by transferring additional gaming machine entitlements from or to its other premises.

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

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8.1 Rockdale RSL has ceased to trade and no longer has licensed premises and the Land is not core property. Therefore, Rockdale RSL no longer has Core Property.

**9. DISPOSAL OF ROCKDALE RSL'S MAJOR ASSETS [REGULATIONS – CLAUSE 7(2)(E2)]**

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9.1 Rockdale RSL has ceased to trade and no longer has licensed premises and the Land is not core property. Therefore, Rockdale RSL no longer has any major assets.

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

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10.1 Rockdale RSL has ceased to trade and no longer has licensed premises.

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

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

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11.1 Rockdale RSL has ceased to trade and no longer has premises.

11.2 The objects of Ramsgate RSL will become the objects of Rockdale RSL with effect from Completion of the Amalgamation.

**12. BINDING EFFECT OF MEMORANDUM**

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12.1 Ramsgate RSL and Rockdale RSL agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

**13. CALLING OF MEETINGS AND ADMISSION OF ROCKDALE RSL MEMBERS TO MEMBERSHIP OF RAMSGATE RSL**

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

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

- 13.3 Ramsgate RSL will call a general meeting of the ordinary members of Ramsgate RSL for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.
- 13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the date of this Memorandum.
- 13.5 In addition to the resolution referred to in clause 13.4, Ramsgate RSL will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, on a special resolution to amend the Constitution of Ramsgate RSL to give effect to the following:
- (a) Subject to clause 13.7, all members of Rockdale RSL who apply to become members of Ramsgate RSL will be admitted to membership of Ramsgate RSL.
  - (b) Subject to clause 13.7, all members of Rockdale RSL will be able to apply for membership of Ramsgate RSL in the manner referred to in this clause 13.5.
  - (c) As soon as practicable after the Order, Ramsgate RSL will forward to each member of Rockdale RSL, who is not already a member of Ramsgate RSL, a written invitation to become a member of Ramsgate RSL.
  - (d) Any member of Rockdale RSL who accepts the invitation and agrees in writing to be bound by the Constitution of Ramsgate RSL will (subject to the name of that person being displayed on the noticeboard of Ramsgate RSL for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by Ramsgate RSL) be elected by a resolution of the Board of Ramsgate RSL to membership of Ramsgate RSL with effect from the date of Completion of the Amalgamation.
  - (e) Rockdale RSL's members who are admitted to membership of Ramsgate RSL will be identified as a separate class of ordinary membership called the "Rockdale RSL Members" but may transfer to any other class of membership of Ramsgate RSL for which they are eligible to join.
  - (f) Rockdale RSL Members will have the same rights as "Associate members" under the Constitution of Ramsgate RSL.
- 13.6 In addition to the special resolution referred to in clause 5, Ramsgate RSL will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, on a further special resolution to amend the Constitution of Ramsgate RSL to provide that:
- (a) any person who is a member of Rockdale RSL as at the date of the Memorandum shall not be eligible to stand for or be elected or appointed to the Board of Ramsgate RSL for at least five (5) years after Completion of the Amalgamation provided that this restriction shall not apply to persons who were members of Ramsgate RSL before the date of this Memorandum;
  - (b) any person who has been a director of Rockdale RSL at any time shall not be eligible to stand for or be elected or appointed to the Board of Ramsgate RSL for at least five (5) years after Completion of the Amalgamation; and

- (c) any person who, at Completion of the Amalgamation, is a Life member of Rockdale RSL will:
  - (i) not become a Life member of the Amalgamated Club; and
  - (ii) continue to be recognised as a Life member of Rockdale RSL only;
  - (iii) will be relieved of the payment of any annual subscription.

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

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

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

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

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

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

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

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15.1 Rockdale RSL warrants to Ramsgate RSL that from the date of this Memorandum to the date of Completion of the Amalgamation, Rockdale RSL 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 Ramsgate RSL's CEO or his delegate;
- (b) maintain the Assets of Rockdale RSL in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets of Rockdale RSL insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (c) provide the Ramsgate RSL's CEO at such other times as requested any details or documents relating to the operation and financial position of Rockdale RSL;
- (d) not knowingly or intentionally do anything which may damage the goodwill of its business or that of the Ramsgate RSL;
- (e) not without the prior written consent of the Ramsgate RSL:
  - (i) enter into, terminate or alter any term of any material contract,

arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;

- (ii) 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 Rockdale RSL's Assets (including without limitation its poker machine entitlements) except to the extent required under the terms of the Option Deed at the date of this MOU;
- (iv) employ any person in any capacity;
- (v) seek to borrow or borrow money from any third party;
- (vi) notify Ramsgate RSL of any of the circumstances referred to clause 15.5 within a reasonable time on becoming aware of the relevant circumstances;
- (vii) engage in discussions or negotiations with anyone other than the Ramsgate RSL concerning an amalgamation or the sale of all or any part of Rockdale RSL's Assets (otherwise than as permitted under (iii) above), and Rockdale RSL must advise Ramsgate RSL Club of any solicitation by any third party in respect of any such discussion or negotiation.

15.2 Each of Rockdale RSL's warranties contained in clause 15.1 remains in full force and effect notwithstanding Completion of the Amalgamation.

15.3 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, Ramsgate RSL may terminate this Memorandum and the amalgamation at any time prior to Completion of the Amalgamation if there is any material breach of any of Rockdale RSL's warranties set out in clause 15.1.

15.4 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):

- (a) anything is identified by the Subject Club (including without limitation, undisclosed Liabilities or undisclosed agreements with third parties) or anything arises in respect of the Subject Club which has or may have a material adverse effect on the Amalgamated Club;
- (b) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
- (c) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
- (d) any Claim of any nature is threatened or asserted by or against the subject Club; or
- (e) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,

then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.

## **16. DISSOLUTION OF ROCKDALE RSL AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO RAMSGATE RSL**

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- 16.1 Rockdale RSL must ensure the Assets, Debts and Liabilities of Rockdale RSL are transferred to the Ramsgate RSL (less an amount sufficient for the purposes of any voluntary liquidation of Rockdale RSL).
- 16.2 The parties acknowledge that it is intended for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order wherever possible. However, the parties acknowledge that the transfer of some Assets, Debts and Liabilities may occur after the date of the Final Order.
- 16.3 For the purposes of clause 16.1, Rockdale RSL must do all things necessary and execute all documents to cause all of the Assets of Rockdale RSL to be transferred to or assigned to Ramsgate RSL. Such transfers and assignments will without limitation be in respect of:
- (a) all poker machines and all gaming machine entitlements;
  - (b) all contract rights including hire purchase agreements;
  - (c) all intellectual property rights;
  - (d) all physical assets, furniture and fittings and stock in trade,
- owned or entered into by Rockdale RSL.
- 16.4 The transfers and assignments referred to in clause 16.3 must be executed by Rockdale RSL and Ramsgate RSL and held in escrow by the Ramsgate RSL pending Completion of the Amalgamation.
- 16.5 As soon as practicable after Completion of the Amalgamation but not before Rockdale RSL has transferred all of its Assets, Debts and Liabilities to Ramsgate RSL, Rockdale RSL must ensure Rockdale RSL is voluntarily liquidated in accordance with section 513B of the Corporation Act 2001.
- 16.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 16.

## **17. ACCESS TO RECORDS**

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- 17.1 From the date of this Memorandum, Rockdale RSL will provide to Ramsgate RSL at all reasonable times access to Rockdale RSL Premises, Records and other information and material reasonably required by Ramsgate RSL (including for the purpose of any due diligence referred to in clause 2.6).
- 17.2 From the date of this Memorandum, Ramsgate RSL will provide to Rockdale RSL at all reasonable times access to Records and other information and material reasonably required by Rockdale RSL for the purposes of the due diligence referred to in clause 2.5).

## **18. CONFIDENTIALITY**

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- 18.1 A party must not without the prior written approval of the other disclose the other

party's Confidential Information.

- 18.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.
- 18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 18.4 This clause 18 survives completion of this Memorandum.

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

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

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

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

**20. COSTS**

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

## 21. STAMP DUTY

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- 21.1 The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.
- 21.2 Despite the exemption from duty referred to in clause 21.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by Ramsgate RSL.

## 22. GENERAL

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- 22.1 This Memorandum constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.
- 22.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.
- 22.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.
- 22.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.
- 22.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.
- 22.6 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.
- 22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales.

## 23. TERMINATION

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- 23.1 Ramsgate RSL may terminate this Memorandum:
- (a) at any time until the date of the meeting of Rockdale RSL referred to in clause 13.1, without penalty, by giving written notice to Rockdale RSL if the due diligence review undertaken by it on Rockdale RSL (as referred to in clause 2.6) is not satisfactory to the Board of Ramsgate RSL. The Board of Ramsgate RSL can waive this requirement at any time.
  - (b) at any time, without penalty, by giving written notice to Rockdale RSL if Rockdale RSL breaches any warranty contained in clause 15.1;
  - (c) at any time after the date of the meeting of Rockdale RSL referred to in clause 13.1, without penalty, by giving written notice to Rockdale RSL if

Rockdale RSL has:

- (i) provided information and Records to Ramsgate RSL as part of its due diligence review of Rockdale RSL which are not true and correct in all respects or it is misleading in any respect (including without limitation, being misleading by the omission of information or Records); and/or
  - (ii) not disclosed all information and Records which would be reasonably required for Ramsgate RSL (as determined by Ramsgate RSL acting reasonably) to obtain a true and fair view of Rockdale RSL's financial position and state of affairs as part of its due diligence review of Rockdale RSL;
- (d) at any time after the date of the meeting of Rockdale RSL referred to in clause 13.1 without penalty, by giving written notice to Rockdale RSL if:
- (i) Rockdale RSL issues a notice to Ramsgate RSL in accordance with clause 15.5; and
  - (ii) Ramsgate RSL, acting reasonably, determines that the circumstance referred to in sub paragraph (i) above will or may result in liability exceeding an amount which is acceptable to Ramsgate RSL.

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

23.3 If:

- (a) the members of Rockdale RSL have not passed the resolution referred to in clause 13.1 within twelve (12) months of the date of this Memorandum; or
- (b) the members of Ramsgate RSL have not passed the resolutions referred to in clauses 13.3 and 13.5 within six (6) months of the members of Rockdale RSL passing the resolution referred to in clause 13.1,

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

23.4 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within twenty four (24) months of the date of this Memorandum (or such later date agreed by the parties), then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

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

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

## 24. NOTICES

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



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

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

24.3 If the notice is to Rockdale RSL then it must be addressed as follows:

- (a) **Name:** Rockdale RSL Sub Branch Club Ltd
- (b) **Attention:** *Andrew Dale*
- (c) **Address:** PO Box 747 Rockdale New South Wales 2216
- (d) **Email:** apdale1@aapt.net.au

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

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

## 25. **PROCESS FOR THE VARIATION OF THIS MEMORANDUM**

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

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

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

## 27. **NOTES**

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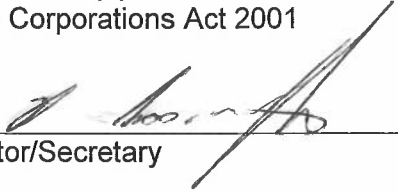
27.1 This Memorandum is to be:

- (a) made available to the ordinary members of Rockdale RSL and Ramsgate RSL at least 21 days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.
- (b) made available for inspection on the premises of each club and on the website of each club for at least 21 days before any meeting as referred to in paragraph (a) of these Notes is held.

- (c) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by Rockdale RSL to Ramsgate RSL.

## EXECUTION PAGE

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


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

  
\_\_\_\_\_  
Director

David Moorcroft  
Name of Director/Secretary

SALLIANNE ROBYN FAULKNER  
Name of Director

Executed by **ROCKDALE R S L SUB-** )  
**BRANCH CLUB LTD (ABN 48 001** )  
**286 228)** pursuant to Section 127 of )  
the Corporations Act 2001 )

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

ANDREW PHILLIP DALE  
Name of Director/Secretary

  
\_\_\_\_\_  
Director

RONALD WILLIAM HOOPER  
Name of Director