

MEMORANDUM OF UNDERSTANDING

NORTH SYDNEY ANZAC MEMORIAL CLUB LIMITED

AND

KIRRIBILLI EX-SERVICE CLUB LIMITED

EASTERN COMMERCIAL LAWYERS

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This Memorandum of Understanding is made on the twenty eighth day of May 2010.

BETWEEN

NORTH SYDNEY ANZAC MEMORIAL CLUB LIMITED of 2 ANZAC Avenue Cammeray NSW ("North Sydney ANZAC")

AND

KIRRIBILLI EX-SERVICE CLUB LIMITED of 11 Harbourview Crescent, Lavendar Bay NSW ("the Kirribilli Club")

BACKGROUND

- (A)** The Kirribilli Club and North Sydney ANZAC both operate registered clubs located in the North Sydney Local Government Area in the State of NSW.
- (B)** In accordance with the provisions of the *Liquor Act 2007*, *Registered Clubs Act 1976*, the Regulations and subject to the approval of the Casino Liquor & Gaming Control Authority, the Kirribilli Club and North Sydney ANZAC propose to amalgamate the two clubs.
- (C)** Clause 11C of the Regulations requires the clubs to enter into a Memorandum of Understanding prior to the Amalgamation Application. The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 3 to 9 inclusive below which reflect the matters listed in clause 11C(2)(a) through (g) of the Regulations.
- (D)** This amalgamation proposal is put forward to members on the basis that the Kirribilli Club and North Sydney ANZAC share a similar Ex Service heritage and culture, close proximity of the existing sites and common occurrence of dual members. An amalgamation of the two entities would allow for the continued recognition of the heritage and identity of the North Sydney ANZAC Club and preservation of its remaining assets for the benefit of members of both Clubs into the future within the same immediate locality.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

“**Amalgamated Club**” means the amalgamated registered club of the Kirribilli Club and North Sydney ANZAC;

“**Amalgamation Application**” means the application for conditional approval of the transfer of North Sydney ANZAC’s club licence to the Kirribilli Club pursuant to Section 60 of the LA by the Kirribilli Clubs CEO and North Sydney ANZAC’s Approved Secretary;

“**Clubs**” means both the Kirribilli Club and North Sydney ANZAC;

“**Corporations Act**” means the *Corporations Act 2001 (Commonwealth)*, including any amendments to the Corporations Act and the Regulations to the Corporations Act;

“**CLACGA**” means the Casino Liquor and Gaming Control Authority of New South Wales;

“**Completion**” means the date upon which the conditions precedent contained in this MOU and the Deed are satisfied or waived.

“**Deed**” means the Deed of Amalgamation between the Kirribilli Club and North Sydney ANZAC;

“**Final Order**” means the date upon which CLAGCA transfer the Club Licence of North Sydney ANZAC to the Kirribilli Club;

“**Kirribilli Club CEO**” means the individual who fulfils the Approved Secretary role at the Kirribilli Club;

“**LA**” means the *Liquor Act 2007 (NSW)* including any amendments to the LA and the Regulations to the LA;

“Party” means the respective management and Board of Directors of North Sydney ANZAC and the Kirribilli Club;

“Regulations” means the Regulations to the RCA the LA or the Corporations Act;

“RCA” means the *Registered Clubs Act 1976 (NSW)* including any amendments to the RCA and the Regulations to the RCA;

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 CLUBS POSITION REGARDING THE PROPOSED AMALGAMATION

2.1 The position of each club regarding the proposed amalgamation is that the amalgamation shall be effected pursuant to section 17AB of the RCA which will result in the continuation of the Kirribilli Club and the dissolution of North Sydney ANZAC.

2.2 Subject to the terms and conditions of the Deed of Amalgamation, North Sydney ANZAC and the Kirribilli Club agree to the following processes for the Amalgamation:

(a) The Assets of North Sydney ANZAC will be distributed to the Kirribilli Club and North Sydney ANZAC will be dissolved;

(b) the Kirribilli Club will assume and be responsible for the liabilities of North Sydney ANZAC;

(c) The Club Licence of North Sydney ANZAC will be transferred to the Kirribilli Club under section 60 of the LA;

(d) the Kirribilli Club is to continue as the body corporate of the Amalgamated Club;

(e) North Sydney ANZAC’s premises will be closed and the premises of the Kirribilli Club will become available to all members of the Amalgamated Club;

(f) Subject to the provisions of clause 16 of the Deed of Amalgamation all members of North Sydney ANZAC will, with their consent, be eligible to be admitted as members of the Amalgamated Club under the “North Sydney ANZAC Members” class of membership. For the avoidance of doubt, it is acknowledged that former members of North Sydney ANZAC who become members of the Amalgamated Club will primarily be identified by the main membership class within the Amalgamated

Club to which they belong, in conformity with the Constitution of the Amalgamated Club. The identification of those persons as former members of North Sydney ANZAC, will be for the purpose of section 17AC(2) of the RCA and in addition to and separate from, their status and rights of the Amalgamated Club in those main membership classes. Persons who are members of North Sydney ANZAC in categories of membership that have a subscription period for more than twelve (12) months will have the balance of their subscription period honoured by the Kirribilli Club and will not be required to pay the subscription to the class of membership of the Kirribilli Club they consent to becoming a member of and are admitted to.

In addition, those current financial members of the North Sydney ANZAC club, who are not as at the date of this deed, also current financial members of the Kirribilli Club, shall be offered membership of the Kirribilli Club in the class of membership they consent to being admitted to, up to 31st December 2012, for a nil membership fee.

3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF NORTH SYDNEY ANZAC WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF NORTH SYDNEY ANZAC PREMISES AND FACILITIES

[Regulations – Clause 6(2)(a)]

- 3.1 North Sydney ANZAC premises and facilities will be closed.
- 3.2 The Amalgamated Club will operate from the Kirribilli Club premises.
- 3.3 For the purposes of the RCA, the Kirribilli Club CEO will be the 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 6(2)(b)]

4.1 Subject at all times to the Deed of Amalgamation:

- (a) The Kirribilli Club is committed to the ongoing support of North Sydney ANZAC's primary focus of maintaining the integrity and traditions of the Returned and Services League and of the ANZAC Corps. The level of support offered to the North Sydney RSL Sub-branch under the Amalgamated Club shall be not less than it had been under the North Sydney ANZAC club.
- (b) The Amalgamated Club will keep and maintain such items of memorabilia as identified by the Board of North Sydney ANZAC prior to Completion of the amalgamation.
- (c) The Amalgamated Club will continue to support those sub-clubs and sporting clubs of the North Sydney ANZAC club, existing at the date of the Amalgamation Application.
- (d) The Amalgamated Club will continue to operate a "Mini-Bus" for members and patrons of the Amalgamated Club which has an area of services which extends to at least five (5) Kilometres from the North Sydney ANZAC premises, provided that such service is financially viable.
- (e) The Amalgamated Club shall use its best endeavours to ensure that the acronym "ANZAC" is included in all signage and stationary of the Amalgamated Club.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB

[Regulations – Clause 6(2)(c)]

- 5.1 The Amalgamated Club will maintain facilities and operations only at the current premises of the Kirribilli Club. The premises of North Sydney ANZAC will not become part of the Amalgamated Club's premises.
- 5.2 To add another position on the Board of the Amalgamated Club to be occupied by the President of North Sydney ANZAC or Nominee at the date of the Completion, such position to be held until the conclusion of the Annual General Meeting of the Amalgamated Club that occurs more than 10 months and not more than 22 months after Completion

6. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED

[Regulations – Clause 6(2)(d)]

- 6.1 North Sydney ANZAC will not without the prior written consent of the Kirribilli Club CEO or his delegate, engage any new employee on a full-time or part-time basis.
- 6.2 It is acknowledged that as a matter of law, North Sydney ANZAC is obliged to and will terminate the employment of each of the Club's employees on and from Completion. However, subject to clause 6.3, those employees will have the opportunity of re-employment with the Amalgamated Club in accordance with the review of the staffing requirements as anticipated by clause 6.3.
- 6.3 (a) Subject to sub paragraph (b) of this clause 6.3 following the granting of the Amalgamation Application the Kirribilli Club will conduct an assessment of the ongoing operational staffing needs of the amalgamated entity and the Amalgamated Club will continue to employ existing staff of the North Sydney ANZAC Club where it is deemed necessary on terms and on a remuneration package (after allowance for Completion) that are not materially in any respect less advantageous than those applying to that employees employment by North Sydney ANZAC at Completion of this Deed. In these circumstances the offer made by the Kirribilli Club must be made to the

employee within sufficient time before Completion of this Deed, to enable that employee to properly consider his or her position and to obtain advice from his or her union or other advisors.

(b) Sub paragraph (a) of this clause 6.3 shall not apply to the person holding the position of Chief Executive Officer of North Sydney ANZAC nor to any employee of North Sydney ANZAC whose employment with the Kirribilli Club had been terminated for breach or misconduct prior to employment with North Sydney ANZAC.

6.4 On Completion of this Deed, the Clubs acknowledge that North Sydney ANZAC at the expense of the Amalgamated Club must pay each employee who does not accept employment with the Amalgamated Club, all entitlements then due to them, having regard to, amongst other applicable laws, the terms of the relevant award or employment agreement, on the termination of their employment. The Clubs acknowledge that it will reduce the gross amount of the assets of the Amalgamated Club.

6.5 In relation to each of the employees of North Sydney ANZAC who accepts the offer of employment with the Amalgamated Club, North Sydney ANZAC must deliver to the Kirribilli Club at Completion of this Deed a document setting out full details of the accrued entitlements of those employees up to Completion of this Deed. The Amalgamated Club must from Completion of this Deed treat those employees of North Sydney ANZAC who accept employment with the Amalgamated Club, and deal with all of their entitlements, as if their entitlements had been accrued whilst in the employment of the Amalgamated Club.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF NORTH SYDNEY ANZAC:

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

[Regulations – Clause 6(2)(e)]

- 7.1 For the purposes of the RCA, North Sydney ANZAC has no core property.
- 7.2 The cash and investments (if any) of North Sydney ANZAC will be transferred to the general reserves of the Amalgamated Club. However, the Kirribilli Club undertakes to set aside any cash and investments of North Sydney ANZAC for a period of twelve (12) months from Completion, at which time the cash and investments will be available for use by the Kirribilli Club. This twelve (12) month period referred to in this clause may be reviewed by the board of the Amalgamated Club after six (6) months from Completion to allow the Kirribilli Club to access the cash and investments transferred, prior to the expiration of the twelve (12) months from Completion.
- 7.3 Of the 40 poker machine entitlements held by North Sydney ANZAC some may be transferred to the premises of the Kirribilli Club and otherwise the Board of the Amalgamated Club may transfer or sell the remainder as it requires.

8. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF NORTH SYDNEY ANZAC OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF NORTH SYDNEY ANZAC

[Regulations – Clause 6(2)(f)]

- 8.1 The Amalgamated Club will not be trading at North Sydney ANZAC's premises.

9. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM NORTH SYDNEY ANZAC PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF NORTH SYDNEY ANZAC PREMISES

[Regulations – Clause 6(2)(g)]

- 9.1 North Sydney ANZAC and the Kirribilli Club agree and acknowledge that North Sydney ANZAC will cease to trade at its premises on or about 26

September 2010.

- 9.2 North Sydney ANZAC and the Kirribilli Club agree and acknowledge that North Sydney ANZAC or the Amalgamated Club will not trade from North Sydney ANZAC premises at any time after the Cessation Date, except for particular functions which have already been booked and which can not be accommodated by the Kirribilli Club.

Executed by **KIRRIBILLI EX-SERVICES CLUB LIMITED** pursuant to Section 127 of the Corporations Act 2001



Director / President

Tom Richardson

Name of Director/Secretary
(print name)



Director / Vice President

David McDowell

Name of Director/Secretary
(print name)

Executed by **NORTH SYDNEY ANZAC MEMORIAL CLUB LIMITED** pursuant to Section 127 of the Corporations Act 2001



Director / President

Denis Dunkley

Name of Director/Secretary
(print name)



Director / Treasurer

David Daffey

Name of Director/Secretary
(print name)