MEMORANDUM OF UNDERSTANDING

DATED 22nd DECEMBER 2021

PARTIES

GEORGES RIVER 16FT SAILING CLUB CO-OP LTD
ABN 90 738 525 905

ILLAWARRA CATHOLIC CLUB LIMITED
ACN 000 361 660

This Memorandum of Understanding is made on.

BETWEEN

GEORGES RIVER 16FT SAILING CLUB CO-OP LTD (ABN 90 738 525 905) of 2 Sanoni Ave, Sandringham New South Wales 2219

(**Sailing Club**).

and

ILLAWARRA CATHOLIC CLUB LIMITED (ACN 000 361 660) of 2 Crofts Ave, Hurstville New South Wales 2220

(**ICC**).

BACKGROUND

(A) The Sailing Club operates a registered club in the City of Bayside from the Sailing Club Premises pursuant to a Club Licence issued in accordance with the provisions of the Liquor Act 2007.

(B) ICC operates a registered club in the Georges River Council area from the ICC Premises pursuant to a Club Licence issued in accordance with the provisions of the Liquor Act 2007.

(C) The Sailing Club is located within fifty (50) kilometres of ICC.

(D) On 19 October 2021, by way of ClubsNSW Circular 21-230, the Sailing Club called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of the Sailing Club.

(E) ICC submitted an expression of interest to the Sailing Club.

(F) Following negotiations, ICC and the Sailing Club have agreed to the terms set out in this Memorandum and 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 Registered Clubs Act, the Regulations, the Liquor Act, the Co-operatives Act and the Corporations Act.

(G) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding. The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 2 to 10.1 inclusive below. However, there are other matters of importance to the clubs that are included in this Memorandum.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

"Amalgamated Club" means the amalgamated registered club of ICC and the Sailing Club the corporate vehicle of which will be ICC.

"Amalgamation" means the amalgamation of the Clubs in accordance with this Memorandum.

"Amalgamation Application" means the provisional application for the transfer of the Sailing Club's Liquor Licence to ICC pursuant to Sections 60(6) and (7) of the Liquor Act by ICC's CEO and the Sailing Club's CEO.

"Asset" means all of the goodwill, personal property, equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to the Sailing Club.

"Authority" means the Independent Liquor & Gaming Authority.

"Business Day" means any day other than a Saturday, Sunday or gazetted public holiday in New South Wales.

"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.

"Council Lease" means the Deed between The Council Municipality of Rockdale and the Sailing Club dated 21 December 1964 whereby responsibility for the maintenance of the access road through Cook Park off Sanoni Avenue to the Sailing Club Premises was conferred on the Sailing Club.

"Clubs" means both ICC and the Sailing Club.

"Completion of the Amalgamation" means the day on which:

(a) the Final Order is granted and the Sailing Club's Liquor Licence is transferred to ICC;

(b) the Assets, Debts and Liabilities of the Sailing Club are transferred to ICC, as referred to in clause 16; and

(c) ICC takes over responsibility and control of the Sailing Club Premises.

"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.

"Co-operatives Act" means the *Co-operatives (Adoption of the National Law) Act* 2012.

"Corporations Act" means the *Corporations Act 2001 (Commonwealth)* and the Regulations made thereunder.

"Debts" means the accumulated debts of the Sailing Club.

"EBITDA" means earnings before interest, taxes, depreciation and amortisation.

"Final Order" means the final order pursuant to Section 60(8) of the *Liquor Act* by the Authority whereby the Sailing Club's Liquor Licence will be transferred to ICC.

"Gaming Machines Act" means the *Gaming Machines Act 2001 (NSW)* and the Regulations made thereunder.

"GST" means *Goods and Services Tax* under *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)* and the Regulations made thereunder.

"ICC's CEO" means the individual who is the Chief Executive Officer/Secretary of ICC.

"ICC Land" means the land owned by ICC upon which the ICC Premises are located.

"ICC Premises" means ICC's premises at:

(a) 2 Crofts Ave, Hurstville, New South Wales, 2220; and

(b) 44-60 Allison Cres, Menai NSW 2234.

"Liabilities" means all liabilities, losses, damages, outgoings, costs and expenses of the Sailing Club (whatever description).

"Liquor Act" means the *Liquor Act 2007 (NSW)* and the Regulations made thereunder.

"Liquor Licence" means the licence issued to a registered club under the *Liquor Act.*

"Maritime Lease" means the lease created by way of Deed between The Maritime Services Board of New South Wales and the Sailing Club dated 25 June 1970, and varied by way of Deed between The Maritime Services Board of New South Wales and the Sailing Club dated 2 May 1985 whereby an area of one hundred and fifty two (152) square metres fronting Cook Park, Dolls Point was demised to the Sailing Club for the use of the Sailing Club.

"Memorandum" means this Memorandum of Understanding.

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

"Party" means the respective management and Board of Directors of the Sailing Club and ICC.

"Perpetual Lease" means Crown Lease 1963/44 (Lease 76334) issued by the New South Wales Government including conditions contained in New South Wales Government Gazette dated 26 February 1965 with respect to the Sailing Club Premises.

"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 the Sailing Club in the conduct of the Sailing Club's business including but not limited to corporate accounting and statutory records.

"Registered Clubs Act" means the *Registered Clubs Act 1976 (NSW)* and the Regulations made thereunder.

"Regulations" means the Regulations to the *Registered Clubs Act.*

"Sailing Club Land" means the land that:

(d) contains the Sailing Club's Premises at Sanoni Avenue, Sandringham New South Wales 2219 comprising Lot 436 in Deposited Plan 752056 and which is occupied under the Perpetual Lease; and

(e) is occupied by the Sailing Club pursuant to the Maritime Lease; and

(f) is occupied by the Sailing Club pursuant to the Council Lease.

"Sailing Club's Chairperson" means the director of the Sailing Club who holds the office of President.

"Sailing Club's CEO" means the individual who is the Chief Executive Officer/Secretary of the Sailing Club.

"Sailing Club Premises" means the Sailing Club's premises at Sanoni Avenue, Dolls Point, New South Wales 2219.

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) 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 ICC and the Sailing Club agree to amalgamate in accordance with this Memorandum, the Registered Clubs Act, the Regulations, the Liquor Act, the Corporations Act and the Co-operatives Act.

2.2 ICC acknowledges that the Sailing Club is a co-operative and the Sailing Club is also required to comply with the requirements of the Co-operatives Act.

2.3 The amalgamation will be affected by the continuation of ICC and the dissolution of the Sailing Club.

2.4 The Amalgamation is intended to enhance the existing facilities and amenities of both Clubs.

2.5 The process for the amalgamation will be as follows:

(a) The clubs entering into this Memorandum.

(b) ICC, at its own expense, undertaking a due diligence review of the Sailing Club's financial position and operations.

(c) The Sailing Club, at its own expense, undertaking a due diligence review of ICC's financial position and operations.

(d) The members of the Sailing Club and ICC 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.

(e) The members of the Sailing Club will also be asked to approve the Sailing Club transferring its Assets to ICC in the manner referred to in clause 16 below and for this purpose, the Sailing Club will liaise with NSW Fair Trading in relation to the requirements for compliance with section 359 and Part 4.5 of the Co-operatives Act and the parties acknowledge and agree that the requirement to liaise and obtain approvals of the NSW Fair Trading can impact on the timeframes contained in this Memorandum and any timeframe specified in this Memorandum will be automatically extended as required to obtain the required approvals of NSW Fair Trading.

(f) The members of ICC will also be asked to approve (by special resolution) amendments to ICC's Constitution in the manner provided for in clause 13.7 to 13.8 inclusive below.

(g) Crown Lands will be asked to consent to the assignment of:

(i) the Perpetual Lease; and

(ii) the Maritime Lease,

from the Sailing Club to ICC.

(h) City of Bayside will be asked to consent to the assignment of the Council Lease from the Sailing Club to ICC.

(i) After the approvals in paragraphs (d) to (g)(i) inclusive have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 13.10 below.

(j) After the Amalgamation Application is granted:

(i) the Sailing Club's Assets, Debts and Liabilities will be transferred to ICC in the manner referred to in clause 16 below;

(ii) for the purposes of section 17AC (2) of the RCA, a separate class of

membership called "Sailing Club members" will be inserted into ICC's Constitution in accordance with the procedure set out in clause 13.7 below;

(iii) members of the Sailing Club who consent to be admitted as members of ICC shall be admitted as Sailing Club members in accordance with ICC's Constitution and this Memorandum; and

(iv) ICC will make offers of employment only to those employees of the Sailing Club it wishes to employ as provided for in clause 6 below.

(k) From Final Order, the Sailing Club Premises will become additional licensed premises of ICC and will be available to all members of the Amalgamated Club. The Sailing Club Premises will be operated in the manner set out in clauses 3, 4 and 5 below.

(l) After Completion of the Amalgamation:

(i) ICC will continue as the body corporate of the Amalgamated Club; and

(ii) the Sailing Club will be wound up in the manner referred to in clause 16 below.

2.6 Those persons who are Life members of the Sailing Club as at the date of this Memorandum will be so identified in the Amalgamated Club's records in respect of the Sailing Club Premises and in relation to the Amalgamated Club will not be required to pay an annual subscription.

2.7 Completion of this Memorandum will occur on the date on which all of the obligations of each of the parties to this Memorandum are completed (or, if not completed, waived).

2.8 The amalgamation will be subject to the approval of each Club's membership and the Authority.

3. THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE SAILING CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE SAILING CLUB PREMISES AND FACILITIES

[Regulations – Clause 7(2) (a)]

3.1 The Sailing Club premises and facilities will become additional premises of ICC.

3.2 As at the Completion of the Amalgamation, the Amalgamated Club will operate and trade from the ICC Club Premises and the Sailing Club Premises.

3.3 The Board of ICC will be the Board of the Amalgamated Club.

3.4 ICC will take over responsibility and control of the Sailing Club Premises (including the obligations under the Café Agreement dated 15 December 2017 with ENE Holdings Pty Ltd) with effect from Completion of the Amalgamation.

3.5 For the purposes of the Registered Clubs Act, ICC's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and will be responsible for ICC Premises and the Sailing Club Premises.

4. A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB

[Regulations – Clause 7(2) (b)]

4.1 The traditions, amenities, culture, facilities, activities and memorabilia of the Sailing Club will be maintained by the Amalgamated Club at the Sailing Club Premises. For the avoidance of doubt, the parties acknowledge and agree that the memorabilia of the Sailing Club may be displayed in its present form or in an electronic form.

4.2 The Amalgamated Club will continue to support the community that was supported by the Sailing Club (as at the date of this Memorandum) and it will explore opportunities to expand community support subject to the financial performance of the Sailing Club Premises.

5. INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB

[Regulations – Clause 7(2) (c)]

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

Amalgamated Club Premises

5.2 The Amalgamated Club will operate and trade from the ICC Club Premises and the Sailing Club Premises.

The Sailing Club Premises

5.3 The Sailing Club Premises will continue to trade as and be promoted as "Georges River 16ft Sailing Club". However, in consultation with the Sailing Operations Committee, the trading name of the Sailing Club Premises may change in the future provided that the origins of the Sailing Club continue to be recognised.

5.4 Subject to clauses 10 and 11, ICC intends to:

(a) immediately:

(i) make outstanding payments to trade creditors to bring them within ICC's trading terms (ie current) on the ageing analysis;

(ii) pay down the Australian Taxation Office (**ATO**) Debt (approximately two hundred and fifty thousand dollars ($250,000)) the subject of the Deed of Arrangement between the Sailing Club and the ATO;

(iii) pay all outstanding amounts for insurances critical to the continued operation of the Sailing Club Premises; and

(iv) reimburse St George Motor Boat Club Limited the unused portion of prepaid rental under the Catering Agreement and any other costs agreed between ICC and St George Motor Boat Club Limited.

(b) maintain the Sailing Club Premises and carry on the business of a licensed

registered club under the Registered Clubs Act and the Liquor Act at the Sailing Club Premises with all the facilities and amenities of a registered club; and

(c) operate the Sailing Club Premises as a successful and well supported local based sporting and community club;

(d) undertake necessary capital works at the Sailing Club Premises with the nature, budget and timeframe of the works to be determined by the Board of the Amalgamated Club in consultation with the Sailing Operations Committee;

(e) use its best endeavours to ensure that the Sailing Club Premises is the local venue of choice in Dolls Point and its surrounding areas;

(f) improve trading at the Sailing Club Premises;

(g) seek to enhance the services and social activities and undertake improvements to the amenities and facilities at the Sailing Club Premises in accordance with clause 5.5;

(h) maintain, and where possible, enhance the existing sailing activities at the Sailing Club Premises.

Sailing Club Premises Enhancements

5.5 Subject to obtaining all necessary permits, consents and authorities, ICC agrees to spend a minimum of ten million dollars ($10,000,000) over ten (10) years, including approximately five million dollars ($5,000,000) to undertake the following enhancements to the Sailing Club Premises amenities and facilities as follows:

Phase 1 – Fire Life Safety and Gaming Room Works - estimated cost of one million dollars ($1,000,000) (immediate)

(a) Bring Sailing Club Premises into compliance with the Building Code of Australia particularly with respect to fire life safety systems.

(b) Make application for twenty (20) additional gaming machine entitlements.

(c) Undertake works to relocate the gaming room to the rear of the Sailing Club Premises building and move snooker/pool further toward the beachside.

(d) Update of the existing forty three (43) gaming machines upon completion of the gaming room relocation works.

(e) All Information Technology and Operating Systems will be updated including Gaming, POS, Payroll, Accounting, Human Resources, Events, Food and Beverage and all "Software" will be aligned with ICC existing systems.

Phase 2 – Level One Works – estimated cost of four million dollars ($4,000,000) within the first eighteen (18) months (subject to relevant approvals)

(f) Seek to enhance the sense of arrival at the Sailing Club Premises by constructing a new reception area;

(g) Renew and upgrade kitchens;

(h) Create a feature balcony the length of the Sailing Club Premises building facing

the beach and Botany Bay;

(i) Create a large continuous bar/restaurant adjoining the feature balcony;

(j) Convert the current main bar area into a multi-use room through the installation and use of operable walls scalable to two (2) smaller rooms;

(k) Enhance and enlarge the bar, including a dedicated TAB area.

Sailing Operations Committee

5.6 ICC acknowledges that sailing operations are part of the "fabric" of the Sailing Club with its success paramount to the future image of the Sailing Club and the Amalgamated Club. ICC acknowledges that sailing operations is not in its expertise and agrees to establish a "self-governing body" to run the sailing operations. The Board of the ICC will create the Sailing Operations Committee for the above purpose.

5.7 The following shall apply in respect of the Sailing Operations Committee:

(a) The Sailing Operations Committee will initially be made up of the:

(i) Approved Manager of the Sailing Club Premises;

(ii) Commodore; and

(iii) Vice Commodore,

of the Sailing Club; and

(iv) Rear Commodore; and

(v) Club Captain,

of the Georges River Sailing Club Committee who, as at the date of Completion of the Amalgamation, have given written consent to ICC to be members of the Sailing Operations Committee (**First Sailing Operations Committee**);

(b) The First Sailing Operations Committee shall hold office until the first election of the Sailing Operations Committee. The first election of the Sailing Operations Committee will be held on or before the date of ICC's Annual General Meeting in 2023. The exact date of the first election of the Sailing Operations Committee will be determined by the Board of the Amalgamated Club;

(c) With effect from the first election of the Sailing Operations Committee, the Sailing Operations Committee will comprise of four (4) members being the Approved Manager of the Sailing Club Premises; and

(i) Vice Commodore;

(ii) Rear Commodore;

(iii) Club Captain,

of the Georges River Sailing Club Committee.

(d) The Sailing Operations Committee will elect its own Chairperson.

(e) The Sailing Operations Committee will meet at such intervals as may be determined by the management of Amalgamated Club from time to time.

(f) The Sailing Operations Committee may make recommendations to the Board and/or management of the Amalgamated Club regarding the following matters:

(i) the sailing operations of the Sailing Club; and

(ii) ClubGRANTS to be made by the Amalgamated Club that are attributable to the Sailing Club Premises;

(iii) membership matters relating to sailing at the Sailing Club Premises;

(iv) the operation of the sailing activities at the Sailing Club.

(g) The Sailing Operations Committee will not have any governance or management powers in the Amalgamated Club (except if specifically delegated to it by resolution of the Board) and it shall be subject to the overall control and direction of the Board and management of the Amalgamated Club.

(h) The Sailing Operations Committee will be required to provide reports to the Board of the Amalgamated Club.

(i) The Sailing Operations Committee shall be in force and effect for the term of this Memorandum

(j) ICC's CEO (or his delegate) shall be entitled to attend and participate in all meetings of the Sailing Operations Committee.

(k) The Board of ICC will adopt By-laws which give effect to the matters set out in this clause.

Sailing Activities

5.8 The Sailing Operations Committee's sailing activities will continue to enjoy and occupy similar, or improved amenities and premises to the Georges River Sailing Club.

5.9 The Amalgamated Club will with respect to the Georges River Sailing Club, allocate an amount of up to $*150*,000 per annum comprising a combination of:

(a) $50,000 cash; and

(b) up to $50,000 in corporate governance measures including:

(i) administrative support, which will be charged out on commercial terms.

(ii) fees payable for licenses and insurances applicable to sailing related activities;

(iii) fees payable to relevant associations in respect of the sailing activities;

(iv) trophies and prizes for sailing competitions and events; and

(v) costs associated with the maintenance and repair of sailing related

areas of the Sailing Club Premises.

(c) Subject to the annual provision of a capital expenditure plan by the Sailing Operations Committee, ICC will pay $50,000 into a capital account for capital expenditure on sailing equipment and activities as agreed between the Sailing Club's Chairperson and ICC's CEO, such agreement not to be unreasonably withheld by either party.

5.10 The Sailing Operations Committee will be at liberty to source further funding from parties interested in the Sailing Operations provided the source of any such funding does not conflict with the Amalgamated Club's values and vision as determined by the Amalgamated Club.

5.11 The Sailing Club and ICC acknowledge and agree that from time to time there may be occasions to support/fund events that the Amalgamated Club's various brands may benefit from (as an example, naming rights to a particular event or the like) and in those circumstances the Amalgamated Club and the Sailing Operations Committee will negotiate in good faith with a view to reaching a mutually acceptable arrangement.

5.12 Should the Sailing Operations Committee elect to establish a separate legal entity, this would be supported by ICC and the benefits outlined in the MOU would transfer.

Other Sub Clubs

5.13 ICC recognises the existence of the following additional sub-clubs of the Sailing Club:

(a) Snooker Club

(b) Golf Club; and

(c) Darts Club.

5.14 The Board of the Amalgamated Club will allow those sub-clubs to continue to exist and continue to enjoy similar amenities, subject to patronage and usage, provided all members of those sub clubs become members of ICC.

Project Control Group

5.15 ICC has invited a current Sailing Club board member to join ICC's Project Control Group. The intention is that the board member will have club experience and some history to contribute to the Project Control Group with respect to the Sailing Club. For this reason, it is intended that the Sailing Club's Chairperson become a member of the ICC Project Control Group.

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

[Regulations – Clause 7(2) (d)]

6.1 ICC will give each current employee of the Sailing Club (including the Sailing Club's CEO), a written offer of employment:

(a) on terms no less favourable than those provided by an applicable industrial instrument; and

(b) otherwise on those terms generally applicable to an employee in a similar role at ICC; or

(c) if there are no employees of ICC employed in a similar role, on the terms generally applicable to such role as ICC identifies for that employee within the Amalgamated Club,

(d) at least 10 Business Days prior to the anticipated date of Final Order.

6.2 The Sailing Club will terminate the employment of all its employees in writing, or accept their written resignation, on Completion of the Amalgamation.

6.3 ICC will use best endeavours to maintain the Sailing Club Premises as the primary place of work for all employees of the Sailing Club who accept an offer of employment from ICC. However, the Sailing Club acknowledges that this may change from time to time to accommodate the reasonable operational requirements of the business of the Amalgamated Club including requiring staff to work at the ICC Premises.

6.4 Any employee who accepts in writing an offer from ICC made under clause 6.1(a) will be employed by the Amalgamated Club on Completion of the Amalgamation on the terms of that offer, and that person's Employee Entitlements accrued with the Sailing Club up to and including Completion of the Amalgamation will be recognised by the Amalgamated Club.

6.5 If any employee of the Sailing Club does not accept an offer of employment from ICC in accordance with clause 6.5, then:

(a) that employee will be paid all accrued Employee Entitlements by the Sailing Club as at Completion of the Amalgamation, which will be the end date of that employee's employment by the Sailing Club;

(b) the Sailing Club must make all superannuation contributions it is obliged to make for that employee up to the date of Completion of the Amalgamation; and

(c) the Sailing Club will obtain written acknowledgment of receipt of such payments from that employee as at Completion of the Amalgamation.

6.6 Each employee of ICC will continue to be employed by the Amalgamated Club after Completion of the Amalgamation, subject to the terms and conditions of employment between each such employee and ICC.

7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE SAILING CLUB:

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

[Regulations – Clause 7(2) (e)]

Core Property

7.1 For the purposes of the Registered Clubs Act, the Sailing Club Premises is the "core property" of the Sailing Club.

7.2 ICC will retain the core property of the Sailing Club and operate the Amalgamated Club in the manner referred to in clause 5.

Cash and Investments

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

Poker Machine Entitlements

7.4 The Sailing Club has forty three (43) gaming machine entitlements.

7.5 The gaming machine entitlements held by the Sailing Club upon amalgamation will become an asset of the Amalgamated Club and will be transferred to the Amalgamated Club and will remain at the Sailing Club premises.

8. RISKS OF NOT PRESERVING SAILING CLUB'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED

Regulations – Clause 7(2) (E1)]

8.1 Subject to clauses 9, 10 and 11, the Amalgamated Club will not dispose of the core property of the Sailing Club during the first ten (10) years after Completion of the Amalgamation.

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

8.3 If the risks (or any of them) in clause 10.4 are realised during the first ten (10) years after the Completion of the Amalgamation, clause 8.1 and section 17AI of the Registered Clubs Act will prevent the Amalgamated Club from disposing the core property.

8.4 If the risks (or any of them) in clause 10.4 are realised after the first ten (10) years after Completion of the Amalgamation, the Amalgamated Club will use its best endeavours to identify sensible commercial options to address those risks so that the disposal of core property will be considered only after all sensible commercial options (if any) have been exhausted and provided the disposal is in accordance with the Registered Clubs Act.

9. DISPOSAL OF SAILING CLUB'S MAJOR ASSETS

[Regulations – Clause 7(2) (E2)]

9.1 For the purposes of the Registered Clubs Act, the Sailing Club Premises is the "core property" of the Sailing Club.

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

10. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE SAILING CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE SAILING CLUB

10.1 ICC does not intend to:

(a) cease trading from the Sailing Club Premises; or

(b) substantially change the objects of the Sailing Club Premises; or

(c) cease the sailing activities conducted at the Sailing Club Premises.

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

10.3 However, for the purposes of clause 7(2)(f) of the Regulations, ICC and the Sailing Club are required to agree to the matters set out in clause 10.4.

10.4 For the purposes of clause 7(2)(f) of the Regulations, ICC and the Sailing Club have agreed that the Amalgamated Club would either cease trading from, change the objects of or cease the activities at the Sailing Club Premises in the following circumstances:

(a) subject to clause 11, if the Sailing Club Premises are not financially viable and the Board of the Amalgamated Club decides not to continue to trade from or continue the activities at the Sailing Club Premises; or

(b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;

(c) upon the lawful order of any government authority;

(d) if the premises were destroyed or partially destroyed by fire, floods, storms etc and any insurance claim is not reasonably sufficient to fund the construction of a new Sailing Club Premises; or

(e) if the lessor of the Sailing Club Premises terminates the Perpetual Lease or does not agree to an assignment of the Perpetual Lease to the Amalgamated Club or an extension or renewal of the Perpetual Lease or the grant of a new lease to ICC with respect to the Sailing Club Premises.

10.5 For the purposes of clauses 10 and 11, the Sailing Club Premises will not be financially viable if the EBITDA for the Sailing Club Premises is not positive for four (4) consecutive quarters, with such EBITDA to be determined by an independent company auditor.

10.6 For the purposes of:

(a) clause 10.4(a), if the Amalgamated Club wishes to cease trading from Sailing Club Premises:

(i) the Amalgamated Club must engage a third party (which may not be the Amalgamated Club's auditor or accountant) to prepare a report on the EBITDA of the Sailing Club Premises; and

(ii) the Amalgamated Club can only cease trading from the Sailing Club Premises if the report (which is to be made available to all members of the Amalgamated Club) declares that the Sailing Club Premises did not

achieve a positive EBITDA in four (4) consecutive quarters.

(b) Clause 10.5:

(i) ***"quarter"*** means a period of three (3) months ending on 31 March, 30 June, 30 September or 31 December; and

(ii) the Amalgamated Club must not knowingly or wilfully do anything or omit doing anything which adversely impacts upon the Sailing Club Premises' ability to achieve a positive EBITDA.

11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM THE SAILING CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE SAILING CLUB PREMISES

[Regulations – Clause 7(2) (g)]

11.1 ICC does not intend to cease trading from the Sailing Club Premises. ICC intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 10.

11.2 The objects of ICC will become the objects of the Sailing Club with effect from Completion of the Amalgamation.

11.3 However, for the purposes of clause 7(2) (g) of the Regulations, ICC and the Sailing Club are required to agree to the matters set out in clause 11.4.

11.4 For the purposes of clause 7(2)(g) of the Regulations, ICC and the Sailing Club have agreed that the Amalgamated Club will continue:

(a) to trade from the Sailing Club Premises;

(b) the activities at the Sailing Club Premises (including sailing activities),

for as long as it remains financially viable but for at least ten (10) years, (except in the circumstances referred to in clauses 10.4(b) to (d) inclusive).

De-amalgamation

11.5 If the Amalgamated Club wishes to cease trading from the Sailing Club Premises under clause 10.4(a), the Amalgamated Club must first make an offer (**De-Amalgamation Offer)** to the Sailing Operations Committee (as representatives of the Sailing Club Premises) for a de-amalgamation between the Amalgamated Club and the Sailing Club Premises (**New the Sailing Club**) (**De-amalgamation**).

11.6 As part of the De-Amalgamation:

(a) the Sailing Club must satisfy the Amalgamated Club that:

(i) its constitution contains a winding-up clause requiring all surplus assets on the winding-up of the Sailing Club to be transferred to ICC to cover any capital work undertaken by the Amalgamated Club on the Sailing Club Premises; and

(ii) in the event that the Sailing Club proposes to enter into an

amalgamation with any other licensed club, the amalgamation agreement will contain a requirement that the amalgamation partner club must pay to ICC such amount required to cover any capital work undertaken by the Amalgamated Club on the Sailing Club Premises.

(b) the Amalgamated Club only needs to transfer the following assets to the Sailing Club:

(i) the club licence for the Sailing Club Premises;

(ii) the Perpetual Lease;

(iii) the Council Lease;

(iv) the Maritime Lease; and

(v) such number of gaming machine entitlements (not exceeding forty three (43)) held, at that time, by the Amalgamated Club in relation to the Sailing Club Premises and comparable gaming machines held at the Sailing Club Premises.

11.7 The Amalgamated Club can immediately cease trading from the Sailing Club Premises and not proceed with the De-amalgamation if:

(a) The Sailing Operations Committee does not accept De-amalgamation Offer within one (1) month of the date of the De-amalgamation Offer; or

(b) The Sailing Operations Committee and the Amalgamated Club do not enter into an agreement for the De-amalgamation on terms acceptable to the Amalgamated Club within three (3) months of the date of the De-amalgamation Offer;

(c) The members of the Amalgamated Club do not approve the De-amalgamation within six (6) months of the date of the De-amalgamation Offer;

(d) The members of the Sailing Club do not approve the De-amalgamation within six (6) months of the date of the De-amalgamation Offer;

(e) The Authority does not approve the De-amalgamation;

(f) The relevant government authority does not either:

(i) approve the transfer of the Perpetual Lease to ICC; or

(ii) enter into a new Perpetual Lease with the ICC for the Sailing Club Premises.

(g) The De-amalgamation is not completed within twelve (12) months of the date of the De-amalgamation Offer (or such longer period acceptable to the Amalgamated Club).

11.8 Notwithstanding anything contained in this Memorandum, the Amalgamated Club may at its cost temporarily cease trading from the Sailing Club Premises from the date of the De-amalgamation Offer until the completion of the proposed De-amalgamation.

12. BINDING EFFECT OF MEMORANDUM

12.1 ICC and the Sailing Club agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

13. CALLING OF MEETINGS AND ADMISSION OF SAILING CLUB MEMBERS TO MEMBERSHIP OF ICC

13.1 The Sailing Club will call a general meeting of the ordinary members of the Sailing Club for the purposes of considering and if thought fit passing a resolution approving in principle the Amalgamation in accordance with section 17AEB (d) of the *Registered Clubs Act*.

13.2 At the meeting referred to in clause 13.1, the Sailing Club may, with the consent of NSW Fair Trading, put other resolutions, including special resolutions, to the ordinary members of the Sailing Club, seeking approvals required under section 359, Part 4.5 and any other relevant section of the Co-Operatives Act.

13.3 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after receipt of the required approvals from NSW Fair Trading.

13.4 In addition to the resolution referred to in clause 13.1, the Sailing Club will, submit to the members at the clause 13.1meeting:

(a) A resolution to approve the disposal by way of transfer of all the Sailing Club's forty three (43) gaming machine entitlements to ICC; and

(b) A resolution declaring that the Sailing Club Premises as "non-core property" of the Sailing Club for the purposes of section 41E of the Registered Clubs Act.

13.5 Subject to the Sailing Club passing the resolutions referred to in clauses 13.1, 13.2 and 13.4, ICC will call a general meeting of the ordinary members of ICC 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 *Registered Clubs Act.*

13.6 The meeting referred to in clause 13.5 will be held as soon as reasonably practicable after the meeting referred to in clause 13.1.

13.7 In addition to the resolution referred to in clause 13.5, ICC will, at the meeting referred to in clause 13.5, submit to those members eligible to attend and vote, a special resolution to amend the Constitution of ICC so that:

(a) All members of the Sailing Club other than those that are already members of ICC who apply to become members of ICC will be admitted to membership of ICC;

(b) All members of the Sailing Club will be able to apply for membership of ICC in the manner referred to in paragraphs (c) to (e) inclusive of this clause 13.7;

(c) A member of the Sailing Club will not be required to be proposed or seconded for membership of ICC.

(d) As soon as practicable after the Order, ICC will forward to each member of the Sailing Club, who is not already a member of ICC a written invitation to become a member of ICC.

(e) Any member of the Sailing Club who accepts the invitation and agrees in writing to be bound by the Constitution of ICC will, subject to the Amalgamated Club's Constitution, be elected by a resolution of the Board of ICC to membership of ICC with effect from the date of Completion of the Amalgamation.

(f) the Sailing Club members who are admitted to membership of ICC will be identified as a separate class called the "Sailing Club Members" for identification purposes only.

(g) members of the Sailing Club who consent to be admitted as members of ICC shall for administrative purposes be identified as Sailing Club members but may make application to transfer to any other class of membership of ICC for which they hold the relevant qualifications.

13.8 In addition to the resolution referred to in clause 13.5, ICC will, at the meeting referred to in clause 13.5 submit to those members eligible to attend and vote a special resolution to provide that no former employee of and no contractor to the Sailing Club shall be eligible to nominate for or be elected to the Board of the Amalgamated Club for the later of four (4) years from the Completion of the Amalgamation or four (4) years from the date of their resignation from employment with the Sailing Club.

13.9 Notwithstanding anything contained in this Memorandum, any member of the Sailing Club who, at Completion of the Amalgamation, is then:

(a) refused admission to or being turned out of ICC Premises; or

(b) suspended from ICC;

(c) expelled from ICC;

shall only be entitled to attend at and use the facilities at the Sailing Club Premises and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at ICC Premises until such time as:

(a) the person is again permitted to enter ICC Premises; or

(b) the period of suspension has been served;

(c) the Board of the Amalgamated Club has overturned the person's expulsion from ICC or has readmitted the person to membership of ICC.

13.10 Notwithstanding anything contained in this Memorandum, any member of ICC who, at Completion of the Amalgamation, is then:

(a) refused admission to or being turned out of the Sailing Club Premises; or

(b) suspended from the Sailing Club;

(c) expelled from the Sailing Club;

shall only be entitled to attend at and use the facilities at the ICC Premises and, for the avoidance of doubt, shall not be entitled to attend at or use the facilities at the Sailing Club Premises until such time as:

(d) the person is again permitted to enter the Sailing Club Premises; or

(e) the period of suspension has been served;

(f) the Board of the Amalgamated Club has overturned the person's expulsion from the Sailing Club or has readmitted the person to membership of ICC.

14. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

14.1 As soon as reasonably practicable after the meetings referred to in clauses 13.1 and 13.5:

(a) the Sailing Club (in relation to the resolution required by clause 13.1) and ICC (in relation to the resolution required by clause 13.5) must forward to the lawyers for the Sailing Club the following documents:

(i) a true copy of the notice of the meeting at which the resolution was passed; and

(ii) a true copy of the minutes of the meeting which will include the number of members present at the meeting and whether or not the resolution was passed.

(b) ICC must forward to the lawyers for the Sailing Club a copy of the following documents:

(i) a true copy of the documents that were sent to the ICC members under clause 13.1; and

(ii) a true copy of the results of the special resolutions put to the members under clause 13.5.

14.2 The Sailing Club and its lawyers will prepare and file the Amalgamation Application. The Sailing Club will provide ICC with a copy of the Amalgamation Application.

14.3 ICC will co-operate with the Sailing Club and the lawyers for the Sailing Club and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application and will cause the ICC CEO to sign the Amalgamation Application if required to do so.

15. WARRANTIES AND OPERATIONAL ARRANGEMENTS

15.1 The Sailing Club warrants to ICC that from the date of this Memorandum to the date of Completion of the Amalgamation, the Sailing Club will:

(a) Carry on its business in the usual ordinary course and in a diligent manner and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of three thousand dollars ($3,000.00) plus GST without the prior approval of ICC's CEO or his delegate.

(b) Keep the Assets of the Sailing Club insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured.

(c) Carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain

and increase the value of the Assets.

(d) Ensure that the Sailing Club's CEO has regular discussions with ICC's CEO regarding the management and operations of the Sailing Club with the object of:

(i) providing for an orderly transfer of the management and operations of the Sailing Club to ICC on the date of Completion of the Amalgamation; and

(ii) reducing losses, increasing profitability and achieving efficiencies and cost savings at the Sailing Club.

(e) Provide ICC CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of the Sailing Club.

(f) Not do anything which may damage the goodwill of its business or that of ICC.

(g) Not without the prior written consent of ICC:

(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) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;

(iii) otherwise than in the usual and routine conduct of its operations, dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of the Sailing Club's Assets;

(iv) employ any employee (other than a genuine casual employee);

(v) terminate the employment of any employee (other than a genuine casual employee);

(vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;

(vii) seek to borrow or borrow money from any third party except from ICC;

(viii) increase the level of debt of the Sailing Club beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of the Sailing Club or as a result of borrowings from ICC; or

(ix) engage in discussions or negotiations with anyone other than ICC concerning a possible amalgamation and/or the sale of all or any part of the Sailing Club's Assets (otherwise than as permitted under (iii) above), and the Sailing Club must advise ICC of any solicitation by any third party in respect of any such discussion or negotiation.

15.2 Each of the Sailing Club's warranties contained in clause 15.1 remain in full force and effect notwithstanding Completion of the Amalgamation.

15.3 As an inducement to the Sailing Club to enter into this Memorandum, ICC represents and warrants as essential conditions that:

(i) ICC is a company duly incorporated under the provisions of the Corporations Act 2001 Cth in good standing with the Australian Securities and Investment Commission;

(ii) except as expressly stated in this Memorandum, no other corporate act or proceeding on the part of ICC or its members or directors is necessary to authorise this Memorandum or the transactions contemplated;

(iii) neither the signing of this Memorandum nor the consummation of the proposed Amalgamation will conflict with or constitute a default under any term or provision of the Constitution of ICC or of any agreement, arrangement, commitment, understanding or restriction of any kind to which ICC is a party or by which ICC is bound nor any law;

(iv) there are no Claims (for amounts in aggregate in excess of $50,000) or investigations pending or threatened by or against ICC of any nature;

(v) ICC has prior to the date of this Memorandum disclosed to the Sailing Club, in writing, everything that might reasonably be material to the decision by the members of the Sailing Club whether or not to approve of the proposed Amalgamation in principle;

(vi) ICC is in a position from its own financial resources to assist the Sailing Club to meet its financial obligations (all of which have been disclosed to ICC) and will upon request from the Sailing Club provide all reasonably requested financial assistance requested by the Sailing Club and ICC needs no finance or approval from any financier or other third party to provide such financial assistance to the Sailing Club;

(vii) ICC is in a position from its own financial resources to consummate the proposed Amalgamation on the terms set out in this Memorandum.

15.4 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, ICC 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 the Sailing Club's warranties set out in clause 15.1.

15.5 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, the Sailing Club 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 ICC's warranties set out in clause 15.3.

15.6 If, before Final Order, in relation to either of the Clubs (the subject Club):

(a) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;

(b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;

(c) any Claim of any nature is threatened or asserted by or against the subject Club; or

(d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,

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

15.7 Title to, property in and risk of the Sailing Club's Assets remain solely with the Sailing Club until such time as they are passed to the Amalgamated Club in accordance with clause 16.

15.8 For the avoidance of doubt, it is acknowledged that no liability is accepted or will exist for any breach of a warranty in the absence of actual knowledge by the relevant club.

15.9 Subject to the Sailing Club complying with clauses 15.1 and 15.5, ICC warrants to the Sailing Club that from the date the Assets of the Sailing Club are transferred to ICC, ICC will:

(a) accept full responsibility for the Sailing Club's Debts and Liabilities; and

(b) indemnify and keep indemnified the directors of the Sailing Club in respect of any Claims made against them by creditors of the Sailing Club.

15.10 Subject to clause 15.11 and the Sailing Club complying with clause 15.1 and 15.5, ICC warrants to the Sailing Club that, provided the members of the Sailing Club pass the ordinary resolutions referred to in clauses 13.1 and 13.4 and approve the special resolutions referred to in clause 13.2, and the members of ICC pass the resolutions referred to in clauses 13.5, 13.7, 13.8, ICC will provide to the Sailing Club such reasonable financial assistance (in accordance with clause 15.11) as is required to assist the Sailing Club to remain solvent until Completion of the Amalgamation or termination of this Memorandum (whichever is the earlier).

15.11 Any financial assistance referred to in clause 15.10 will be subject to the following:

(a) the Clubs entering into appropriate loan and security documents ("**Loan Agreement**") on terms and conditions satisfactory to ICC; and

(b) if this Memorandum is terminated (and the Amalgamation is not completed):

(i) the monies loaned under the Loan Agreement plus interest will be repaid in accordance with the Loan Agreement; and

(ii) interest will be charged at rates as agreed (or failing agreement 5%) and will be calculated from the date of the Loan Agreement until repayment;

(iii) in default thereof, ICC may deal with any security provided by the Sailing Club in accordance with the Loan Agreement.

16. DISSOLUTION OF THE SAILING CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO SAILING CLUB

16.1 As soon as practicable after the Order, but subject to the Final Order, the Sailing Club must ensure the Assets, Debts and Liabilities of the Sailing Club are transferred to ICC (less an amount sufficient for the purposes of liquidating the Sailing Club in the manner referred to in clause 16.5).

16.2 The parties acknowledge that it is proposed for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order.

16.3 For the purposes of clause 16.1, the Sailing Club must do all things necessary and execute all documents to cause all of the Assets of the Sailing Club to be transferred to or assigned to ICC with effect from the date of Final Order. Such transfers and assignments will without limitation be in respect of:

(a) all real property;

(b) all poker machines and all poker machine entitlements;

(c) all contract rights including hire purchase agreements;

(d) all intellectual property rights; and

(e) all physical assets, furniture and fittings and stock in trade,

owned or entered into by the Sailing Club.

16.4 The transfers and assignments referred to in clause 16.3 must be executed by the Sailing Club and held in escrow by ICC pending Completion of the Amalgamation.

16.5 As soon as practicable after Completion of the Amalgamation, the Sailing Club must ensure the Sailing Club is wound up.

17. ACCESS TO RECORDS

17.1 From the date of this Memorandum:

(a) For the purpose of any due diligence referred to in clause 2.5(b), the Sailing Club will, if required, provide information (including but not limited to, details of all their Assets, Debts and Liabilities) and assistance to ICC in order for ICC to properly carry out and complete the due diligence review.

(b) For the purposes of the due diligence referred to in clause 2.5(c), ICC will, if required, provide information (including, but not limited to, details of all their Assets, Debts and Liabilities) and assistance to the Sailing Club in order for the Sailing Club to properly carry out and complete the due diligence review.

(c) The Sailing Club will provide to ICC at all reasonable times access to the Sailing Club's Premises, Records and other information and material reasonably required by ICC.

18. CONFIDENTIALITY

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

Confidential Information.

18.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.

18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.

18.4 This clause 18 survives completion of this Memorandum.

19. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

19.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.

19.2 A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.

19.3 On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.

19.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 19.2 or any extended period agreed in writing between the parties as to:

(a) the dispute resolution technique or procedures to be adopted;

(b) the timetable for steps in those procedures; and

(c) the selection and compensation of an independent person required for such dispute resolution technique or procedures,

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

19.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 19.2 a party which has complied with the provisions of this clause 19 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.

19.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 19 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

20. COSTS

20.1 Each party shall pay its own costs of and in relation to the preparation, execution and

completion of this Memorandum.

21. STAMP DUTY

21.1 The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.

21.2 Despite the exemption from duty referred to in clause 21.1 the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by ICC.

22. GENERAL

22.1 This Memorandum constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.

22.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.

22.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.

22.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.

22.5 Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.

22.6 Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.

22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales and any Court hearing appeals from those Courts.

23. TERMINATION

23.1 ICC may terminate this Memorandum at any time, without penalty, by giving written notice to the Sailing Club if:

(a) the due diligence review undertaken by it on the Sailing Club (as referred to in clause 2.5(b)) is not satisfactory to the Board of ICC (the Board of ICC can waive this requirement at any time);

(b) the Sailing Club breaches any warranty contained in clause 15; and

(c) the circumstances in clause 15.5 exist in relation to the Sailing Club.

23.2 The Sailing Club may terminate this Memorandum at any time, without penalty, by

giving written notice to ICC if:

(a) the due diligence review undertaken by it on ICC (as referred to in clause 2.5(c)) is not satisfactory to the Board of the Sailing Club. The Board of the Sailing Club can waive this requirement at any time; or

(b) the circumstances in clause 15.5 exist in relation to ICC.

23.3 If:

(a) the members of the Sailing Club have not passed the resolutions referred to in clauses 13.1, 13.2 and 13.4 within six (6) months of the date of this Memorandum; or

(b) the members of ICC do not pass the resolutions referred to in clauses 13.5, 13.7and 13.8 within six (6) months of the members of the Sailing Club passing the resolutions referred to in clause 13.1, 13.2 and 13.4,

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

23.4 Notwithstanding anything contained in this Memorandum, if Final Order has not occurred within twelve (12) months of the date of this Memorandum or such other later date agreed by the parties, then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

23.5 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within twelve (12) months of the date of Final Order or such other later date agreed by the parties, then either party by giving written notice to the other may, without penalty, terminate this Memorandum.

23.6 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.

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

24. NOTICES

24.1 A notice to be given by one club to the other pursuant to this Memorandum must be:

(a) in writing;

(b) directed to the recipient's address specified in this Memorandum or as varied by written notice; and

(c) left at, or sent by pre-paid registered post, hand delivery or by email to that address.

24.2 A notice given in accordance with subparagraphs 24.1(a), 24.1(b), 24.1(c) of paragraph 24.1 will be deemed to be duly given:

(a) on the day of delivery;

(b) two days after the date of posting by pre-paid post; or

(c) if sent by email between 9.00am and 4.00pm on a Business Day, one (1) hour after it is sent or if sent at any other time, at 9.00am on the next Business Day,

as the case may be.

25. COUNTERPARTS

25.1 This Memorandum may be executed in any number of counterparts each signed by one or more parties. Each counterpart when so executed is deemed to be an original and all such counterparts taken together constitute one document and the date of this Memorandum will be the date on which a counterpart is executed by the last party.

25.2 The exchange of executed counterparts by email will create a binding agreement. The parties are to provide an original copy of the executed counterparts within fourteen (14) days of any such exchange.

26. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

26.1 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.

27. WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT

27.1 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.

28. NOTES

28.1 This Memorandum is to be:

(a) Made available to the ordinary members of the Sailing Club and ICC 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 (if the club has a website) 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 the Sailing Club to ICC.

Executed by **Illawarra Catholic Club Limited (ACN 000 361 660)** pursuant to Section 127 of the Corporations Act 2001)

Director / Secretary

Phillip Stanton.

Name of Director/Secretary
(print name)

Director / Secretary

PAUL RICHARDSON

Name of Director/Secretary
(print name)

Executed by **Georges River 16ft Sailing Club Co-Op Ltd (ABN 90 738 525 905)** pursuant to Section 49 of Cooperatives (Adoption of National Law) Act 2012)

Director / Secretary

Name of Director/Secretary
(print name)

Director / Secretary

Name of Director/Secretary
(print name)