

DATED: 13/04/24

PARTIES:

THE COOTAMUNDRA COUNTRY CLUB LTD  
ACN 000 999 379

AND

WYONG RUGBY LEAGUE CLUB LTD  
ACN 000 834 908

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is made on

2024

**BETWEEN :**

**The Cootamundra Country Club Ltd ACN 000 999 379** of 94 Hurley St, Cootamundra NSW 2590 ("**Cootamundra**")

**AND**

**Wyong Rugby League Club Ltd ACN 000 834 908** of Lakehaven Drive, Kanwal in the State of New South Wales ("**Wyong**")

**BACKGROUND**

- A. On 15 November 2022, Wyong, being the proponent Club, published, by way of Clubs NSW Circular (Circular No: 22-177) published on 15 November 2022, an expression of interest seeking an amalgamation.
- B. Cootamundra submitted an expression of interest for amalgamation with Wyong on 12 June 2023. Cootamundra is 462 kilometres from Wyong.
- C. Wyong accepted the expression of interest from Cootamundra and, following further negotiations, Wyong and Cootamundra have agreed to the terms set out in this Memorandum.
- D. Cootamundra operates the Cootamundra Country Club from the Cootamundra Premises.
- F. The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding and to deal with, or include, the matters contained in clauses 2 to 11 inclusive below. However, there are other matters of importance to the Clubs that are also included in this Memorandum.
- G. Wyong and Cootamundra 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:

**"Amalgamation"** means the amalgamation of the Clubs in accordance with this Memorandum, the RCA, the Liquor Act and the Corporations Act.

**"Amalgamation Application"** means the provisional application for the transfer of the Cootamundra Liquor Licence to Wyong pursuant to Sections 60(6) and (7) of the Liquor Act.

**"Amalgamated Club"** means the amalgamated registered club of Cootamundra and Wyong, the corporate vehicle of which will be Wyong.

**"Assets"** means the Cootamundra Premises, and all of the goodwill, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines, cash at bank and cash on hand belonging to Cootamundra and located at the Cootamundra Premises.

**"Authority"** means the Independent Liquor & Gaming Authority.

**"Borrower"** has the same meaning as Cootamundra.

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in Sydney, New South Wales are open for business.

**"Claim"** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature which the Clubs become aware of prior to the Completion of the Amalgamation.

**"Clubs"** means both Cootamundra and Wyong.

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

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

- (a) the Final Order is granted and the Cootamundra Liquor Licences are transferred to Wyong;
- (b) the Assets, Debts and Liabilities of Cootamundra are transferred to Wyong, as referred to in clause 16;
- (c) Wyong takes over responsibility and control of the Cootamundra Premises; and
- (d) Control of the Land is assigned or transferred to Wyong.

**"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 and information relating to employees of a party.

**"Cootamundra Liquor Licence"** means the Club Licence (No: LIQC300236803).

**"Cootamundra Premises"** means the building comprising the licensed premises of the Cootamundra Country Club located on the Land and known as 94 Hurley St, Cootamundra NSW 2590, including all improvements thereon.

**"Corporations Act"** means the *Corporations Act 2001 (Cth)* and its Regulations.

**"Debts"** means the accumulated debts of Cootamundra at the time of Completion of the Amalgamation.

**"Disposition", "Disposal" or "Dispose"** means the sale, transfer, licence, lease,

or other disposition (including a sale and leaseback) of any property or asset (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, or any notes, or accounts receivable or any rights and claims associated herewith relating to the Land.

**"Final Order"** means the final order pursuant to Section 60(8) of the *Liquor Act* by the Authority whereby the Cootamundra Liquor Licences will be transferred to Wyong.

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

**"Golf Pro"** means Graeme Cheshire of 41 Centenary Avenue, Cootamundra NSW.

**"GST"** means *Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and its Regulations.

**"Land"** means the land comprising Lot 106 in Deposited Plan 1228944 (Folio: 106/1228944) on which is constructed the Cootamundra Premises, and the land comprising Lot 505 in Deposited Plan 753601 (Folio: 505/753601) the subject of the Lease but excludes the Non-Core Property.

**"Lender"** has the same meaning as Wyong.

**"Lease"** means Special Lease 1985/1 Cootamundra granted to Cootamundra for Lot 505 in Deposited Plan 753601 (Folio 505/753601) which expires on 31 December 2024.

**"Liabilities"** means all liabilities, losses, damages, outgoing, costs and expenses of Cootamundra (by whatever description) at Completion of the Amalgamation.

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

**"Member Loans"** means the unsecured/non-recourse loans given by specific members of Cootamundra to Cootamundra, the details of which have previously been provided to Wyong and agreed between Wyong and Cootamundra.

**"Memorandum"** means this Memorandum of Understanding.

**"Non-Core Property"** means the land (including all property rights attached to such land) of the Club situated:

- along Poole Street, Cootamundra and zoned Residential, being approximately three point seven (3.7) acres of grassland;
- along Hurley Street, Cootamundra and zoned Residential, being approximately two and half (2.5) acres of grassland,

which was declared by the members of Cootamundra at the Annual General Meeting of Cootamundra held on 24 October 2023, to be non-core property for the purposes of section 41E of the RCA.

- at the end of Poole Street stretching around the top side of the 4th hole, being approximately fifteen (15) acres of bushland shown shaded in yellow on the map attached to this MOU,

which was declared by the members of Cootamundra at a General Meeting of Cootamundra held on 29 January 2022, to be non-core property for the purposes of section 41E of the RCA.

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

**"Party"** means Cootamundra and/or Wyong as the context permits.

**"Records"** means all original and copy records, sales brochures and catalogues, lists of members, lists of suppliers, contracts, documents, books, files, accounts, plans and correspondence belonging to or used by Cootamundra in the conduct of Cootamundra 's business including but not limited to corporate accounting and statutory records.

**"Regulations"** means the Regulations to the RCA.

**"RCA"** means the *Registered Clubs Act 1976 (NSW)* and its Regulations.

**"Stock"** means all liquor located in the Cootamundra Premises.

**"Wyong Club's CEO"** means the individual who fulfils the Approved Secretary role at Wyong.

**"Wyong Premises"** means Wyong premises at Kanwal, New South Wales (being its principal premises) and all other premises in respect of which Wyong holds a Club Liquor Licence.

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 The Amalgamation will be effected by the continuation of Wyong and the eventual dissolution of Cootamundra.
- 2.2 The Amalgamation is intended to enhance the existing facilities and amenities of both clubs. The Amalgamation is also intended to:
  - (a) ensure the continuity of the Cootamundra Premises as premises of a registered club;
  - (b) ensure the history and traditions of the Cootamundra Premises continue after the Amalgamation;
  - (c) continue and enhance support for the local community from the activities and trading of the Cootamundra Premises;
  - (d) ensure the continuity and improvement of the Cootamundra Premises;
  - (e) operate a profitable business from the Cootamundra Premises for the benefit of the members of the Amalgamated Club and the community of Cootamundra; and
  - (f) preserve the social facilities of the Cootamundra Premises, and the golfing facilities of the Cootamundra Premises in the manner set out in this Memorandum.
- 2.3 The process for the Amalgamation will be as follows:
  - (a) The Parties enter into this Memorandum.
  - (b) The members of Cootamundra and Wyong will be asked to:
    - (i) approve the Amalgamation; and
    - (ii) approve the clubs making the Amalgamation Application, at separate meetings of the ordinary members and life members of Wyong, and the honorary life members, ordinary members, associate members and junior golf members ("Full Members") of Cootamundra. These meetings will be called and held in the manner referred to in clause

13 below.

- (c) After the approvals in subparagraph (b) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner provided for in clause 14 below.
- (d) After the Amalgamation Application is approved by the Authority:
  - (i) all members of Cootamundra will be invited to become members of Wyong and if they accept the invitation and become members of Wyong, will be identified as a separate class of membership called "Members of the dissolved Cootamundra Golf Club Ltd" with effect from the date of Completion of the Amalgamation. This will occur in accordance with the procedure set out in clause 13 below; and
  - (ii) subject to clause 6.3, all employees of Cootamundra will be offered employment on the same terms as they would have in equivalent positions at Wyong. Their employment with Wyong will take effect from the date of Completion of the Amalgamation with Wyong, and if they accept the offer of employment, they will be employed by Wyong. This offer of employment will be made in accordance with the procedure set out in clause 6 below.
- (e) On Completion of the Amalgamation:
  - (i) All of the Assets, Debts and Liabilities of Cootamundra and the Land will be transferred to Wyong in accordance with clause 16.
  - (ii) All members of Cootamundra who have accepted the invitation to become members of Wyong will become members of Wyong.
  - (iii) All employees of Cootamundra who have accepted employment with Wyong will become employees of Wyong.
- (f) From Completion of the Amalgamation the premises of the Amalgamated Club will be available to all members of the Amalgamated Club and the Cootamundra Premises will be operated in the manner set out in clauses 3, 4 and 5 below.
- (g) After Completion of the Amalgamation, Wyong will continue as the body corporate of the Amalgamated Club.
- (h) Wyong agrees to repay all Member Loans in full within fourteen (14) days after Completion of the Amalgamation.
- (i) Cootamundra owns the land contained in Lot 106 in Deposited Plan 753601, and occupies the land in the Lease, subject to the terms of the Lease.

#### **Due Diligence**

- 2.4 Cootamundra may, at its own expense, undertake a due diligence review of Wyong's financial position.

- 2.5 Wyong may, at its own expense, undertake a due diligence review of Cootamundra's financial position and operations.
- 2.6 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 COOTAMUNDRA WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF COOTAMUNDRA PREMISES AND FACILITIES [Regulations - Clause 7(2)(a)]**

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- 3.1 Cootamundra Premises and facilities and facilities will become premises of the Amalgamated Club.
- 3.2 The Amalgamated Club will operate from twelve (12) premises being;
- (a) Cootamundra Premises;
  - (b) Blackhead Bowling Club;
  - (c) Woolgoolga RSL Club;
  - (d) Woolgoolga Golf Club;
  - (e) Wyong Rugby League Club;
  - (f) Wallarah Bay Recreation Club;
  - (g) Wyong Bowling Club;
  - (h) Budgewoi Soccer Club;
  - (i) Canton Beach Sports Club;
  - (j) Goulburn Railway Bowling Club;
  - (k) Avoca Beach Bowling & Recreation Club; and
  - (l) Bateau Bay Bowling Club.
- 3.3 For the purposes of the RCA, Wyong Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and Wyong will appoint an Approved Manager to the Cootamundra Premises pursuant to section 66 of the Liquor Act
- 3.4 The Board of Wyong will be the Board of the Amalgamated Club.
- Golf Activities**
- 3.5 Wyong will:



- (a) retain the structure and operations of the men's and women's golf committees as presently existing in the Cootamundra Premises;
- (b) allow all tee signage sponsorship fees to be retained by the relevant golf committee;
- (c) retain the Golf Pro and facilities and a shop for the Golf Pro:
  - subject to the terms of the agreement between Cootamundra and the Golf Pro; or
  - on the terms of a new agreement between Wyong and Golf Pro, such terms not to be any less favourable than the terms of the agreement between Cootamundra and the Golf Pro.
- (d) ensure that:
  - if the term of the Lease is extended or renewed – maintain an 18 hole minimum par 71 golf course for the term of the Lease;
  - if the term of the Lease is not extended or renewed – maintain an 18 hole golf course for at least ten (10) years from Completion of the Amalgamation; and
- (e) actively encourage and promote the game of golf to the local community.

#### **Bowling/Croquet Activities**

3.6 Wyong will:

- (a) ensure that at least one (1) bowling green and croquet green are retained for a minimum of ten (10) years from Completion of the Amalgamation; and
- (b) actively encourage and promote the games of bowls and croquet to the local community.

#### **Sub Clubs**

- 3.7 It is intended that Wyong will retain all of the existing Cootamundra sub-clubs. Each sub-club will have their own rules, committees and members and be authorised to operate a bank account. They will elect their own committees and be responsible for conducting the sub-clubs.
- 3.8 The Amalgamated Club will allocate funds to each sub-club in such amount as determined by the Board of the Amalgamated Club acting reasonably, provided that such amounts will not be less than those provided by Cootamundra at the date of this Memorandum) subject to the relevant sub-club providing an annual budget to the Board of the Amalgamated Club. The budget will cover all relevant insurances, trophies and prizes.

#### **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 From Completion of the Amalgamation, Wyong will:
- (a) maintain memorabilia on display on Completion of the Amalgamation at the Cootamundra Premises, including honour boards and references to the Cootamundra Premises being established in 1895, will be retained and continued to be displayed for as long as the Amalgamated Club trades from the Cootamundra Premises whether in the current form or in digital form; and
  - (b) continue to celebrate major anniversaries of Cootamundra once every ten (10) years, including the upcoming 130 Year celebration and it will provide support (financial and otherwise) for such celebrations (for example holding functions and other similar events).
- 4.2 Continue the same, or provide a greater amount, of support and sponsorship to community, social and sporting groups in the local community of the Cootamundra Premises as set out in Schedule 5.
- 4.3 Wyong agrees to commit to providing donations, grants and support to the Cootamundra community in kind and in amounts not less than the average of those provided to the community by Cootamundra over the three (3) years preceding the date of this Memorandum.
- 4.4 Wyong will use its best endeavours to establish funding relationships between local sporting and community groups and the amalgamated Club that are aligned to Wyong's sporting goals and the Roo's Foundation principles.

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 overall general strategic plan of the Amalgamated Club and its finances. However, it is the intention of Wyong to operate the Amalgamated Club and the Cootamundra Premises in accordance with this clause 5.
- 5.2 Wyong will operate the Amalgamated Club from its premises in Cootamundra subject to clause 5.3(b).
- 5.3 Wyong will:
- (a) Maintain the Cootamundra Premises and carry on the business of a licensed registered club under the RCA and Liquor Act at the Cootamundra Premises with all facilities and amenities of a registered club; and
  - (b) Appoint a manager to each of the premises pursuant to section 66(2) of the *Liquor Act 2007* who will be responsible for the day-to-day operations of Cootamundra Premises, and a venue manager to oversee both premises.
  - (c) Use its best endeavours to operate the Cootamundra Premises profitably, provide golfing, croquet and bowling facilities and to grow the business of

the Cootamundra Premises.

- 5.4 Wyong commits to Cootamundra that Wyong will undertake capital works on the Cootamundra Premises to not less than a cost of \$2 million over the three (3) years commencing from the date of Completion of the Amalgamation.

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 The employment of all employees with Cootamundra will come to an end on the date of Completion of the Amalgamation.
- 6.2 Prior to Completion of the Amalgamation and subject to clause 6.3, Wyong will offer employment to all of employees of Cootamundra on the same terms and conditions presently offered by Wyong to its employees. Where a Cootamundra employee substantially performs duties not currently performed by an employee of Wyong, that Cootamundra employee will be offered employment on the terms and conditions required by the relevant Award or other industrial instrument for those duties.
- 6.3 In the event that an employee of Cootamundra is paid a higher hourly rate or salary than that paid by Wyong for substantially the same duties, Wyong agrees to offer the hourly rate or salary paid by Cootamundra to the employee, and maintain that remuneration until the relevant award or industry instrument exceeds the amount offered.
- 6.4 Wyong hereby assures any employee of Cootamundra who accepts the offer of employment with Wyong will receive continuity of employment and their accrued entitlements as employees of Cootamundra will be transferred to and honoured by Wyong.
- 6.5 Any employee of Cootamundra who does not accept the offer of employment with Wyong will be paid their full entitlements by Cootamundra when the employment of that employee at the Cootamundra Premises comes to an end which will be on or before Completion of the Amalgamation.

7. **INTENTIONS REGARDING THE FOLLOWING ASSETS OF COOTAMUNDRA:**

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

**[Regulations - Clause 7(2)(e)]**

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**Core Property**

- 7.1 "Core Property of Cootamundra" means, for the purposes of the RCA, the Land and the Cootamundra Premises, but excluding the Non-Core Property or any other part of the Land that has been declared, by resolution of the members of Cootamundra to be non-core property on or before the date of this Memorandum.

- 7.2 Wyong intends to retain the Core Property of Cootamundra 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 Cootamundra in respect of the Cootamundra Premises will be transferred (in accordance with clause 16) at face value to the general reserves of the Amalgamated Club.

**Gaming machine entitlements**

- 7.4 Wyong intends to review the gaming machine entitlements at the Cootamundra Premises and determine the appropriate number required at the Cootamundra Premises which shall not be less than twelve (12) gaming machine entitlements and gaming machines. If, as part of the review, Wyong determines that the Cootamundra Premises requires more gaming machine entitlements, Wyong intends to adjust the number of gaming machine entitlements accordingly.

**8. THE RISKS OF NOT MEETING ANY SPECIFIED INTENTIONS REGARDING THE PRESERVATION OF THE CORE PROPERTY OF THE DISSOLVED CLUB AND HOW THOSE RISKS ARE TO BE ADDRESSED IF REALISED [Regulations clause 7(2)(e1)]**

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- 8.1 The risks of the Amalgamated Club not meeting the intentions to preserve the core property of Cootamundra include that:
- (a) The only core property of Cootamundra is the Cootamundra Premises; and
  - (b) If the Cootamundra Premises are disposed of, then the ability to use those premises as a registered club will cease.

- 8.2 The likelihood that the risks outlined in clause 8.1 will be realised are mitigated because of the restrictions on disposal of the Major Assets of Cootamundra in the RCA and the additional restrictions set out in clause 10 and 11.2 of this Memorandum.

**9. ANY AGREEMENT UNDER SECTION 17AI(1) OF THE ACT RELATING TO THE PERIOD DURING WHICH THE MAJOR ASSETS OF COOTAMUNDRA MUST NOT BE DISPOSED OF [Regulations clause 7(2)(e2)]**

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- 9.1 The Amalgamated Club may not dispose of the Major Assets of Cootamundra except in accordance with clause 10 and 11.2 of this Memorandum.

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

## COOTAMUNDRA [Regulations - Clause 7(2)(f)]

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- 10.1 Wyong has no intention of ceasing to trade from the Cootamundra Premises.
- 10.2 Wyong intends to operate the Amalgamated Club in the manner referred to in clause 5.
- 10.3 For the purposes of clause 7(2)(f) of the Regulations, Wyong and Cootamundra agree that the Amalgamated Club may cease trading from the Cootamundra Premises in the following circumstances:
- (a) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs that trading cease;
  - (b) upon the lawful order of any government authority that trading cease;
  - (c) if the Cootamundra Premises are destroyed or partially destroyed by fire, flood, storm or other similar event, except where appropriate insurance cover is available to reinstate the Cootamundra Premises or if it is otherwise economically viable to do so; or
  - (d) if, it is not financially viable (as defined in clause 10.5) for the Amalgamated Club to continue to trade from, the Cootamundra Premises.
- 10.4 Pursuant to the Amalgamation the objects of Cootamundra are replaced by the objects of Wyong.
- 10.5 For the purposes of clauses 10 and 11 and subject to clause 10.6 below, the Cootamundra Premises will not be financially viable if, in any two (2) consecutive years the EBITDARD percentage for the Cootamundra Premises is ten per cent (10%) or less in each year with such EBITDARD percentage to be determined by an independent company auditor (**the Minimum EBITDARD**).
- 10.6 For the purposes of clauses 10.3(d) and 10.5:
- (a) Wyong must prepare separate financial reports for the Cootamundra Premises.
  - (b) Wyong must not knowingly or wilfully do anything or omit doing anything which adversely impacts upon the Cootamundra Premises' ability to achieve the Minimum EBITDARD.
  - (c) If Wyong wishes to cease trading from the Cootamundra Premises:
    - (i) Wyong must engage an independent company auditor (and not Wyong's auditor or accountant) to prepare a report on the EBITDARD of the Cootamundra Premises; and
    - (ii) Wyong can only cease trading from the Cootamundra Premises if the report (which is to be made publicly available) declares that the Cootamundra Premises did not achieve the Minimum EBITDARD in two (2) consecutive years.
- 10.7

**11. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB IS PERMITTED TO CEASE TRADING FROM COOTAMUNDRA PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF COOTAMUNDRA PREMISES [Regulations - Clause 7(2)(g)]**

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- 11.1 Wyong does not intend to cease trading from the Cootamundra Premises.
- 11.2 Wyong intends to operate the Amalgamated Club in the manner referred to in clause 5 for a minimum of ten (10) years from the Completion of the Amalgamation and would only cease to do so in the circumstances referred to in clause 10.
- 11.3 For the purposes of clause 7(2)(g) of the Regulations, Wyong and Cootamundra have agreed that the Amalgamated Club will continue to trade from Cootamundra Premises and that the objects of the Amalgamated Club will be the objects of Wyong for as long as it remains financially viable (as assessed in accordance with clause 10.5).

**12. BINDING EFFECT OF MEMORANDUM**

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- 12.1 Wyong and Cootamundra agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

**13. CALLING OF MEETINGS AND ADMISSION OF COOTAMUNDRA MEMBERS TO MEMBERSHIP OF WYONG**

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- 13.1 Cootamundra will call a general meeting of its full members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve in principle, the Amalgamation in accordance with section 17AEB(d) of the RCA; and
  - (b) approve the Clubs making the Amalgamation Application.
- 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 Wyong will call a general meeting of its ordinary members for the purposes of considering and, if thought fit, passing a resolution to:
- (a) approve in principle the Amalgamation in accordance with section 17AEB(d) of the RCA; and
  - (b) approve the Clubs making the Amalgamation Application;
  - (c) amending the Constitution of Wyong as provided in clause 13.5.
- 13.4 The meeting referred to in clause 13.3 will be held by 31 May 2024 (or at such prior time as may be determined by Wyong in its absolute discretion).

- 13.5 At the general meeting of Wyong referred to in clause 13.3 the life members and rugby league ordinary members of Wyong will be asked to consider and if thought fit pass a special resolution to amend the Constitution of Wyong to insert a new category of membership in the following terms:
- "8A. Members of the dissolved Cootamundra Country Club Ltd**
- 8A.1 *Members of the dissolved Cootamundra Country Club Ltd ("Cootamundra") shall be:*
- (a) *those members who are full members (as defined in the Registered Clubs Act) of Cootamundra and who are admitted to membership of the Club for the purpose of the Amalgamation between the Club and Cootamundra; and*
- (b) *eligible to transfer to such other category of membership for which they are or become qualified under these rules but shall also be identified as a Cootamundra member.*
- 8A.2 *Until a Cootamundra member transfers to another category of membership, that member shall be entitled to the rights and privileges and be subject to the restrictions of an Associate member under these Rules."*
- 13.6 Prior to the Completion of the Amalgamation, Wyong will forward to each member of Cootamundra who is not already a member of Wyong, a written invitation to become a member of Wyong.
- 13.7 All members of Cootamundra referred to in clause 13.6 who apply to become members of Wyong will be admitted to membership of Wyong. Provided members of Cootamundra are financial members of Cootamundra as at the date of Completion of the Amalgamation they will not be required to pay an annual subscription to be members of Wyong until the commencement of Wyong's membership year first commencing after the date of Completion of the Amalgamation.
- 13.8 All members of Cootamundra referred to in clause 13.6 will be able to apply for membership of Wyong in the manner referred to in clauses 13.6 and 13.9.
- 13.9 Any member of Cootamundra who accepts the invitation referred to in clause 13.6 and agrees in writing to be bound by the Constitution of Wyong will (subject to the name of that person being displayed on the noticeboard of Wyong 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 Wyong) be elected by a resolution of the Board of Wyong to membership of Wyong with effect from the date of Completion of the Amalgamation.
- 13.10 Members of Cootamundra referred to in clause 13.6 who are admitted to membership of Wyong will be, for the purpose of section 17AC(2) of the RCA, identified as a separate class called the "Members of the dissolved Cootamundra Country Club Ltd but may transfer to any other class of membership of Wyong for which they are eligible to join.
- 13.11 The Board of Wyong agrees to pass a By-Law recognising all Life Members of Cootamundra in respect of the Cootamundra Premises as at the date of

Amalgamation, as Life Members with respect to the Cootamundra Premises only. Cootamundra Life Members shall have the same rights as Club Members in the Amalgamated Club.

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

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- 14.1 As soon as reasonably practicable after the meeting referred to in clauses 13.1 Cootamundra must forward to Wyong:
- (a) a copy of the Notice of Meeting and minutes of the meeting; and
  - (b) confirmation that the notice of the meeting referred to in clause 13.1 and a copy of this memorandum have been issued and been made available to members of Cootamundra as required by the Registered Clubs Act and Regulations.
- 14.2 Subject to the resolutions referred to in clauses 13.1 and 13.3 being passed, Wyong will lodge the Amalgamation Application with the Authority as soon as reasonably practicable after the conclusion of the general meeting of Wyong held under clause 13.3.
- 14.3 Wyong will seek a grant of provisional approval of the Amalgamation Application with the final transfer of the Cootamundra Liquor Licences to Wyong to occur on Completion of the Amalgamation.
- 14.4 Cootamundra agrees to promptly sign all documents and do all things reasonably requested by Wyong to complete and lodge the Amalgamation Application and answer any requisitions or inquiry by any government agency in connection with the proposed Amalgamation.
- 14.5 Wyong acknowledges that at all times Cootamundra remains under the control of the Board of Cootamundra and its other duly authorised officers and that Wyong will participate in discussions about the management of Cootamundra or its business and undertakings in the capacity of an observer only.

#### **15. MATERIAL ADVERSE CHANGES TO CLUBS**

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- 15.1 If, before Completion of the Amalgamation, in relation to either of Cootamundra or Wyong (the subject Club):
- (a) an event occurs which has or may have a material adverse effect on the profitability of the premises or value of any of the Assets of the subject Club;
  - (b) any Claim of any nature is threatened or asserted by or against the subject Club; or
  - (c) 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 of becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.

- 15.2 Title to, property in and risk of Cootamundra's Assets remains solely with Cootamundra until such time as title is passed to the Amalgamated Club in accordance with clause 16.
- 15.3 Wyong warrants to Cootamundra that from the date the Assets, Debts and Liabilities of Cootamundra are transferred to Wyong, Wyong will accept full responsibility for Cootamundra's Debts and Liabilities incurred after that date.
- 15.4 Cootamundra must ensure the Assets, Debts and Liabilities of Cootamundra are transferred to Wyong (less an amount sufficient for the purposes of any liquidation of Cootamundra).
- 15.5 Cootamundra will ensure the Member Loan are repaid in full within fourteen (14) days of Completion of the Amalgamation.
- 15.6 The parties acknowledge that it is intended for the transfer of Assets, Debts and Liabilities referred to in 15.3 and 15.4 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. TRANSFER OF COOTAMUNDRA'S ASSETS TO WYONG**

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- 16.1 As soon as practicable after the Order, but subject to the Final Order, Cootamundra must ensure the Assets of Cootamundra are transferred to Wyong promptly.
- 16.2 For the purposes of clause 16.1, Cootamundra must do all things necessary and execute all documents to cause all of the Assets of Cootamundra to be transferred to or assigned to Wyong with effect from the date of Final Order. Such transfers and assignments will be in respect of:
  - (a) the Cootamundra Premises but subject to clause 16.6;
  - (b) the Stock;
  - (c) all gaming machines and all gaming machine entitlements;
  - (d) all contract rights including hire purchase agreements;
  - (e) all intellectual property rights and investment;
  - (f) physical assets, furniture and fittings at the Cootamundra Premises; and
  - (g) the cash at bank and cash on hand at the Cootamundra Premises.
- 16.3 At the end of trading on the night before the date of the Final Order Cootamundra will conduct a cash count of all cash in the Cootamundra Premises. Wyong may have a representative present to observe the cash count.
- 16.4 The parties acknowledge that Cootamundra is the registered proprietor of Lot 106 in

Deposited Plan 753601 (Folio: 106/753601).

- 16.5 The parties acknowledge that Cootamundra is the Lessee pursuant to the Lease.
- 16.6 The parties further agree that, for the purposes of clause 16.1, Cootamundra must, at Wyong's expense, do all things necessary and execute all documents to:
- (a) transfer Lot 106 in Deposited Plan 753601 (Folio: 106/753601) to Wyong;
  - (b) obtain the approval of the relevant authority to extend the term of the Lease by twenty (20) years to 31 December 2044; and
  - (c) assign or transfer the extended Lease,
- with effect from the date of the Final Order.

## 17. LIQUIDATION OF COOTAMUNDRA

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- 17.1 Following Completion of the Amalgamation, Cootamundra will proceed to a members' voluntary liquidation.
- 17.2 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 clauses 16.

## 18. ACCESS TO RECORDS

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- 18.1 From the date of this Memorandum:
- (a) For the purpose of any due diligence Cootamundra will, if required, provide information (including but not limited to, details of all their Assets, Debts, Liabilities and Member Loans in relation to Cootamundra) and assistance to Wyong in order for Wyong to properly carry out and complete the due diligence review.
  - (b) For the purposes of the due diligence Wyong will, if required, provide information (including, but not limited to, details of all their Assets, Debts and Liabilities) and assistance to Cootamundra in order for Wyong to properly carry out and complete the due diligence review.

## 19. CONFIDENTIALITY

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- 19.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 19.2 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.

- 19.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 19.4 This clause 19 survives Completion of this Memorandum.

## 20. **RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM**

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- 20.1 A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 20.2 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.
- 20.3 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.
- 20.4 If the parties do not agree within seven (7) days of the receipt of the notice referred to in clause 20:2 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.

- 20.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 20.2, the party which has given notice 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.
- 20.6 The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 20 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.

## 21. **COSTS**

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- 21.1 Cootamundra and Wyong will pay their own respective costs of and in relation to the preparation, execution and completion of this Memorandum.

## 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 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.
- 22.3 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.
- 22.4 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.
- 22.5 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.
- 22.6 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

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- 23.1 Wyong may terminate this Memorandum at any time, without penalty or liability to Cootamundra, by giving written notice to Cootamundra if:
- (a) the circumstances in clause 15.1 exist in relation to Cootamundra; or
  - (b) the Authority refuses the Amalgamation.
- 23.2 Cootamundra may terminate this Memorandum at any time, without penalty or liability to Wyong, by giving written notice to Wyong if:
- (a) the circumstances in clause 15.1 exist in relation to Wyong; or
  - (b) the Authority refuses the Amalgamation.
- 23.3 Either party may terminate this Memorandum within thirty (30) days of the date of this Memorandum, without penalty, by giving written notice to the other party if the due diligence review undertaken by the other party (as referred to at clauses 2.4 and 2.5) is not satisfactory to the Board of the terminating party.

23.4 If:

- (a) the members of Cootamundra have not passed the resolution referred to in clause 13.1 within three (3) months of the date of this Memorandum; or
- (b) the members of Wyong do not pass the resolutions referred to in clause 13.3 and the special resolution in clause 13.5 within by 31 May 2024,

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

23.7 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within eighteen (18) months of the date of this Memorandum (or such later date agreed in writing by the parties), then either party by giving notice to the other may, without penalty, terminate this Memorandum.

## 24. NOTICES

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

- (a) in writing;
- (b) directed to the recipients address specified in this Memorandum or as varied by written notice;
- (c) left at, or sent by pre-paid registered post or hand delivery to that address; or
- (d) sent via email at the email addresses as follows:

Cootamundra:     norman.gwen@gmail.com

Wyong:             bcoghlan@wyongleagues.com.au

24.2 A notice given in accordance with clauses 24.1(a), 24.1(b), 24.2(a) or 24.2(b) will be deemed to be duly given:

- (a) If delivered by hand, on the day of delivery;
- (b) If sent by pre-paid registered post, two days after the date of posting; or
- (c) if sent by email, at the time and on the day of successful delivery, as the case may be.

## **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 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.

(a)

## **27. NOTES**

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- 27.1 This Memorandum is to be:


- (a) Made available to the ordinary members of Cootamundra and Wyong 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 licences held by Cootamundra to Wyong.

# PLAN OF NON-CORE PROPERTY DECLARED AT GENERAL MEETING ON 29 JANUARY 2022





Executed for and on behalf of The Cootamundra Country Club Ltd ACN 000 999 379 pursuant to section 127 of the Corporations Act 2001 (Cth):

  
Name: Owen Norman  
Office held: Chair

  
Name: Justyn Smith  
Office held: Vice Chair.

Executed for and on behalf of Wyong Rugby League Club Ltd ACN 000 834 908 pursuant to section 127 of the Corporations Act 2001 (Cth):

  
Name: ANTHONY NEWELL  
Office held:  
CHAIRPERSON

  
Name: ROBERT PETTIFORD  
Office held: VICE CHAIRMAN