

## **MEMORANDUM OF UNDERSTANDING**

21st February 2022 Dated

### **PARTIES:**

**RAMSGATE RSL MEMORIAL CLUB LIMITED**

**ABN 15 000 967 340**

**ENGADINE R.S.L. & CITIZENS CLUB LIMITED**

**ABN 91 000 966 978**

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This Memorandum of Understanding is made on

## **BETWEEN**

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

**(Ramsgate RSL)**

and

**ENGADINE R.S.L. & CITIZENS CLUB LIMITED (ABN 91 000 966 978)** of 1029 Old Princes Highway, Engadine NSW 2233

**(Club Engadine)**

## **BACKGROUND**

- (A) Ramsgate RSL and Club Engadine both operate registered clubs in New South Wales.
- (B) Ramsgate RSL called for expressions of interest in amalgamation from clubs within a radius of 50 kilometres of Ramsgate RSL by way of ClubsNSW Circular (Circular No: 20-065) published on 12 May 2020.
- (C) On 30<sup>th</sup> June 2020, following discussions initiated by Ramsgate RSL, Club Engadine submitted an expression of interest to Ramsgate RSL.
- (D) Club Engadine is located within 50 kilometres of Ramsgate RSL.
- (E) Ramsgate RSL has accepted the expression of interest from Club Engadine and, following further negotiation, Ramsgate RSL and Club Engadine have agreed to the terms set out in this Memorandum.
- (F) Ramsgate RSL and Club Engadine propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

## **1. DEFINITIONS AND INTERPRETATIONS**

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1.1 In this Memorandum unless the context otherwise requires:

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

equipment, stock, intellectual property, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to Club Engadine at the time of Completion of the Amalgamation;

- (e) **"Authority"** means the Independent Liquor and Gaming Authority;
- (f) **"Claim"** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature, whether known or unknown;
- (g) **"Clubs"** means both Ramsgate RSL and Club Engadine;
- (h) **"Completion of the Amalgamation"** means the day on which:
  - (i) the Final Order is granted and Club Engadine's Liquor Licence is transferred to Ramsgate RSL; and
  - (ii) the Assets, Debts and Liabilities of Club Engadine are transferred to Ramsgate RSL, as referred to in clause 15.1;
  - (iii) Club Engadine's members have been invited to become members of Ramsgate RSL and those members of Club Engadine who make application for membership of Ramsgate RSL become members of the Amalgamated Club;
  - (iv) Ramsgate RSL takes over responsibility for the management and control of Club Engadine Premises.
- (i) **"Confidential Information"** means all information relating to a party, its business, employees or suppliers which is or might reasonably be considered by the other party to be confidential and which is not in the public domain, including all financial data and information relating to a party, business plans, unpublished financial accounts, data and reports, supply lists and information relating to the business of a party's suppliers;
- (j) **"Core Property"** means, for the purposes of the RCA, Club Engadine Premises.
- (k) **"Corporations Act"** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder;
- (l) **"Club Engadine Premises"** means Club Engadine's premises located at 1029 Old Princes Highway, Engadine NSW 2233 comprising Lot 101 Deposited Plan 848679;
- (m) **"Club Engadine's General Manager"** means the individual who fulfils the Secretary or General Manager's role at Club Engadine;
- (n) **"Debts"** means the accumulated debts of Club Engadine at the time of Completion of the Amalgamation;
- (o) **"EBITDARD"** means earnings before interest, taxes, depreciation, amortisation, rent and donations;
- (p) **"Encumbrance"** means any:

- (i) security granted for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); or
- (ii) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (iii) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (iv) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

- (q) "**Final Order**" means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby Club Engadine's Liquor Licence will be transferred to Ramsgate RSL;
- (r) "**Gaming Machines Act**" means the Gaming Machines 2001 (NSW) and the Regulations made thereunder;
- (s) "**GST**" means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (t) "**Land**" means the real property comprising:
  - Lot 101 Deposited Plan 848679;
  - Lot 1 Deposited Plan 593318; and
  - any other real property owned by Club Engadine.
- (u) "**Liabilities**" means all liabilities, losses, damages, outgoings, costs and expenses of Club Engadine (whatever description) at the time of Final Order;
- (v) "**Liquor Act**" means the Liquor Act 2007 (NSW) and the Regulations made thereunder;
- (w) "**Liquor Licence**" means the club licence issued to a registered club under the *Liquor Act*;
- (x) "**Memorandum**" means this Memorandum of Understanding;
- (y) "**Order**" means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (z) "**Party**" means the respective management and Board of Directors of Club Engadine and Ramsgate RSL;
- (aa) "**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 Club Engadine in the conduct of Club Engadine business including but not limited to corporate, accounting and statutory records;

- (bb) **“Regulations”** mean the Regulations to the RCA;
- (cc) **“RCA”** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder;
- (dd) **“Ramsgate RSL’s CEO”** means the individual who fulfils the Secretary or Secretary Manager’s role at Ramsgate RSL;
- (ee) **“Ramsgate RSL Premises”** means Ramsgate RSL’s premises located at Chuter Avenue and Ramsgate Road, Sans Souci, New South Wales 2219;
- (ff) **“Year”** means a period of twelve (12) months commencing on the anniversary of the date of the Final Order and concluding on the day immediately before the next anniversary date of the Final Order.

1.2 In this Memorandum unless the context otherwise requires:

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

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

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- 2.1 Ramsgate RSL and Club Engadine agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.
- 2.3 The amalgamation will be effected by the continuation of Ramsgate RSL and the dissolution of Club Engadine.

### **Process for Amalgamation**

2.4 The process for the amalgamation will be as follows:

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

manner provided for in clause 13.5 below.

- (d) Once the approvals in paragraphs (b) and (c) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 14 below;
- (e) After the Amalgamation Application is granted and on the date of the Final Order:
  - (i) The Assets, Debts and Liabilities will be transferred to Ramsgate RSL Club in the manner referred to in clause 16 below;
  - (ii) Subject to clause 13.7, all members of Club Engadine will, with their consent, be admitted as members of Ramsgate RSL and will be identified as a separate class of ordinary membership called "Club Engadine members". This will occur in accordance with the procedure set out in clause 13.5 below (that is, the category of membership will be inserted into Ramsgate RSL's Constitution pursuant to the Special Resolution referred to in that clause);
  - (iii) Employees of Club Engadine and if those offers of employment are accepted, they will become employees of the Amalgamated Club;
  - (iv) On Completion of the Amalgamation, Ramsgate RSL will payout all amounts owing by Club Engadine on the Land so that the Land may be transferred simultaneously to Ramsgate RSL free of any and all Encumbrances.
  - (v) After Completion of the Amalgamation, Ramsgate RSL will continue as the body corporate of the Amalgamated Club;
- (f) From Completion of the Amalgamation, Club Engadine Premises will become additional licensed premises of Ramsgate RSL and will be available to all members of the Amalgamated Club. Club Engadine Premises will be operated in the manner set out in clauses 3, 4 and 5 below;
- (g) After Completion of the Amalgamation, Club Engadine will be liquidated or otherwise voluntarily deregistered in the manner referred to in clause 16 below.

### **Due Diligence**

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

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

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- 3.1 Club Engadine Premises will become additional premises of Ramsgate RSL.
- 3.2 The Amalgamated Club will operate and trade from the:
- (a) Ramsgate RSL Premises;
  - (b) Fingal Bay premises at 100 Rocky Point Road, Fingal Bay; and
  - (c) Club Engadine Premises.
- 3.3 Club Engadine acknowledges that Ramsgate RSL has made application to amalgamate with Heathcote Services and Citizens Club Limited (**Club Heathcote**) which was approved in principle by Liquor and Gaming NSW on 11 February 2022. If final approval of that amalgamation application is approved, Ramsgate RSL will, in addition to the premises referred to in clause 3.2 above, also trade from Club Heathcote's premises at 24 Oliver Street, Heathcote. This Memorandum and the rights and obligations of the parties hereto are not conditional upon the approval of the amalgamation application referred to in this clause 3.3.
- 3.4 The Board of Ramsgate RSL will be the Board of the Amalgamated Club.
- 3.5 Ramsgate RSL will take over responsibility and control of Club Engadine Premises with effect from Completion of the Amalgamation.
- 3.6 For the purposes of the RCA:
- (a) Ramsgate RSL's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and be responsible for Club Engadine Premises; and
  - (b) Club Engadine's General Manager will be employed by Ramsgate RSL as the approved manager of Club Engadine Premises under section 66 of the Liquor Act subject to and in accordance with clause 6.6.

**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 The traditions, amenities, culture and memorabilia of Club Engadine will be maintained by the Amalgamated Club at Club Engadine Premises. For the avoidance of doubt, the parties acknowledge and agree that any memorabilia of Club Engadine may be displayed in its present form or in an electronic (digital) form.
- 4.2 The Amalgamated Club will continue to support the community that was supported by Club Engadine (as at the date of this Memorandum) and it will explore opportunities to expand community support.

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

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

#### **Appointment to the Board of Club Engadine Directors**

- 5.2 Ramsgate RSL agrees that on and from the Completion of the Amalgamation Ramsgate RSL's board will, in accordance with Rule 27.1(b) of its Constitution, appoint two (2) directors elected by Club Engadine's board to Ramsgate RSL's board for a period of three (3) years.

#### **Amalgamated Club Premises**

- 5.3 The Amalgamated Club will operate and trade from the Ramsgate RSL Premises, Fingal Bay premises at 100 Rocky Point Road, Fingal Bay and Club Engadine Premises. Club Engadine also acknowledges clause 3.3 of this Memorandum.

#### **Club Engadine Premises**

- 5.4 Club Engadine Premises will continue to trade as and be promoted as "Club Engadine RSL". However, the Board of the Amalgamated Club may resolve to change the trading name of the Club Engadine Premises after five (5) years from the date of this Memorandum.

- 5.5 Subject to clauses 10 and 11, Ramsgate RSL will:

- (a) maintain Club Engadine Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at Club Engadine Premises with all the facilities and amenities of a registered club;
- (b) operate Club Engadine Premises as a successful and well supported local based community club;
- (c) undertake planning to encapsulate marketing, social media and community engagement for Club Engadine Premises;
- (d) seek to enhance the social facilities, services, amenities and activities at Club Engadine Premises, and
- (e) spend a minimum of five million dollars (\$5,000,000.00) on one or more of the following, to be commenced within three (3) years of Completion of the Amalgamation:
  - (i) retiring debt.
  - (ii) refurbishment of Level 1 of the Club Engadine Premises with the intention of utilising roof-space.
  - (iii) developing the Club Engadine Premises.

#### **Sub Club Activities**

- 5.6 The Board of the Amalgamated Club will recognise and allow the Engadine RSL Sub-Branch, and the Golf, Darts, Snooker and Fishing sub-clubs to continue to exist provided all members of those sub clubs first become members of Ramsgate RSL.

5.7 It is intended that Club Engadine sub-clubs will:

- (a) have their own rules, committees and members; and
- (b) be authorised to operate a bank account;
- (c) continue using their existing names and insignia including the words, logos and images used by or associated with Club Engadine or its operations;
- (d) elect their own committees and shall retain their existing rights and established practices as to holding meetings on club premises, using notice boards and other facilities at the Club Engadine premises;
- (e) be eligible to affiliate with such bodies controlling the activity in which they engage on such terms and conditions (not inconsistent with the Constitution of the Ramsgate RSL or the RCA) as such controlling bodies may from time to time require; and
- (f) be responsible for all relevant costs of conducting the sub-club including obtaining the necessary insurances.

5.8 The Amalgamated Club may allocate funds to each sub-club in such amount as determined by the Board of the Amalgamated Club acting reasonably subject to the relevant sub-club providing an annual budget to the Board of the Amalgamated Club.

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

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6.1 As part of the Amalgamation, Club Engadine will be wound up/liquidated. As part of the winding up/liquidation of Club Engadine, the employment of all Club Engadine's employees by Club Engadine would otherwise come to an end.

6.2 Prior to the Completion of the Amalgamation and subject to clause 6.6 below, Ramsgate RSL will make offers of employment to all employees of Club Engadine to commence employment after Completion of the Amalgamation.

6.3 The offers of employment:

- (a) will be effective from the Completion of the Amalgamation; and
- (b) will, subject to clause (c) below, be on the same terms and conditions presently offered by Ramsgate RSL to employees of Ramsgate RSL in similar roles;
- (c) may result in some employees of Club Engadine being offered different roles with the Amalgamated Club and/or having different titles, duties, responsibilities, hours of work and times of work with the Amalgamated Club.

6.4 Any employee of Club Engadine who accepts an offer of employment with Ramsgate RSL will receive continuity of employment and their accrued entitlements will be honoured by Ramsgate RSL.

6.5 Any employee of Club Engadine does not accept an offer of employment with Ramsgate RSL will be paid their full entitlements when their employment with Club Engadine comes to an end.

- 6.6 Ramsgate RSL agrees to accept an assignment of the employment contract of Club Engadine's General Manager on Completion of the Amalgamation subject to Club Engadine's General Manager agreeing to any amendments proposed by Ramsgate RSL prior to this MOU.

**7. INTENTIONS REGARDING THE FOLLOWING ASSETS OF CLUB ENGADINE:**

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

- 7.2 Club Engadine will transfer the Core Property to Ramsgate RSL and Ramsgate RSL will retain the Core Property of Club Engadine 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 Club Engadine will be transferred (in accordance with clause 16) to the general reserves of the Amalgamated Club.

**Gaming Machine Entitlements**

- 7.4 Club Engadine has eighty (80) gaming machine entitlements and those gaming machine entitlements will be retained at Club Engadine Premises after the Completion of the Amalgamation.
- 7.5 Ramsgate RSL Club will, after it has assessed the performance of the gaming machine installation of Club Engadine, consider and review the viability of increasing or decreasing the number of gaming machine including by transferring additional gaming machine entitlements from or to its other premises. Ramsgate RSL shall ensure that it maintains the gaming machines to a high standard and replaces them as and when reasonably required and will otherwise modernises and improve the gaming machine area at Club Engadine premises when required.

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

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- 8.1 Club Engadine agrees that the Land will be transferred to Ramsgate RSL free from any Encumbrance.
- 8.2 Subject to clauses 9, 10 and 11, the Amalgamated Club will not dispose of the Core Property of Club Engadine.
- 8.3 The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the Core Property of Club Engadine are those set out in clause 10.4.
- 8.4 If the risks (or any of them) in clause 10.4 are realised during the first three (3) years after the Completion of the Amalgamation, section 17A1 of the RCA will prevent the Amalgamated Club from disposing the Core Property.
- 8.5 If the risks (or any of them) in clause 10.4 are realised after the first three (3) years but before the expiration of five (5) years after Completion of the Amalgamation, the Amalgamated Club will use its best endeavours to find ways to address those risks so that the disposal of Core Property will be considered only after all other ways have

been exhausted and provided the disposal is in accordance with the RCA.

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

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- 9.1 For the purposes of the RCA, the 'major assets' of Club Engadine is the Core Property.
- 9.2 Subject to clauses 8, 10 and 11 of this Memorandum, the Amalgamated Club will not dispose of the major assets of Club Engadine during the first five (5) years after Completion of the Amalgamation.
- 9.3 The effect of section 17A1 of the Registered Clubs Act is to restrict Ramsgate RSL as the Amalgamated Club from selling or leasing ("disposal") any of the major assets of Club Engadine Club for three (3) years after the amalgamation unless the Independent Liquor and Gaming Authority ("ILGA") approve the disposal. The ILGA can only approve the disposal if firstly the disposal is necessary to ensure the financial viability of the amalgamated club and if a majority of the members of Club Engadine Club-as at the Completion of the Amalgamation-approve the disposal at a meeting where only those members can attend and vote.
- 9.4 The term 'major asset' means the Core Property of Club Engadine. Therefore, the Land cannot be disposed of without the approval of Club Engadine members at any time during three (3) years after Completion of the Amalgamation and also subject to clause 10 below. However, Ramsgate RSL has given an undertaking not to dispose of the Core Property for five (5) years.

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

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- 10.1 Ramsgate RSL does not intend to:
- (a) cease trading from Club Engadine Premises; or
  - (b) substantially change the objects of Club Engadine Premises.
- 10.2 Ramsgate RSL 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, Ramsgate RSL and Club Engadine 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, Ramsgate RSL and Club Engadine have agreed that the Amalgamated Club would either cease trading from or change the objects of the Club Engadine Premises in the following circumstances:
- (a) subject to clauses 10.7 to 10.12 and 11, if it is not financially viable for the Amalgamated Club to continue to trade from the Club Engadine 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 Club Engadine Premises are destroyed or partially destroyed by fire, floods, storms etc such that it is not lawful for a licensed club to be operated at Club Engadine Premises and any resulting insurance claim is not sufficient to re-instate or re-build an operational club house at Club Engadine Premises.
- 10.5 For the purposes of clauses 10 and 11 and subject to clause 10.6 below, Club Engadine Premises will not be financially viable if, in any twelve (12) month period (commencing after the five (5) year period referred to in clause 11.4), the EBITDARD percentage for Club Engadine Premises is ten per cent (10%) or less with such EBITDARD percentage to be determined by an independent company auditor (**Minimum EBITDARD**).
- 10.6 For the purposes of clauses 10.4(a) and 10.5:
- (a) Ramsgate RSL must prepare separate financial reports for Club Engadine Premises.
  - (b) Ramsgate RSL must not knowingly or wilfully do anything or omit doing anything which adversely impacts upon Club Engadine Premises' ability to achieve the Minimum EBITDARD.
  - (c) If Ramsgate RSL wishes to cease trading from Club Engadine Premises:
    - (i) Ramsgate RSL must engage an independent third party (and not Ramsgate RSL's auditor or accountant) to prepare a report on the EBITDARD of Club Engadine Premises; and
    - (ii) Ramsgate RSL can only cease trading from Club Engadine Premises if the report (which is to be made publicly available) declares that Club Engadine Premises did not achieve the Minimum EBITDARD in that Year.

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

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- 11.1 Ramsgate RSL does not intend to cease trading from Club Engadine Premises. Ramsgate RSL 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 Ramsgate RSL will become the objects of Club Engadine with effect from Completion of the Amalgamation.
- 11.3 However, for the purposes of clause 7(2) (g) of the Regulations, Ramsgate RSL and Club Engadine 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, Ramsgate RSL and Club Engadine have agreed that the Amalgamated Club will continue:
- (a) to trade from Club Engadine Premises;
  - (b) the activities at Club Engadine Premises,

for as long as it remains financially viable but for at least five (5) years, (except in the circumstances referred to in clauses 10.4(b) to (d) inclusive).

## **12. BINDING EFFECT OF MEMORANDUM**

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

## **13. CALLING OF MEETINGS AND ADMISSION OF CLUB ENGADINE MEMBERS TO MEMBERSHIP OF RAMSGATE RSL**

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- 13.1 Club Engadine will call a general meeting of the ordinary members of Club Engadine for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.
- 13.2 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 13.3 Ramsgate RSL will call a general meeting of the ordinary members of Ramsgate RSL for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.
- 13.4 The meeting referred to in clause 13.3 will be held as soon as reasonably practicable after the date of this Memorandum.
- 13.5 In addition to the resolution referred to in clause 13.3, Ramsgate RSL will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, on a special resolution to amend the Constitution of Ramsgate RSL to give effect to the following:
- (a) Subject to clause 13.7, all members of Club Engadine who apply to become members of Ramsgate RSL will be admitted to membership of Ramsgate RSL.
  - (b) Subject to clause 13.7, all members of Club Engadine will be able to apply for membership of Ramsgate RSL in the manner referred to in this clause 13.5.
  - (c) As soon as practicable after the Order, Ramsgate RSL will forward to each member of Club Engadine, who is not already a member of Ramsgate RSL, a written invitation to become a member of Ramsgate RSL.
  - (d) Any member of Club Engadine who accepts the invitation and agrees in writing to be bound by the Constitution of Ramsgate RSL will (subject to the name of that person being displayed on the noticeboard of Ramsgate RSL for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by Ramsgate RSL) be elected by a resolution of the Board of Ramsgate RSL to membership of Ramsgate RSL with effect from the date of Completion of the Amalgamation.
  - (e) Club Engadine's members who are admitted to membership of Ramsgate RSL will be identified as a separate class of ordinary membership called the "Club Engadine Members" but may transfer to any other class of membership of Ramsgate RSL for which they are eligible to join.

- (f) Club Engadine Members will have the same rights as "Associate members" under the Constitution of Ramsgate RSL.

13.6 In addition to the special resolution referred to in clause 5, Ramsgate RSL will, at the meeting referred to in clause 13.3, submit to those members eligible to attend and vote, a further special resolution to amend the Constitution of Ramsgate RSL to provide that any person who, at Completion of the Amalgamation, is a Life member of Club Engadine will not become a Life member of the Amalgamated Club but be recognised as a Life member only in respect of Club Engadine Premises.

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

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

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

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

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

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

- (d) the person is again permitted to enter Club Engadine Premises; or
- (e) the period of suspension has been served.

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

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

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

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

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15.1 Club Engadine warrants to Ramsgate RSL that from the date of this Memorandum to the date of Completion of the Amalgamation, Club Engadine 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 five thousand dollars (\$5,000.00) plus GST without the prior approval of the Ramsgate RSL's CEO or his delegate;
- (b) maintain the Assets of Club Engadine in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets of Club Engadine 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;
- (d) provide the Ramsgate RSL's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Club Engadine;
- (e) not knowingly or intentionally do anything which may damage the goodwill of its business or that of the Ramsgate RSL;
- (f) not without the prior written consent of the Ramsgate RSL:
  - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
  - (ii) 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) dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of Club Engadine's Assets (including without limitation its real property or poker machine entitlements);
  - (iv) employ any employee (other than a casual employee);
  - (v) terminate the employment of any employee (other than a 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;
  - (viii) increase the level of debt of Club Engadine beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of Club Engadine; or
  - (ix) notify Ramsgate RSL of any of the circumstances referred to clause 15.5 within a reasonable time on becoming aware of the relevant circumstances;



- (x) engage in discussions or negotiations with anyone other than the Ramsgate RSL Club concerning the sale of all or any part of Club Engadine's Assets (otherwise than as permitted under (iii) above), and Club Engadine must advise Ramsgate RSL Club of any solicitation by any third party in respect of any such discussion or negotiation.
- 15.2 Each of Club Engadine's warranties contained in clause 15.1 remains in full force and effect notwithstanding Completion of the Amalgamation.
- 15.3 Without limiting its other rights, and notwithstanding any other provision of this Memorandum, Ramsgate RSL may terminate this Memorandum and the amalgamation at any time prior to Completion of the Amalgamation if there is any material breach of any of Club Engadine's warranties set out in clause 15.1.
- 15.4 Ramsgate RSL's CEO and Club Engadine's General Manager will have regular discussions about the management and operations of Club Engadine with the object of:
- (a) providing for an orderly transfer of the management and operations of Club Engadine to Ramsgate RSL on the date of Completion of the Amalgamation; and
  - (b) achieving efficiencies and cost savings in Club Engadine;
  - (c) implementing operational changes in preparation for Completion of the Amalgamation.
- 15.5 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
- (a) anything is identified by the Subject Club (including without limitation, undisclosed Liabilities or undisclosed agreements with third parties) or anything arises in respect of the Subject Club which has or may have a material adverse effect on the Amalgamated Club;
  - (b) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
  - (c) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
  - (d) any Claim of any nature is threatened or asserted by or against the subject Club; or
  - (e) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,
- then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.
- 15.6 Title to, property in and risk of Club Engadine's Assets remain solely with Club Engadine until such time as they are passed to the Amalgamated Club in accordance with clause 15.1.
- 15.7 For the avoidance of doubt it is acknowledged that no liability by Club Engadine is

accepted or will exist for any breach of a warranty in the absence of actual knowledge by Club Engadine.

**16. DISSOLUTION OF CLUB ENGADINE AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO RAMSGATE RSL**

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16.1 Club Engadine must ensure the Assets, Debts and Liabilities of Club Engadine are transferred to the Ramsgate RSL (less an amount sufficient for the purposes of any liquidation of Club Engadine).

16.2 The parties acknowledge that it is intended for the transfer of the Assets, Debts, Liabilities referred to in clause 16.1 to occur on the date of the Final Order wherever possible. However, the parties acknowledge that the transfer of some Assets, Debts and Liabilities may occur after the date of the Final Order.

16.3 For the purposes of clause 16.1, Club Engadine must do all things necessary and execute all documents to cause all of the Assets of Club Engadine to be transferred to or assigned to the Ramsgate RSL. Such transfers and assignments will without limitation be in respect of:

- (a) all real property; and
- (b) all poker machines and all gaming machine entitlements;
- (c) all contract rights including hire purchase agreements;
- (d) all intellectual property rights;
- (e) all physical assets, furniture and fittings and stock in trade,

owned or entered into by Club Engadine.

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

16.5 As soon as practicable after Completion of the Amalgamation but not before Club Engadine has transferred all of its Assets, Debts and Liabilities to Ramsgate RSL, Club Engadine must ensure Club Engadine is either voluntarily deregistered or liquidated.

16.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause

**17. ACCESS TO RECORDS**

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

17.2 From the date of this Memorandum, Ramsgate RSL will provide to Club Engadine at all reasonable times access to Records and other information and material reasonably required by Club Engadine for the purposes of the due diligence referred to in clause 2.5).

## **18. CONFIDENTIALITY**

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- 18.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 18.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.
- 18.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 18.4 This clause 18 survives completion of this Memorandum.

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

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

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

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

## **20. COSTS**

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

## 21. **STAMP DUTY**

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

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

## 22. **GENERAL**

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

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

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

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

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

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

22.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales.

## 23. **TERMINATION**

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23.1 Ramsgate RSL may terminate this Memorandum:

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

Engadine if Club Engadine has:

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

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

23.3 If:

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

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

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

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

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

## 24. NOTICES

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

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

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

24.3 If the notice is to Club Engadine then it must be addressed as follows:

- (a) **Name:** Engadine R.S.L. & Citizens Club Limited
- (b) **Attention:** Nerida Grant
- (c) **Address:** 1029 Old Princes Highway, Engadine NSW 2233
- (d) **Email:** nerida@clubengadine.com.au

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

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

## 25. PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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

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

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

## 27. NOTES

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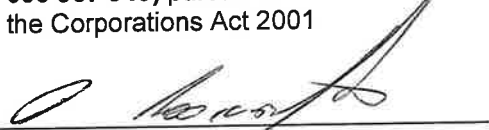
27.1 This Memorandum is to be:

- (a) made available to the ordinary members of Club Engadine and

Ramsgate RSL at least 21 days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.

- (b) made available for inspection on the premises of each club and on the website of each club for at least 21 days before any meeting as referred to in paragraph (a) of these Notes is held.
- (c) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by Club Engadine to Ramsgate RSL.

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


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

  
\_\_\_\_\_  
Director

David Moorcroft  
Name of Director/Secretary

Sallianne Faulkner  
Name of Director

Executed by **ENGADINE R.S.L. &** )  
**CITIZENS CLUB LIMITED (ABN 91** )  
**000 966 978)** pursuant to Section 127 of )  
the Corporations Act 2001 )

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

NERIDA GRANT  
Name of Director/Secretary

  
\_\_\_\_\_  
Director  
GARY EGGERT  
Name of Director