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18 May 2018

Dear Ms Innes,

<b>Application for</b>	Transfer of Club Licence (for amalgamation)
<b>Applicant</b>	Queanbeyan Sports and Community Club Limited
<b>Surviving Club</b>	Queanbeyan Sports and Community Club Limited 97 Campbell Street Queanbeyan NSW 2620
<b>Dissolving Club</b> <b>Dissolving Club address</b>	The Queanbeyan Bowling Club Limited 97 Campbell Street Queanbeyan NSW 2620
<b>Issue</b>	Whether to transfer a registered club licence to another club for the purpose of amalgamation.
<b>Legislation</b>	Sections 3, 18-20 and 60 of the <i>Liquor Act 2007</i> Sections 10, 12, Part 2 and Part 4A of the <i>Registered Clubs Act 1976</i> .

**Independent Liquor & Gaming Authority Decision**  
**Application to transfer a club liquor licence from Queanbeyan Bowling Club Ltd to Queanbeyan Sports and Community Club Ltd**

The Independent Liquor and Gaming Authority has considered an application to transfer club licence LIQC300242269 from The Queanbeyan Bowling Club Ltd to the Queanbeyan Sports and Community Club Limited (LIQC330019630) to facilitate the amalgamation of those two registered clubs.

Pursuant to section 60 of the *Liquor Act 2007*, the Authority has decided to approve the transfer of the licence. This decision is subject to a requirement pursuant to section 47(2) of the *Liquor Act 2007* that the transfer shall not take effect until the Authority has been advised in writing (through LGNSW licensing staff) of the settlement of the amalgamation process.

While the Authority is not required by the *Gaming and Liquor Administration Act 2007* to publish a statement of reasons for this type of decision, attached is a summary of the Authority's rationale for approving the licence transfer. If you have any questions, please contact the Authority via [ilga.secretariat@liquorandgaming.nsw.gov.au](mailto:ilga.secretariat@liquorandgaming.nsw.gov.au)

Yours faithfully



Philip Crawford  
Chairperson  
For and on behalf of the Independent Liquor and Gaming Authority

## SUMMARY OF REASONS

### INTRODUCTION

1. On 3 March 2017 the Independent Liquor and Gaming Authority (“Authority”) received an application (“Application”) made by the applicant (“Applicant”), Queanbeyan Sports and Community Club Limited (“QSCC”), under section 60 of the *Liquor Act 2007* (“Liquor Act”).
2. The Application seeks to transfer the registered club liquor licence number LIQC300242269 for the Queanbeyan Bowling Club Limited (“QBC”) to QSCC which currently holds club licence LIQC330019630. The Application is made for the purposes of giving effect to an amalgamation of the two registered clubs under Part 17AB of the *Registered Clubs Act 1976* (“Act”).
3. QBC has been a registered club since 1 December 1947. QSCC became a registered club upon the grant of a club licence under the Liquor Act that is recorded in a previous decision made on 14 September 2016 that was published with a statement of reasons on 4 October 2016 (the “QSCC Licence Decision”).
4. Pursuant to section 17AB(1) of the Act, two or more registered clubs may amalgamate. Section 17AB(2)(b) specifies that an amalgamation of two or more registered clubs is effected by the continuation of one of those clubs and the dissolution of the other club or clubs, and the transfer, under section 60 of the Liquor Act, of the club licence held by each of those dissolved clubs to the continuing club.
5. The proposed club premises of the amalgamated club will continue to be the current licensed premises of QBC, at 97 Campbell Street, Queanbeyan NSW 2620 (“Premises”).
6. The Authority has considered the Application and all submissions received in relation to it and has decided, pursuant to section 60 of the Liquor Act, to **approve** the transfer of the QBC club licence LIQC300242269 to another club, the QSCC.

### SUBMISSIONS

7. Without purporting to restate the entirety of submissions, the key points made in response to the Application and in reply from the Applicant may be summarised as follows.

#### Submissions from Queanbeyan Clubs

8. Russell Corporate Advisory (“Russell Corporate”) is a consultant engaged by several competing club interests in Queanbeyan, including Mr Leigh Kiely, General Manager of the Queanbeyan Kangaroo Rugby League Football Club Ltd (“QKRLFC”); Mr Jeremy Wyatt, Chief Executive Officer of the Queanbeyan Leagues Club (“QLC”) and Mr Mark White, General Manager of the Queanbeyan Australian Football Club Ltd (“QAFC”).
9. Russell Corporate have prepared an 11-page submission letter dated 7 April 2017 addressed to Mr Paul Newson (then Deputy Secretary, New South Wales Department of Justice and now Deputy Secretary, New South Wales Department of Industry). The consultant submits that it would be open to the Secretary to make a disciplinary complaint to the Authority under part 6A of the Act on the basis that the requirements in section 10(1) of that Act are not being met by QSCC and that QSCC is not a bona fide club with bona fide club premises.

10. Briefly, Russell Corporate contend that QSCC may have committed several breaches of the Act, including the requirement in section 12(b) of the Act for a minimum number of members and breaches of club rules by QSCC, including the rule prescribed by section 30(1)(c) requiring monthly meetings and the rule prescribed by section 30(1)(d) preventing proxy voting at club meetings. The consultant also refers to requirements in Part 4A of the Act and clause 22 of the *Registered Clubs Regulation 2015* (“Regulation”) to report certain matters to club members and question whether a notice was displayed on the Premises as required by clause 22.
11. More broadly, the consultant submits that control of the QSCC board does not actually lie with natural persons but with a third party corporate entity – the Tuggeranong Valley Rugby Union and Sports Club Ltd (“Vikings Group”) - a sporting club registered in the Australian Capital Territory.
12. With regard to QSCC’s financial affairs, Russell Corporate contend that as of 8 March 2017 QSCC had not lodged any financial statements with the Australian Securities and Investments Commission (“ASIC”). They submit, on the basis of a Deed of Loan Report published on the QBC website, that Vikings Group have lent approximately \$25,000 to QBC to discharge an existing debt to the National Australia Bank and this was entered into at a similar time to entry into a management agreement between the entities. The consultant expresses concern as to the financial viability of QSCC, on the basis of the explanatory note to Ordinary Resolution 2 at item 19 of the QBC Notice of its 2016 Annual General Meeting, which states that QBC believes that the disposal of the QBC Premises is necessary to ensure the financial viability of the amalgamated club. Russell Corporate submit that the proposed amalgamation may be in breach of section 17AEB(b) of the Act, which requires the proposed parent club to be financially viable.
13. The consultant refers to a club management agreement entered into between QBC and QSCC on 23 October 2015 (“QBC Management Agreement”) and expresses concern that this arrangement gave Vikings Group “control” over QBC, prior to completion of the amalgamation process that commenced with the calling of expressions of interest by QBC on 9 October 2014. They contend that the operation of the Memorandum of Understanding dated 3 November 2016 (“MOU”) agreed between QBC and QSCC has the effect of giving Vikings Group control over QBC prior to approval of the proposed amalgamation.
14. The consultant submits that under the Management Agreement, a pro rata management fee may become payable by QBC to QSCC in the sum of \$15,000 per month, capped at \$180,000, which only becomes a debt should the amalgamation with QSCC not be successful. Russell Corporate question whether QBC members approved this increase in QBC’s debt or whether the Authority approved the increase in the club’s debt that is evidenced in QBC’s financial statements for the year ended 30 June 2016. They further question whether QBC members were asked to approve the proposed sale of QBC’s core property to facilitate the repayment of the debt owed by QBC to Vikings Group.
15. Russell Corporate questions whether Mr Shane Holland (QBC’s Secretary/Manager) or Mr Anthony David Hill (Vikings Group CEO) are in breach of the requirement, in section 67(1)(c) of the Liquor Act, for the Authority to approve a person who is appointed as the approved manager of a licensed premises. They submit that the licence record shows that Mr Holland was appointed as club Secretary of the QBC on 30 September 2014 and that QSCC was granted its club licence on 4 October 2016. The Authority’s decision does not indicate who the “authorised manager” is in respect of the QSCC licence and there is

some uncertainty about this. The consultant observes that Mr Anthony Hill is the CEO of Vikings Group as well as the company secretary for Vikings and while Clause 3.4 of the MOU provides that Mr Holland will be the Secretary/Manager of the *amalgamated* QSCC the document is “silent on who the QSCC nominee manager of the Bowling Club will be during the management period prior to amalgamation”. Russell Corporate contend that as of 8 March 2017 their ASIC searches did not disclose the lodgement of documents reflecting any change in officeholders at QSCC and submit that this is further evidence that QSCC is not a bona fide club.

16. On the process of QBC inviting expressions of interest to amalgamate, the Directors Report in QBC’s June 2015 financial statements indicate that two external clubs were considered for amalgamation, with consultations held with the members and the Deed of Company Arrangement (DOCA) sub-committee and Russell Corporate questioning whether the details of both approaches were actually put to QBC members. The consultant submits that QKRLFC responded to QBC’s invitation for expressions of interest and yet an “invalid” response from QSCC has been accepted over a “bona fide” response from QKRLFC. Russell Corporate “understand” that Mr Holland, who is engaged as a manager of QSCC, was part of the QBC selection committee in selecting the preferred amalgamation partner.
17. On QSCC’s status as a registered club, Russell Corporate contend that QSCC was not even incorporated as a company nor was it a registered club at the time when the offer to amalgamate was signed by Vikings, on behalf of QSCC.
18. Russell Corporate contend that QSCC is not a bona fide registered club and that it was not entitled to the grant of a liquor licence by the Authority in 2016. It was created as a “contrived” vehicle to enable the “cross border” control of a NSW registered club by a club that is located in the Australian Capital Territory – the Vikings Group. The proposed amalgamation will give “effective control” of the amalgamated QSCC to the Vikings Group, which is not a registered club and could not satisfy the requirements of the Act. The amalgamation is a “sham”.

#### Clubs NSW

19. In a nine-page submission letter dated 13 April 2017 sent to LGNSW by Mr Anthony Ball, Chief Executive Officer of the Registered Clubs Association of NSW (“Clubs NSW”), Mr Leigh Kiely of QKRLFC, Mr Jeremy Wyatt of QLC and Mark White of QAFC (“the Clubs NSW Submission”), the authors raise several concerns with the amalgamation.
20. Briefly, they contend that QSCC was not a registered club at the time that Vikings Group submitted an expression of interest, purportedly on QSCC’s behalf, in response to QBC’s notice seeking amalgamation partners; that the Act and Regulation provide that only *existing* registered clubs may participate in the expression of interest process; that any agreement entered into with respect to a club amalgamation must be with a *registered* club and that QBC commenced this amalgamation process in a manner that is “non-compliant” and “fundamentally flawed”.
21. The authors contend that the amalgamation was proposed for a “wrongful purpose”. By QSCC entering into an agreement or understanding to amalgamate with QBC and only *thereafter* obtaining a club licence, this indicates that the arrangement has been “contrived” to enable the Vikings Group to get its debt repaid out of the assets of QBC. The

authors further contend that QBC does not appear to have considered the “lawful” expression of interest made by QKRLFC on 10 December 2014.

22. They submit that QSCC is not a *bona fide* club, by reason of a lack of club premises. QSCC claims to occupy the same premises as the (bona fide) QBC. Furthermore, QBC and Vikings Group appear to be members of the QSCC. The authors submit that this is not possible, by reason that the Act requires that members of registered clubs be individuals, since proxy voting is not permitted. QSCC is not a registered club controlled by its members but is controlled by another corporate entity - the Vikings Group. QSCC was merely a “transitional” vehicle created by the Vikings Group to effect the amalgamation. Referring to clauses 12 and 17 of the QSCC Constitution (as amended on 9 March 2016) they submit that only Vikings Group can appoint directors to QSCC, while ordinary members cannot hold office or nominate candidates for election to the QSCC board.
23. The authors question the financial viability of QSCC. Referring to the QBC Management Agreement and a Deed of Loan Report published on the QBC website, they raise concerns whether approval was obtained from QBC’s members and the Authority for an apparent increase in QBC’s debt (as evident from financial statements for the year ended 30 June 2016, disclosing that the amount of QBC debt increased to \$723,000) and whether QBC members were asked to approve the sale of QBC core property to facilitate repayment of the debt owed to the Vikings Group. The authors question why QSCC/Vikings Group have not taken action to stem the losses of QBC and attempt to make QBC viable.
24. They contend that QBC, in its current (post Deed of Company Arrangement) format, is “not viable”. They refer to the Deed of Loan Report on the QBC Website, the terms of the MOU and QBC’s Notice of 2016 Annual General Meeting and note that QBC’s auditor has issued a “qualified” financial report only, noting that the enterprise may only continue to trade with the ongoing management and support of the Vikings Group. The authors contend that once the amalgamation occurs, QSCC will not be viable by reason of the “intentions” of the Vikings Group to sell QBC’s core property.

#### LGNSW Compliance Section

25. In a summary of an investigation conducted by Mr Sean Goodchild, LGNSW Director of Compliance, dated 11 December 2017 (“Investigation Summary”) Mr Goodchild advised that LGNSW have considered allegations that requirements of section 10(1) of the Act are not being met, or have not been met by QSCC; that QSCC has not complied with section 12(b) of the Act; that rules specified by section 30(1) of the Act have been breached by QSCC and that other provisions of the Act, Regulation and the Liquor Act may have been breached by QSCC. They have also considered allegations that the amalgamation will give effective control of the QSCC to a non-NSW club and that proposed amalgamation could never satisfy requirements of the Act.
26. Mr Goodchild concludes that having considered the concerns raised in the Russell Corporate and Clubs NSW Submissions, LGNSW has not identified any evidence to support the allegations or assertions that the club/s were in breach of the liquor and gaming legislation. The investigation did not reveal evidence to support any particular grounds of disciplinary complaint available under Part 6A of the Act.

#### Further Submissions

27. In a three-page letter from Russell Corporate Advisory to LGNSW dated 15 December 2017 responding to the Investigation Summary, Russell Corporate submit that alleged

breaches of the Act have not been “appropriately investigated” by LGNSW as the investigation had a limited focus. They further submit that the QSCC licence was granted by the Authority because QSCC did not disclose to the Authority that it was *not* a bona fide club at the time of making that application and for this reason the proposed amalgamation should not be approved by the Authority. The consultant submits that Mr Goodchild’s statements to the effect that QSCC will have the capacity to ensure legal compliance moving forward is not sufficient to negate any breach of the Act that may have occurred at “relevant times” nor does it address the allegation that QSCC has not been conducted in good faith as a club. Russell Corporate submit that Mr Goodchild’s advice confirms that “non-natural” members of QSCC had control of that club at the time the application was made for the club licence and at the time of making the application for amalgamation. Russell Corporate reiterate the submission that the QSCC club licence was obtained as a contrived vehicle to enable the cross-border control of a NSW registered club by a club that is located in the Australian Capital Territory.

- 28.** In a two-page letter from Mr Ball to Mr Goodchild dated 15 December 2017 responding to the LGNSW Investigation Summary, Mr Ball advises that the Russell Corporate Submission was made separately to the ClubsNSW Submission and that the issues raised in both submissions are different. Mr Ball submits that the amalgamation of QBC and QSCC should not be granted and that the “remedial action” taken by QSCC to amend its constitution, to deal with some of the issues that were flagged in the Russell Corporate submission, indicates that their concerns have substance.
- 29.** In a one-page submission letter from the board of directors of QBC to the Authority dated 20 December 2017, QBC contend that they had approached QLC for an amalgamation but their proposal was dismissed; that QLC only became interested in amalgamation when the gaming machine entitlements became available and that QLC have now “interfered” with the current process for the purpose of frustrating the club’s chance for viability. They contend that the “late” and “token” submission from QLC is a “delay tactic” that does not guarantee viability and the amalgamation between QBC and QSCC is a “member driven unified decision” made after thorough processes and communication over three years.
- 30.** In a two-page letter from Ms Katie Innes of Bradley Allen Love Lawyers (“BAL Lawyers”) dated 22 December 2017 addressed to LGNSW, the Applicant responds to the submissions from QLC and Clubs NSW dated 15 December 2017. The Applicant submits that should LGNSW withhold any adverse third-party submissions from the Applicant this will amount to a denial of procedural fairness; that the QLC submission dated 15 December 2017 does not *object* to the amalgamation but merely indicates interest in amalgamating should the application be unsuccessful; that the Clubs NSW submission raises no new matters that have not already been addressed by LGNSW Compliance and that the relevant call for expressions of interest is still listed on the Clubs NSW website.
- 31.** In another two-page letter from BAL Lawyers dated 22 January 2018 addressed to LGNSW, the Applicant responds to email correspondence from licensing staff dated 17 January 2018 and discusses the lease agreement proposed between the Vikings Group and QBC; the potential future sale by QSCC of QBC’s core property to the Vikings; the ongoing commercial relationship between the Vikings Group, QSCC and QBC; the financial viability of QSCC; whether QSCC was incorporated for the sole purpose of an amalgamation and other issues raised in opposing submissions, including that QSCC did

not operate its own business prior to amalgamation, that QSCC has no assets or cash flow and the benefits of the amalgamation for the community.

## **FINDINGS**

### **Liquor Act Requirements**

- 32.** Section 60 of the Liquor Act makes provision for the transfer of liquor licences. Section 60(1) provides that the Authority may, on application made in accordance with this section, approve the transfer of a licence to a person who, in the opinion of the Authority, would be entitled to apply for the same type of licence in relation to the licensed premises. The Authority is satisfied that the Applicant QSCC would be entitled to apply for the same type of licence in respect of the Premises.
- 33.** Pursuant to section 60(2), an application for a licence transfer may be made by the licensee or the person to whom the licence is proposed to be transferred. The Authority notes that the Application is made by QSCC, the proposed transferee.
- 34.** Noting that section 60(3) only concerns limited licences, section 60(4) of the Liquor Act requires that an application to transfer a licence be in the form and manner approved by the Authority and accompanied by the fee prescribed by the regulations. It must provide such information and particulars as may be prescribed by the regulations. If an application is made by a person other than the licensee, it must be accompanied by the written consent of the licensee to the proposed transfer and the application must generally comply with such other requirements as may be approved by the Authority or prescribed by the regulations. The Authority is satisfied that the minimum requirements of section 60(4) have been met on the basis of the Application material and supporting information provided by the Applicant and held on the Application file.
- 35.** Section 60(5) provides that an application to transfer a liquor licence to another person is to be dealt with and determined by the Authority as if it were an application for the grant of a new licence and the other person was the applicant for that licence. The provisions in Division 1 of Part 4 of the Act apply.
- 36.** Sections 40 and 60(5) prescribe certain minimum requirements for making a valid licence application and licence transfer application respectively. The Authority is satisfied that these formal requirements have been met, on the basis of the Application material and supporting material provided by the Applicant and held on the Application file.
- 37.** With regard to section 45 of the Liquor Act, the Authority finds that:

  - (a) for the purposes of section 45(3)(a), the Applicant is a fit and proper person to carry on the proposed business. This finding is made on the same evidence or material noted in the Authority's published QSCC Licence Decision and noting that no significant adverse personal probity concerns were raised in respect of current or proposed officers of QSCC in response to this Application during consultation with NSW Police and the LGNSW Compliance Section, both of whom maintain regulatory compliance records with respect to licensed premises. The Authority further notes the LGNSW Investigation Summary discussed below and evidence of the current directors of the QSCC board in the statutory declaration of Mr Shane Holland dated

21 July 2017, which provides some positive evidence of their ability to serve as company and/or club directors;

- (b) for the purposes of section 45(3)(b), practices will be in place from the commencement of licensed trading on the Premises to ensure the responsible serving of alcohol and to prevent intoxication. This finding is made on the basis of the information noted in the Authority's QSCC Licence Decision, noting QSCC's *Responsible Service of Alcohol House Policy*;
- (c) for the purposes of section 45(3)(c), the requisite development consent permitting use of the Premises as a registered club is in force. This finding is made on the basis of the information noted in the Authority's QSCC Licence Decision and noting that the Local Consent Authority Notice for that application was endorsed by Queanbeyan City Council on 13 April 2016, which advises that development approval 93-2006 permitting use of the Premises is in force.

- 38.** Section 60(11) of the Liquor Act requires that the Authority must not approve a licence transfer unless satisfied that practices will be in place that ensure as far as reasonably practicable that liquor is sold, supplied and served responsibly on the premises and that all reasonable steps are taken to prevent intoxication on the premises, and that those practices will remain in place. The Authority is satisfied that this requirement is met on the same basis as its finding on section 45(3)(b) of the Liquor Act.

### **Clubs Act Requirements**

- 39.** Section 60(6) of the Liquor Act provides that a club licence may be transferred to another club only if the Authority is satisfied that the requirements of Division 1A or 1B of Part 2 of the Act (that is the Registered Clubs Act) and any regulations made for the purpose of this section have, to the extent that they apply in relation to the transfer, been complied with.

#### Part 2, Division 1A of the Act – club amalgamations

- 40.** For the purposes of section 17AC(2) of the Act, the Authority is satisfied that the “parent” club (QSCC) has established that the members of the “dissolved” club (QBC) will be a separate class of members of the amalgamated club. The Minutes of the QSCC 2016 Annual General Meeting held on 27 November 2016 record that the members of QSCC approved a special resolution inserting new “rule 13A” into the QSCC Constitution that will establish QBC members as a separate class of “bowling members” of the QSCC.
- 41.** Section 17AE(2) of the Act requires that a registered club that is a party to a proposed amalgamation must, in accordance with the regulations, notify its members of the proposal. Clause 5 of the Regulation provides that the members must be notified by means of a notice displayed on a notice board at that club’s premises and published on the club’s website (if any).
- 42.** The Authority finds that the requirements of section 17AE(2) have been satisfied on the basis of information provided in QSCC’s Notice of the 2016 Annual General Meeting of 27 November 2016 (which notes that it was issued on 4 November 2016) and QBC’s Notice of the 2016 Annual General Meeting for 27 November 2016 (which also notes that it was issued on 4 November 2016).
- 43.** The Authority further notes that on page 2 of QBC’s Notice of the 2016 Annual General Meeting it records that a notice under section 17AE of the Act “has been given to members of the proposed amalgamation on the notice board of the Club’s premises and on the

Club's website". Moreover, QSCC's Notice of the 2016 Annual General Meeting states on page 2 that a notice under section 17AE of the Act "has been given to the members of the proposed amalgamation on the notice board of the Club's premises".

44. Section 17AEA(1) of the Act specifies that any person may, subject to and in accordance with the regulations, make a written submission to the Authority in relation to a proposed amalgamation under this Division. Section 17AEA(2) requires the Authority to take any such submission into consideration before deciding whether or not to approve the transfer of the licence of the dissolved club under section 60 of the Liquor Act.
45. Section 17AEB(b) of the Act prevents the Authority from approving the transfer of the licence of a dissolved club under the Liquor Act unless satisfied that the parent (surviving) club will be financially viable. While the authors of the Russell Corporate and Clubs NSW submissions have questioned the viability of QSCC, the Authority must assess the financial viability of QSCC should the transfer of the licence be approved and the amalgamation proceed.
46. The Authority accepts the Applicant's representations about the nature of the management and financial arrangements between the two amalgamating clubs (in the submission dated 22 January 2018) and notes, on the basis of the QSCC Annual Report and financial statements for 2016 to 2017, that QSCC has incurred a debt of \$207,663.00 for 2017.
47. The MOU dated 3 November 2016 defines the relevant core property for the purposes of the amalgamation ("Core Property") as "Lot 222 in Deposited Plan 560740 at Queanbeyan" as shown on the plan annexed to the MOU. The Applicant states in a letter dated 22 January 2018, and the Authority accepts that the Vikings Group has indicated its willingness to enter into an Option Deed to purchase this core asset, with the option exercisable in the period three years after the amalgamation but before five years after the amalgamation.
48. The Authority accepts the Applicant's representation that if the Core Property is sold within the three years following the amalgamation there is a requirement in a proposed sale contract for a leaseback arrangement (of \$1) to the amalgamated club, to ensure its access to the property. The sale of this property would discharge QBC's debt to the Vikings Group and would leave the amalgamated club with cash of approximately \$500,000. A copy of the proposed lease agreement between the Vikings Group and QBC was provided by the Applicant on 22 January 2018 and is in evidence before the Authority.
49. The Applicant submits that in the alternative, if the Core Property is *not* sold within the three years following amalgamation, there would be sufficient equity and cash flow within the amalgamated club to ensure the viability of QSCC. QSCC has managed QBC pursuant to a club services management agreement and is incurring debt to do so, but QSCC has not enforced the payment of its management fee (\$180,000 plus GST per annum, calculated daily), which would otherwise be used to reduce or eliminate the current debt of QSCC. This is because QSCC and QBC have agreed that the management fee would *only* become due and payable *if* the amalgamation *does not* occur. QSCC is operating at a loss to *ensure* the ongoing viability of QBC so as not to deprive QBC of funds, noting that if the amalgamation proceeds, those funds would be used by the amalgamated club. With the support of the Vikings Group, QSCC has been able to incorporate and act as the manager of QBC and has done so all in the best interests of *preserving* the QBC business.

50. Notwithstanding the concerns raised by the authors of the Russell Corporate and Clubs NSW submissions that QSCC is not financially viable, the Authority is satisfied that the amalgamated QSCC will be financially viable on the basis of the information provided by the Applicant. The requirement of 17AEB(b) is established.
51. Section 17AEB(c) of the Act prevents the Authority from approving the transfer of the licence of a dissolved club under the Liquor Act unless satisfied that the proposed amalgamation is in the interests of the members of each of the amalgamating clubs.
52. The Authority finds that this requirement has been met on the basis of the MOU dated 3 November 2016, the Applicant's submission dated 22 January 2018, the statutory declaration of Mr Holland dated 21 July 2017 and the minutes of the QBC Annual General Meeting held on 27 November 2016 that the amalgamation of QBC and QSCC is in the interests of the members of both QBC and QSCC. The Authority finds that the amalgamation is supported by QBC members, who passed Ordinary Resolution "2" on 27 November 2016 approving the sale of the property at Lot 222 DP 56-740 at 97 Campbell Street, being a core asset of the QBC, within three years of amalgamation, subject to a lease back of the Premises from the Vikings Group. All 75 members who attended the QBC Annual General Meeting voted in favour of amalgamation and provided statutory declarations in support of the proposal. The amalgamation offers some apparent benefits to QBC, in that the QBC board wishes to reduce the debt owed to the Vikings Group. Should Vikings Group take ownership of the Premises there is the opportunity for the Vikings Group to further invest in the Premises, which would ultimately benefit QBC through the lease-back option. The Authority is satisfied that the members of the respective clubs are well placed to make a decision on whether the amalgamation and potential sale and lease back of the Core Property is in their interests. The requirement of section 17AEB(c) is established.
53. Section 17AEB(d) of the Act prevents the Authority from approving the transfer of the licence of a dissolved club under the Liquor Act unless satisfied that the proposed amalgamation has been approved in principle at separate extraordinary general meetings of the ordinary members of each of the clubs proposing to amalgamate. This requirement has been established on the basis of minutes for the QBC Annual General Meeting held on 27 November 2016, where the amalgamation proposal specified in Ordinary Resolution 1 was carried by a unanimous vote, and the minutes of QSCC's Annual General Meeting held on 27 November 2016 whereby the Ordinary Resolution proposing amalgamation was carried.
54. Section 17AF(1) of the Act provides that a registered club (including a club that has already been formed by, or continued as the result of, an amalgamation) may amalgamate with a total of no more than 10 other registered clubs over any period of time. There is no indication in the Application material or submissions that either of the clubs have participated in more than 10 previous amalgamations. The Application has been the subject of investigation by the LGNSW Director of Compliance with no adverse comment in this regard. The Secretary of the Department of Industry, through the licensing section of LGNSW, maintains records of all club amalgamations in New South Wales.
55. The Authority is satisfied, for the purposes of section 17AH(1) of the Act, that QSCC and QBC are situated in the same area. Section 17AC of the Act defines the "same area" as within a radius of 50 kilometres of the main premises of the parent club. Onegov liquor

licence records before the Authority in respect of QBC and QSCC record the locations of both clubs as 97 Campbell Street, Queanbeyan NSW 2620.

- 56.** It is a requirement of section 17AI of the Act that during the three years following the amalgamation of 2 or more registered clubs, the parent club must not dispose of any of the major assets of the dissolved club unless such disposal has been approved by the Authority. Although the members of QBC have unanimously approved the potential sale and lease back of a core asset during the period of 3 years following the amalgamation, the Authority accepts the Applicant's representations through its solicitors dated 22 January 2018 that QSCC is willing to hold off on any sale of the Core Property for three years after amalgamation. The Authority further accepts the Applicant's representation that the Vikings Group is willing to enter into an Option Deed to purchase the core asset, exercisable in the period three years after the amalgamation but before five years after the amalgamation. If a sale does not occur in that five-year period, any sale of the core asset would need to be put back to the members, pursuant to the procedures prescribed by the Act.

*Requirements of a bona fide club – Section 10(1) Act*

- 57.** Section 17AEB(a) of the Act prevents the Authority from approving the transfer of the licence of a dissolved club to another club unless satisfied that the parent club (in this case, QSCC) will meet the minimum requirements required of a registered club under section 10(1) of the Act. The Authority finds, on the evidence or material specified below, that the requirements of section 10(1) of the Act will be met by the proposed amalgamated club, QSCC, if the transfer is approved.
- 58.** The Authority is satisfied, for the purposes of section 10(1)(a) of the Act, that QSCC shall be conducted in good faith as a club. Section 10(2) specifies that when determining whether a club is conducted in good faith as a club, regard is to be had to the nature of the premises, whether the club has been under administration for an extended period of time, whether any arrangement relating to the club has resulted in another person or body assuming the effective control of the club and its business and such other matters as may be prescribed by the Regulation.
- 59.** The Authority accepts the contentions made in the Russell Corporate and Clubs NSW submissions that the Vikings Group, being a sporting club registered in the Australian Capital Territory responded (on behalf of QSCC) to QBC's call for expressions of interest for amalgamation partners during October 2014. The Authority accepts their contention that this response occurred before QSCC was registered as a company pursuant to sections 131 and 132 of *the Corporations Act 2001* (Cth) (which, according to ASIC records before the Authority occurred on 2 June 2015). The QSCC expression of interest also occurred before QSCC obtained a New South Wales registered club licence, on 14 September 2016.
- 60.** While the Russell Corporate and Clubs NSW Submissions raise concerns about the timing and circumstances in which QSCC obtained its club licence, the Authority is not aware of any legal action challenging the legality of the QSCC Licence Decision. This is notwithstanding that the Authority's reasons for that decision have been published for some 19 months.

61. The Authority must assess the Application now before it on its merits and on the facts and circumstances prevailing at this time. The Authority does not consider it in the public interest to purport to revisit the QSCC Licence Decision at this time. There is no indication that the QSCC licence is in jeopardy through disciplinary complaint or otherwise, noting the information provided in the LGNSW Investigation Summary. At the time of considering this licence transfer, QSCC remains a validly licensed registered club in New South Wales.
62. The Authority accepts that QSCC's objects are those expressed in rule 3 of the QSCC Constitution, as amended. Rules 3.1(d)-(f), (i)-(j) and (m)-(o) of the QSCC Constitution indicate that the amalgamated club intends to conduct operations in good faith while preserving the fundamentals of a bowling club. There is no evidence before the Authority to indicate that QSCC has been under administration for an extended period of time.
63. While the Russell Corporate and Clubs NSW submissions contend that QSCC is a vehicle by which control may be exercised by the Vikings Group, there is insufficient evidence before the Authority to determine that another person or body is actually controlling QSCC at this time or will be in a position to do so following the amalgamation.
64. The Act does not prevent registered clubs from entering into loan or management agreements with third parties, provided that the requirements of that Act are observed. There is insufficient evidence or information provided in the Russell Corporate or Clubs NSW Submissions to establish that, upon amalgamation, QSCC will be under the control of any party other than its governing body, secretary/manager, or other persons permitted by the Act. Noting also the discussion that follows, the requirement of section 10(1)(a) is satisfied.
65. Section 10(1)(b) of the Act requires that a registered club be a company within the meaning of the *Corporations Act 2001* (Cth). This requirement is met at this time on the basis of the ASIC Current Organisation Extract for QSCC, current as of 7 April 2017, recording that QSCC is an Australian public company, limited by guarantee, that was registered on 2 June 2015.
66. Noting that section 10(1)(c) has been repealed, section 10(1)(d) requires that a club's membership consist of, or include no less than, such number of ordinary members as prescribed by section 12 of that Act. Section 12(b)(ii) specifies the minimum number of ordinary members for a club whose premises are situated outside 24 kilometres from the General Post Office in Sydney as "100 or such lesser number, not being less than 30, as the Authority may in special circumstances determine in respect of the club". The Authority's published QSCC Licence Decision recorded the Authority's approval of QSCC having a minimum of 30 ordinary members. The Authority accepts the information provided in the Applicant's legal submission made through its solicitors, BAL Lawyers, dated 29 November 2017 ("the BAL Submission") that, as of 27 November 2017, QSCC has 37 full time members.
67. Section 10(1)(e) of the Act requires that a registered club be established for a social, literary, political, sporting or athletic purpose, or for any lawful purpose, and for the purpose of providing accommodation for its members and their guests. QSCC meets this requirement on the basis of rules 3.1(d) and 3.1(e) of QSCC's Constitution. Rule 3.1(d) specifies that one of the objects of QSCC is to "promote and conduct the game of bowls and such other sports games, amusements and entertainments pastimes and recreations indoor and outdoor as the Club may deem expedient and to promote social intercourse

between members of the Club and between the Club and other clubs". Rule 3.1(e) specifies that one of the objects of the club is to "establish, maintain and conduct a bowling club for the accommodation of the members of the Club, their friends and such persons as may be approved by the Committee and generally to afford to them the usual privileges, advantages, conveniences and accommodation of a club".

- 68.** Section 10(1)(f) requires a club to have premises of which it is the bona fide occupier for the purposes of the club and which are provided and maintained from the funds of the club. The authors of the Russell Corporate and Clubs NSW Submissions contend that two registered clubs cannot share the same premises and that QSCC is non-compliant with the requirement of this subsection. While the LGNSW OneGov records establish that QSCC and QBC currently share the same licensed premises address of 97 Campbell Street, Queanbeyan NSW 2620, QSCC is not necessarily precluded by the Act, from occupying the same premises as QBC. In any event, following the licence transfer, the surviving club (QSCC) will be the sole occupier of the Premises, which will be maintained by the funds of the amalgamated club.
- 69.** Section 10(1)(g) of the Act requires that a registered club contain accommodation appropriate for the purposes of the club. While the authors of the Russell Corporate and Clubs NSW Submissions question whether QSCC has satisfied this requirement, the Authority accepts the information provided by the Applicant in the BAL Submission that through its management of QBC, QSCC currently provides the following accommodation and amenities for club members and guests: 5 bowling greens; clubhouse offering dining, liquor and gaming facilities including a properly constructed bar room; car parking facilities; and a second smaller clubhouse located on the leased Premises. The Applicant has provided a floor plan of the Premises with this submission and the Authority accepts the Applicant's representations that following amalgamation, QSCC will attend to the improvement, upgrade and repair and maintenance of the Premises, facilities and amenities for gaming, food and beverage, service of alcohol and community functions. Section 10(1)(f) is satisfied for the proposed amalgamated QSCC.
- 70.** Section 10(1)(h) of the Act requires that premises of a registered club contain a properly constructed bar room, but *not* contain a separate area for the sale or supply of takeaway liquor in respect of which there is direct access from outside any building that is part of those premises. The Authority finds that this requirement is met on the basis of the BAL Submission advising that, by virtue of a club services management agreement and QSCC's club licence, the Premises has a properly constructed bar and will not contain a separate area for the sale or supply of takeaway liquor from which there is direct access from outside any building which is part of the Premises. The BAL Submission also includes a floor plan of the Premises.
- 71.** Section 10(1)(i) of the Act provides that a member of a registered club, whether or not he or she is a member of the governing body or any committee of that club, shall *not* be entitled, under the rules of the club or otherwise, to derive, directly or indirectly, any profit, benefit or advantage from the club that is not offered equally to every full member of the club. The Authority finds that QSCC is aware of and will comply with this requirement in respect of the amalgamated club having considered rules 3.1(b), 5.2, 6, 12.4 and 13A.6 of the QSCC Constitution.

72. Section 10(1)(j) of the Act provides that only the club and its members are to be entitled under the rules of the club or otherwise to derive, directly or indirectly, any profit, benefit or advantage from the ownership or occupation of the premises of the club unless the profit, benefit or advantage is in the form of reasonable and proper interest paid to a lender on any loan made to the club that is secured against the premises of the club, or reasonable and proper rent or occupation fees paid to the owner of the premises of the club, being, in either case, a payment arising out of dealings reasonably carried out, or contracts reasonably made, with the club in the ordinary course of its lawful business. The Authority finds that QSCC will comply with this requirement on the basis of rules 5.1, 5.2 and 6 of QSCC's Constitution. The Authority further accepts the Applicant's advice, in the BAL Submission, that QSCC is aware of and complies with this requirement.
73. Section 10(1)(k) of the Act provides that the secretary or manager or any employee, or a member of the governing body or of any committee of a club is not entitled to receive, either directly or indirectly, any payment calculated by reference to the quantity of liquor purchased, supplied, sold or disposed of by the club or the receipts of the club for any liquor supplied or disposed of by the club, or the keeping or operation of approved gaming machines in the club. The Authority accepts that the Applicant is aware of this provision noting advice in the BAL Submission that no payment or part payment may be made to the CEO or another officer of the QSCC by way of commission from liquor supplied or the operation of gaming machines at the Premises.
74. Section 10(1)(k1) of the Act and clause 36 of the Regulation requires that the membership of the governing body of a registered club, on and from 1 January 2017 shall not exceed 9 persons. This Authority finds that this requirement is met on the basis of rule 17.1 of the QSCC Constitution, which provides the board shall comprise a maximum of 7 directors. The Authority further notes a statutory declaration dated 21 July 2017 from the QSCC general manager, Mr Shane Holland, providing evidence of the five *natural* persons who are the current members of the QSCC governing body.
75. Section 10(1)(l) of the Act requires that a registered club comply with any reporting requirements imposed by section 38 of that Act. Section 38(1) states that the regulations may make provision for reporting requirements while section 38(2) provides that such requirements operate in addition to the provisions of the *Corporations Act 2001* (Cth) regarding the preparation of balance sheets and profit and loss accounts by companies. Clause 21 of the Regulation prescribes certain reporting requirements with respect to club financial statements, while clause 22 requires the provision of certain information to club members. The Authority is satisfied that QSCC will comply with these requirements, on the basis of the QSCC Annual Report and Financial Statements for financial year ended 30 June 2017 and QSCC's disclosures registers dated 2015 to 2016.
76. Section 10(1)(n) of the Act requires that the business conducted on the premises of a registered club must not be managed or controlled by any person or body other than the governing body, the secretary, the manager of the club premises, a person acting in a capacity referred to in section 41(1) of that Act, a person appointed under section 41A in respect of the club or a person who is exercising functions relating to the management of the business or affairs of the club under a management contract within the meaning of section 41O.

77. The Authority accepts the representations made by the Applicant in the BAL Submission, that the amalgamated QSCC club to be conducted on the Premises is not and will not be managed or controlled by any person or body other than QSCC's governing body and secretary/manager.
78. The Authority has considered the contentions made in the Russell Corporate and Clubs NSW Submissions to the effect that QSCC is a "sham" and that Vikings Group will actually be in control of the amalgamated QSCC. However, the Authority accepts, on the basis of rule 16.1 of QSCC's Constitution that the amalgamated club will actually be managed by its governing body. Rule 19.1 provides that subject to any restriction contained in the Act, the Board will have the sole control and management of the property, income, affairs and concerns of the Club and may act in all matters concerning the Club in such manner as it believes desirable to carry out or promote the objects of the Club.
79. Rules 12.4 and 12.5 of the QSCC Constitution provide for the ordinary members to vote for and be eligible for election to the QSCC governing body. The QSCC Constitution does not, at the time of this decision, indicate that any corporate entity is, or is eligible to become, a member of the club. The Constitution dated 21 November 2017 (as amended via special resolution) removed any previous power of the Vikings Group, described as a "founding member" to appoint club directors.
80. A statutory declaration dated 21 July 2017 from the QSCC general manager, Mr Holland, provides evidence of the five *natural* persons who are the current members of the QSCC governing body, providing a brief account of their training as directors and their employment experience. Rules 12, 17 and 19 of the QSCC Constitution provides the rules for ordinary members, directors and the governing body (the board).
81. There is insufficient evidence at the time of making this decision to establish that QSCC will actually be under the control of any third-party, whether Vikings Group or otherwise. The positive evidence provided by the QSCC Constitution and Mr Holland's statutory declaration satisfy the Authority that now and upon amalgamation, QSCC will not be controlled by any entity other than its governing body, secretary, or other persons contemplated by section 10(1)(n) of the Act.
82. The Authority accepts that the local clubs represented by Russell Corporate and the industry body ClubsNSW have a strongly held policy concern that New South Wales clubs not come under the control of private businesses or interstate clubs. The Authority acknowledges that loan agreements or management agreements pose a *potential* source of external influence over a club's affairs. However, the Act does not prevent clubs from entering into such agreements, including with interstate businesses, provided that the requirements of sections 41N and 41O are observed. The Authority is satisfied that the requirement of section 10(1)(n) of the Act is established by the Applicant.

#### Accountability requirements – Part 4A Act

83. Section 10(1)(m) of the Act requires that a registered club comply with any requirements imposed upon the club under Part 4A of that Act. The Authority is satisfied, on the evidence or material specified below, that the requirements of Part 4A of the Act are satisfied.

- 84.** Section 41C requires that a member of the governing body of a registered club (other than a co-operative) who has a material personal interest in a matter that relates to the affairs of the club must, as soon as practicable after the relevant facts have come to the member's knowledge, declare the nature of the interest at a meeting of the governing body. The Authority finds that QSCC meets the requirement of section 41C (and the associated regulations) on the basis of the disclosure registers for the period from 2015 to 2016 (described in the schedule as "Club Accountability Returns") provided by the Applicant for QSCC with the BAL Submission, which includes the document titled *Register of disclosures of interests in contracts* recording "Nil" declarations.
- 85.** Section 41D of the Act requires that a member of the governing body or the top executive of a registered club who holds or acquires a financial interest in respect of a hotel to provide a written declaration of that interest to the club secretary. The Authority finds that QSCC meets this requirement (and the associated regulations) on the basis of the disclosures registers for 2015 to 2016 provided by the Applicant for QSCC with the BAL Submission which includes the document titled *Register of disclosures of hotel interests* recording "Nil" declarations. The Authority notes and accepts the information provided in the BAL Submission that the Secretaries of QBC and QSCC do not hold any written declarations of interest in respect of any hotel.
- 86.** Section 41E requires that a member of the governing body or the top executive of a registered club must, in accordance with this section, declare any gift or remuneration received by the member or top executive after the commencement of this section from an affiliated body if the value of the gift, or the amount of remuneration, exceeds \$500. The Authority is satisfied that QSCC is aware of and meets the requirements of section 41E (and the associated regulations) on the basis of the disclosures registers for 2015 to 2016 provided by the Applicant for QSCC on 29 November 2017 with the BAL Submission which includes the document titled *Register of gifts or remuneration from affiliated bodies* recording "Nil" declarations.
- 87.** Section 41F of the Act requires a member of the governing body of a registered club or an employee of a registered club to submit a written return each year to the club, in accordance with the regulations, declaring any gift or remuneration received by the member or employee from a person or organisation that is a party to a contract with the club. The Authority is satisfied that QSCC meets the requirements of section 41F (and the associated regulations) on the basis of the disclosures registers for 2015 to 2016 provided for QSCC with the BAL Submission, which includes the document titled *Register of gifts or remuneration from contractors* recording "Nil" declarations.
- 88.** Section 41J(2) requires that the annual report of a registered club specify the "core" and "non-core" property of the club as at the end of the financial year to which the report relates. Pursuant to section 41J(3), a registered club must not dispose of any core property of the club unless the property has been valued by a qualified valuer, with the disposal approved at a general meeting of the ordinary members of the club at which a majority of the votes cast supported the approval, and for any sale to be by way of a public auction or open tender conducted by an independent real estate agent or auctioneer.
- 89.** The Applicant does not explicitly refer to section 41J of the Act in the BAL Submission or otherwise. However, it is apparent from the Applicant's letter dated 22 January 2018, the MOU and QSCC Constitution that while QSCC does not currently maintain significant

assets, it will acquire the core and non-core property of QBC upon amalgamation. It is also apparent from the Applicant's submissions on the other accountability requirements of Part 4A of the Act that QSCC has received legal advice on and is aware of these provisions. The Authority further notes the training and experience of the QSCC directors that is specified in the statutory declaration of Mr Holland dated 21 July 2017. This gives the Authority further confidence that the amalgamated QSCC will comply with legislative requirements in relation to management of core and non-core property. While section 41J(2) will become germane to QSCC's operations, the Authority is satisfied that section 41J is or will be satisfied.

90. Section 41K of the Act prevents a registered club from entering into a contract with a member of the governing body or a top executive of the club, or with a company or other body in which such a member or top executive has a pecuniary interest, unless the proposed contract is first approved by the governing body. The Authority accepts the Applicant's advice in the BAL Submission that both QSCC and QBC are aware of and comply with this section and the associated regulations. The Authority further notes the disclosures registers for 2015 to 2016 provided by the Applicant for QSCC with the BAL Submission which include the document titled *Clubs records of contracts approved by Board* recording "Nil" contracts.
91. Section 41L requires that a registered club must not enter into a contract with: (a) the secretary of the club, a manager appointed under the Liquor Act for any premises of the club, or any other person prescribed by the regulations (b) any close relative of a person referred to in paragraph (a); (c) a company or other body in which a person referred to in paragraph (a) or (b) has a controlling interest. The Authority finds that these requirements are met on the basis of the Applicant's advice in the BAL Submission that both QSCC and QBC are aware of and comply with the requirements of section 41L and the associated regulations. The Authority further notes the disclosures registers for QSCC for 2015 to 2016 provided by the Applicant with the BAL Submission, which includes the document titled *Club records of close relatives* indicating "Nil" disclosures.
92. Section 41M of the Act requires that a registered club not enter into a contract for the remuneration of a top executive unless the proposed contract has first been approved by the governing body. The Authority accepts the Applicant's advice in the BAL Submission that both QSCC and QBC are aware of and comply with the requirements of section 41M and associated regulations. The Authority further notes that the disclosures registers for 2015 to 2016 have been provided by the Applicant for QSCC with the BAL Submission, which includes the document titled *Club records of board approval of top executive remuneration* recording board approval of top executive remuneration.
93. Section 41N(1) provides that a registered club must not lend money to a member of the governing body of that club, while section 41N(2) provides that a registered club must not lend money to a club employee unless the amount of the proposed loan (together with the amount of any other loan to the employee by the club that has not been repaid to the club) is \$10,000 or less and the loan has first been approved by the governing body. The Authority accepts the Applicant's advice in the BAL Submission that both QSCC and QBC currently have no loans to board members or employees and that each club maintains the practice of *not* lending any money to club directors or employees (although the Club could change its practice in the future, provided that loans to employees comply with the requirements of the legislation). The Authority further notes that the disclosure registers for

the period from 2015 to 2016 have been provided by the Applicant for QSCC with the BAL Submission, which includes a document titled *Club records of loans to employees* indicating “Nil” loans.

94. Finally, the Authority notes the requirement of section 41U of the Act that when a person becomes a top executive of a registered club, the club must, as soon as practicable, give written notice to that person informing them that he or she is a top executive and has responsibilities under Part 4A of that Act. While the Applicant does not expressly deal with this issue, the Authority infers that the amalgamated QSCC is likely to comply with this requirement on the basis that the club has received legal advice on accountability requirements in Part 4A and provided evidence and material indicating awareness of and compliance with the provisions in Part 4A of the Act with respect to top executives.

Requirement to seek expressions of interest – clause 4 of the Regulation

95. Clause 4(1) of the Regulation requires that a registered club (the proponent club) that is seeking or proposing to amalgamate must, before entering into any agreement or understanding with another registered club about an amalgamation, call for expressions of interest in amalgamating from each other registered club that has premises within a radius of 50 kilometres of the premises of the proponent club. The Authority finds that QBC met this requirement on the basis of the Clubs NSW Circular dated 9 October 2014 that was issued to all member clubs making them aware that QBC was seeking an amalgamation partner and calling for expressions of interest. This occurred well before QBC entered into an MOU with QSCC on 3 November 2016.

Requirements for a Memorandum of Understanding – clause 7 of the Regulation

96. Pursuant to clause 7(1) of the Regulation, registered clubs proposing to amalgamate must enter into a memorandum of understanding with respect to the proposed amalgamation. The Authority finds that that this requirement was met on the basis that on 3 November 2016 both QBC and QSCC entered into and signed the MOU (a copy of which was provided by the Applicant on 1 March 2017 accompanying the Application).
97. It is a requirement of clause 7(2)(a) that such memorandum deal with the position of both amalgamating clubs on the manner in which the premises and other facilities of the dissolved club (in this case, QBC) will be managed and the degree of autonomy that will be permitted in the management of those premises and facilities following amalgamation.
98. The Authority finds that this requirement has been met on the basis of clauses 3.1 to 3.8 of the MOU, which provide that the core property and premises of QBC will become the Premises of QSCC and the amalgamated club will retain QBC's operations by: continuing QBC's operations; applying QSCC's business processes, management skills, human resources, risk management, governance, networks, and acumen to the operation of the bowling club; making available QSCC's human resources and infrastructure; completing a strategic plan for the amalgamated club within 12 months. Furthermore, clause 3.4 of the MOU states that the Secretary Manager, Mr Holland, who currently identifies himself in his statutory declaration dated 21 July 2017 as General Manager of QSCC, will become the CEO and Secretary of the amalgamated club and will be known as the Secretary Manager. Clause 3.5 of the MOU outlines what is to occur during the management period and details what will happen to the board and committees at clauses 3.6 and 3.7. Clause 3.8 states that the bowling club has considered the financial position of QSCC and is confident that

QSCC is sufficiently resourced to ensure the current and future stability of the amalgamated club.

- 99.** Clause 7(2)(b) of the Regulation requires that a memorandum of understanding deal with a list of the traditions, amenities and community support that will be preserved or continued by the amalgamated club. The Authority finds that this requirement has been addressed at clause 4.1 of the MOU which specifies that QSCC will: maintain the traditions and ethos of QBC; promote and encourage bowling in such a manner as to attract membership and patronage; maintain a minimum of two bowling greens at the Premises for at least 5 years; improve, upgrade, repair and maintain the core property and the Premises, facilities and amenities for gaming, food and beverage and service of alcohol and community functions; ensure the furtherance of QBC's involvement in supporting its local community by providing quality sporting facilities; maintain and recognise the memorabilia and major events and competitions of the bowling club; continue to support local community groups; allow for the core property and the Premises to be referred to as "Queanbeyan Sports & Community Club".
- 100.** Clause 7(2)(c) requires that a memorandum state both clubs' position with respect to the future direction of the amalgamated club. The Authority finds that clause 5.1 of the MOU addresses this requirement by identifying that the future direction of the amalgamated club will be to: maintain the core property and the Premises and carry on the business of a licensed registered club; increase membership of the combined clubs; host regional, state or national events; operate efficient and environmentally sustainable club house facilities; promote the facilities at the core property and the Premises and improve the trading position so it is financially viable.
- 101.** Clause 7(2)(d) of the Regulation requires that a memorandum of understanding state the clubs' position in respect of the extent to which the employees of each club will be protected. The Authority finds that this requirement has been met in clauses 6.1 to 6.8 of the MOU. Clause 6.3 makes provision for QBC employees being offered continued employment with QSCC, clause 6.4 concerns redundancies and clause 6.5 deals with existing employee entitlements.
- 102.** Clause 7(2)(e) requires that a memorandum deal with the amalgamating clubs' intentions regarding any core property, cash or investments and any gaming machine entitlements held by the dissolved club. This requirement has been met on the basis of clauses 7.1 to 7.4 of the MOU. Clause 7.2 states that a resolution was put to the members of QBC that the core property be sold to the Vikings Group during the period of three years following the amalgamation with a lease-back of \$1 to the amalgamated club; that the QBC board wishes to reduce the debt owed to the Vikings Group and if the Vikings Group takes ownership of the core property, there is the opportunity for Vikings Group to further invest in the core property which would benefit the amalgamated club through the lease-back option. Clause 7.3 states that the cash and investments of QBC on completion of the amalgamation will be transferred to the general reserves of the amalgamated club and clause 7.4 states that the poker machine entitlements and the poker machines will be transferred to the amalgamated club.
- 103.** Clause 7(2)(f) of the Regulation requires that a memorandum of understanding state the amalgamating clubs' position on circumstances that would permit the amalgamated club to cease trading on the premises of the dissolved club or substantially change the objects of

the dissolved club. The Authority finds that these requirements are met on the basis of clause 8.1 of the MOU, which states that the amalgamated club proposes to continue to trade from the club house whilst listing six circumstances in which it would be permitted to cease trading. Clause 8.2 addresses a change to the objects of the QBC.

- 104.** Clause 7(2)(g) requires that a memorandum state the amalgamating clubs' position on an agreed period of time before any action referred to in paragraph (f) may be taken by the amalgamated club. Noting that clause 7(2)(f) of the Regulation concerns the circumstances that would permit an amalgamated club to cease trading on the premises of the dissolved club, or to substantially change the objects of the dissolved club, the Authority finds that this requirement is met by clause 9.1 of the MOU, which states that the amalgamated club will continue to trade from the current club house of the QBC for a minimum of 5 years from completion of the amalgamation.
- 105.** Clause 7(3) of the Regulation requires that a memorandum of understanding be made available to the ordinary members of each club that is a party to the proposed amalgamation, at least 21 days before any meeting is held by the members of those clubs for the purposes of voting on approval of the proposed amalgamation, and for the memorandum to be available for inspection on the premises of each club and their websites (if any) for at least 21 days before any such meeting is held. The Authority finds that the MOU was posted on QSCC and QBC's noticeboards and websites at least 21 days prior to the clubs' respective Annual General Meetings.
- 106.** While compliance with this requirement is not in dispute, the Applicant has provided via email from BAL Lawyers on 24 November 2017 a notice signed by Mr Anthony Hill, QSCC Secretary, regarding that club's 27 November 2016 Annual General Meeting. The document states on its face that it was issued on 4 November 2016 and specifies the information required by clause 7(3), noting that the MOU was on display on the QSCC noticeboard on the Premises. Also provided by the Applicant, as part of the Application material filed on 1 March 2017, was a notice signed by Mr Stephen Scanlan, QBC President, for that club's 27 November 2016 Annual General Meeting. That document records on its face that it was issued on 4 November 2016 and specifies the information provided by clause 7(3), noting that the MOU was on display on the QBC notice board and the club website.

## **Conclusion**

- 107.** In making this decision, the Authority has had regard to all of the statutory objects in section 3(1) of the Liquor Act and has considered all of the statutory considerations in section 3(2) of the Liquor Act. Section 3(1) prescribes the statutory objects that guide the Authority when making decisions on applications under that Act. The objects include to regulate and control the sale, supply and consumption of liquor in a way that is consistent with the expectations, needs and aspirations of the community; to facilitate the balanced development, in the public interest, of the liquor industry and to contribute to the responsible development of related industries such as the live music, entertainment, tourism and hospitality industries.
- 108.** Briefly, notwithstanding some opposition to the amalgamation expressed by the management of several competing clubs, the Authority is satisfied, on the basis of the MOU, QSCC's Constitution and the Applicant's legal submissions, that transferring the licence to facilitate the proposed amalgamation will regulate liquor in a manner consistent

with the needs and aspirations of the community that it is likely to serve, giving weight to the interests of those members of the amalgamating clubs who will continue to enjoy the facilities offered on the Premises. The amalgamation will prevent the loss of the club facilities to QBC members and advance the responsible development of related industries through the ongoing provision of licensed entertainment and hospitality services to members and guests.

- 109.** Section 3(2) of the Liquor Act prescribes statutory considerations to which decision makers must have regard when making decisions under the Liquor Act. They include the need to minimise harm associated with the misuse and abuse of liquor (including harm arising from violence and other anti-social behaviour); the need to encourage responsible attitudes and practices towards the promotion, sale, supply, service and consumption of liquor and the need to ensure that the sale, supply and consumption of liquor contributes to, and does not detract from, the amenity of community life. The Authority is satisfied, on the basis of the proposal outlined in the Application material and submissions from the Applicant that approving the transfer and facilitating this amalgamation is consistent with those statutory considerations.
- 110.** Noting the consultation on the Application was performed with NSW Police and the LGNSW Compliance Section, there is no information suggesting that either of the amalgamating clubs have any significant adverse history with respect to the responsible service of alcohol or have engaged in irresponsible practices with respect to the sale or promotion of liquor. There is no evidence or material indicating that the amalgamating clubs (or their members) have had an adverse impact upon local amenity or that the services to be provided on the Premises, following the proposed amalgamation, will have such impact. The Authority is satisfied that the amalgamation will enable the continuation of the licensed entertainment previously provided by the QBC club, on the same Premises, in a redeveloped club.
- 111.** Pursuant to section 60(6) of the Liquor Act, a club licence may be transferred to another club only if the Authority is satisfied that the requirements of Division 1A or 1B of Part 2 of the Act and of any regulations made for the purposes of this section have, to the extent that they apply in relation to the transfer, been complied with. The Authority is satisfied that the Applicant has met these requirements of the Act on the basis of the findings noted above.



Philip Crawford  
Chairperson

## SCHEDULE: APPLICATION MATERIAL AND SUBMISSIONS

1. Clubs NSW Circular dated 9 October 2014 (provided by the Applicant on 25 April 2017) notifying members that Queanbeyan Bowling Club (“QBC”) is seeking an amalgamation partner and seeking expressions of interest from registered clubs within the same area.
2. Application Form (Application) to transfer club licence signed and dated 14 February 2017 made by Queanbeyan Sports and Community Club (“QSCC”) (the Applicant) including the Notice to Police signed and dated 14 February 2017. These documents were sent under a cover letter from BAL Lawyers dated 1 March 2017 and received by Liquor and Gaming NSW (“LGNSW”) on 3 March 2017. The Application included the following material:
  - (a) QSCC Annual Report and Financial Statements for 2015 to 2016 financial year (ending 30 June 2016) including a director’s report, statement of comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows, notes to the financial statements and director’s declaration.
  - (b) Memorandum of Understanding (“MOU”) between QSCC and QBC dated 3 November 2016 prepared by Bradley Allen Love Lawyers (“BAL Lawyers”).
  - (c) Minutes of the QSCC Annual General Meeting held on 27 November 2016.
  - (d) QBC Notice of 2016 Annual General Meeting to be held on 27 November 2016 issued on 4 November 2016.
  - (e) Minutes of the QBC Annual General Meeting held on 27 November 2016 including a copy of the attendance sheet indicating member number, member name and email addresses for each member.
3. LGNSW “Onegov” liquor licence record for QSCC (LIQC330019630) as at 6 April 2017.
4. LGNSW “Onegov” licence record details for QBC (LIQC300232269) as at 6 April 2017.
5. Submission made by Russell Corporate Advisory (comprising 11 pages) dated 7 April 2017 on behalf of Queanbeyan Kangaroo Rugby League Football Club Ltd (“QKRLFC”), Queanbeyan Leagues Club Ltd (“QLC”) and Queanbeyan Australian Football Club Ltd (“Q AFC”) addressed to Mr Paul Newson, then Deputy Secretary Liquor, Gaming & Emergency Management NSW Department of Justice (now Deputy Secretary, Department of Industry) making allegations on a potential disciplinary complaint that may be considered by the Secretary under Part 6A of the *Registered Clubs Act 1976* (“Act”).
6. Submission from Mr Anthony Ball, Chief Executive of Clubs NSW, QKRLFC, QLC and Q AFC (comprising 9 pages) to LGNSW in response to the application to transfer the club liquor licence dated 13 April 2017, accompanied by the following material:
  - (a) *Wilson v North Sydney Anzac Memorial Club Ltd* (Unreported, Supreme Court of New South Wales, Nicholas J, 2 April 2008) - which concerned a failure to provide at least 21 days’ notice on a club website before a general meeting would consider a resolution to approve an amalgamation.
  - (b) Notice of 2016 Annual General Meeting of QBC issued on 4 November 2016.
  - (c) Constitution of QSCC prepared by BAL Lawyers (undated).
  - (d) Notification of resolution to amend the Constitution of QSCC, date stamped received by ASIC on 11 April 2016.
  - (e) MOU between QSC and QSCC prepared by BAL Lawyers dated 3 November 2016.
7. Australian Securities and Investments Commission (“ASIC”) Current Organisation Extracts for Queanbeyan Sports & Community Club Limited and The Queanbeyan Bowling Club as at 7 April 2017, including (*creditor*)*watch* reports, filed by the Applicant on 18 April 2017.

8. QSCC Notice of 2016 Annual General Meeting issued on 4 November 2016 and provided by the Applicant on 24 November 2017.
9. Six-page legal submission letter from the Applicant via BAL Lawyers to LGNSW dated 29 November 2017 (the “BAL Submission”) in support of the Application. This submission also included the following material:
  - (a) QSCC “Accountability Returns” (also described by the Applicant as “disclosures registers”) for the period from 1 July 2015 to 30 June 2016 provided by the Applicant as part of the BAL Submission, comprising the following material:
    - a. Guidelines to registered clubs in relation to their accountability under the Act and *Registered Clubs Regulation 2015* (“Regulation”);
    - b. A document detailing the information required on the forms approved by the Secretary of the NSW Department of Industry relating to the accountability of registered clubs under sections 41C, 41D, 41E and 41F of the Act and clauses 19 and 22 of the Regulation;
    - c. Register of disclosures of interests in contracts;
    - d. Register of disclosures of hotel interests;
    - e. Register of gifts or remuneration from affiliated bodies;
    - f. Register of gifts or remuneration from contractors;
    - g. “Important information” for club members in relation to the accountability of registered clubs under sections 41C, 41D and 41F of the Act and clause 22 of the Regulation;
    - h. Club records of overseas travel;
    - i. Club records of loans to employees;
    - j. Club records of contracts approved by board;
    - k. Club records of close relatives;
    - l. Club records of consultants engaged [note that a record for 1 July 2015 to 30 June 2016 and a record for 1 July 2016 to 30 June 2017 has been provided for this document];
    - m. Club records of legal settlements;
    - n. Club records of legal fees paid;
    - o. Club records of board approval of remuneration for “top executives”.
  - (b) QBC “Accountability Returns” for 1 July 2015 to 30 June 2016 containing the same categories of documents as the returns for QSCC.
  - (c) QSCC Annual Report and Financial Statements for 2016 to 2017 financial year (ending 30 June 2017) including the director’s report, statement of comprehensive income, statement of financial position, statement of changes in equity, statement of cash flows, notes to the financial statements and director’s declaration.
10. Letter from Mr Sean Goodchild, LGNSW to Mr Anthony Ball, Chief Officer of Clubs NSW dated 11 December 2017 enclosing a three-page summary of an investigation conducted by LGNSW Compliance Section (“Investigation Summary”) into the proposed amalgamation.
11. Letter from Mr Goodchild to Russell Corporate Advisory dated 11 December 2017 enclosing the LGNSW Investigation Summary.
12. One-page letter from QLC to the Authority dated 15 December 2017 advising interest in amalgamating should the Application not be approved.
13. Two-page letter from Clubs NSW to Mr Sean Goodchild, LGNSW dated 15 December 2017, in response to the LGNSW Investigation Summary.

14. Three-page letter from Russell Corporate to Mr Sean Goodchild, LGNSW dated 15 December 2017, in response to the LGNSW Investigation Summary.
15. One-page submission letter from the board of QBC to the Authority dated 20 December 2017 concerning QBC's previous unsuccessful approach to QLC and questioning the motives of QLC's submission dated 15 December 2017.
16. Two-page submission from the Applicant through BAL Lawyers dated 22 December 2017 responding to submissions from QLC and Clubs NSW dated 15 December 2017.
17. Statutory declaration by Mr Shane Holland, General Manager of QSCC dated 21 July 2017 provided by the Applicant to licensing staff on 10 January 2018 providing information on the current directors of the QSCC Bowling Club Advisory Committee and the governing board of QBC; QBC's recent period of voluntary administration between 29 September 2014 and 26 August 2016; requirements for the disposal of club real property under section 41J of the Act; the potential disposal of QBC's core property; certain provisions of the MOU and evidence of member support for amalgamation. The following material is annexed:
  - (a) QBC Notice of 2016 Annual General Meeting issued on 4 November 2016.
  - (b) A presentation to the Annual General Meeting dated 25 February 2015 on the proposed amalgamation presented by RSM Bird Cameron. The document is titled "The Queanbeyan Bowling Club Ltd (Subject to Deed of Company Arrangement)".
  - (c) Letter from ASIC to McS Accounting Pty Ltd. dated 30 September 2014 approving QBC's application for an extension of time to hold the Annual General Meeting. The extension was approved to a date no later than 28 February 2015.
  - (d) Minutes of QBC Annual General Meeting held on 25 February 2015.
  - (e) List of members present at QBC's Annual General Meeting dated 25 February 2015.
  - (f) Minutes of the QBC Annual General Meeting held on 27 November 2016.
18. QSCC Constitution, as amended by special resolution dated 21 November 2017, prepared by BAL Lawyers and provided to licensing staff on 10 January 2018.
19. Two-page submission from the Applicant through BAL Lawyers dated 22 January 2018 discussing the proposed lease agreement between Vikings Group and QBC, potential sale of QSCC property to Vikings, the financial viability of QSCC and other matters.
20. Proposed lease between the Vikings Group and QBC for Torrens Title "Property leased Part of 222/560740" commencing in 2017, terminating in 2024 and with an option to renew, provided by the Applicant on 22 January 2018.
21. Google maps of 97 Campbell Street Queanbeyan NSW 2620 obtained by licensing staff.