



22 October 2021

NOTICE OF SPECIAL GENERAL MEETING

NOTICE IS HEREBY GIVEN that a Special General Meeting of City Tattersall's Club will be held at **6pm on 22 November 2021 (Meeting)**.

The Meeting will be held online via Zoom Technology.

The business for the **Meeting** is set out below in the 'Business of the Special General Meeting' section.

Under the Club Rules, all Voting Members (which includes Life Members and Gold Members only) are entitled to attend and vote at the Meeting.

None of the resolutions to be considered at the Meeting may be amended in substance from the floor of that meeting.

Members who are employees of City Tattersall's are not entitled to vote upon the resolutions, and proxy voting is not permitted by the *Registered Clubs Act 1976 (NSW)*.

This notice is issued under a resolution of the Board.

Yours sincerely.

MARCELO A. VELOZ
Chief Executive Officer

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BUSINESS OF THE SPECIAL GENERAL MEETING OF VOTING MEMBERS

The business of the Special General Meeting will be:

For all eligible Voting Members of the Club to consider and, if thought fit, pass:

1. **Resolution 1** set out below to approve the proposed new clause 59 of the Club Rules in relation to the management and investment of the TCCL Retained Funds by the City Tattersall's Club (ABN 44 004 054 353) (CTC) (**New Clause 59**); and
2. **Resolution 2** set out below to approve the sale of the airspace surrounding the buildings located at 196-204 Pitt Street from Level 5 upwards, together with 100% of the Club's interest in the Hotel Stratum Lot as defined in the Stage 2 Development Application submitted in March 2021 and the most recent amended plans published in the Club's website. (Noting that approval for the sale of the Hotel was previously given by members on ~~20~~31 July 2020)

RESOLUTION 1 – CHANGES TO THE CLUB RULES

That the members approve to amend the Club Rules by inserting the following new clause 59:

59. *TCCL Retained Funds*

59.1 *This clause 59 shall only apply if TCCL transfers the TCCL Retained Funds to the Club voluntarily before the fifth anniversary of the completion of the Amalgamation and it will take effect immediately from the date the TCCL Retained Funds are transferred to the Club by TCCL to hold in trust for TCCL.*

59.2 *As and from the date that the TCCL Retained Funds are transferred to the Club, a committee, comprised of the seven (7) individuals who are the Directors of TCCL on the date that the Retained Funds are transferred to the Club (TCCL Investment Committee) will be automatically established and clause 13 of these Rules will not apply to the TCCL Investment Committee.*

59.3 *The TCCL Retained Funds will be invested under the direction of the TCCL Investment Committee and be held in a separate bank account and must not be transferred to the usual cash reserves of the Club. For the avoidance of doubt, the Club holds the TCCL Retained Funds in trust for TCCL and must not use the TCCL Retained Funds for any purpose (except as permitted under this clause 59), including without limitation using the TCCL Retained Funds as security for or to guarantee any current or future loans of the Club.*

59.4 *The TCCL Investment Committee will have the power to manage and invest the TCCL Retained Funds, is solely responsible for the retention, management and investment of the TCCL Retained Funds and must comply with this clause 59.*

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- 59.5 *A minute of all proceedings and decisions of the TCCL Investment Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by these Rules to be made entered and signed, and a copy of the minute must be presented at the next meeting of the Board after the meeting of the TCCL Investment Committee takes place. Notwithstanding anything contained in these Rules, clause 13 of these Rules shall not apply to the TCCL Investment Committee.*
- 59.6 *A person will cease to be a member of the TCCL Investment Committee immediately if he or she ceases to be a member of the Club.*
- 59.7 *If any vacancy occurs on the TCCL Investment Committee or (for example, because a member of the TCCL Investment Committee ceases to be a member of the Club, or dies or becomes unable or unwilling to perform their duties as a member of the TCCL Investment Committee, or resigns), the TCCL Investment Committee may appoint by way of replacement, a Catholic Club Member or a member of the Board to fill that vacancy. This is subject to the requirement that the number of members of the committee shall not be less than four (4) at any time and that the majority of members of the committee are Catholic Club Members.*
- 59.8 *The proposed honorarium for the members of the TCCL Advisory Committee shall be determined by the Advisory Committee in its absolute discretion provided that the total combined amount of the honorariums payable to members of the Committee shall not exceed fifty thousand dollars (\$50,000.00) unless approved by the Board. Any member of the TCCL Investment Committee who is also a member of the Board, will not be entitled to receive an honorarium in their capacity as a member of the Board for the period they receive an honorarium as a member of the TCCL Investment Committee.*
- 59.9 *The TCCL Investment Committee shall use its best endeavours to increase the value of the TCCL Retained Funds to at least a level equivalent to the increase in the Consumer Price Index (Sydney – All Groups) plus 1.0% to 3% per annum, net of costs, in each financial year and, subject to clauses 59.11 and 59.17, must not commit, spend, dispose, mortgage or charge any of the TCCL Retained Funds.*
- 59.10 *The TCCL Investment Committee must seek to maximise the return earned on the TCCL Retained Funds over the medium term (ie at least 5 years), consistent with international best practice for institutional investment.*
- 59.11 *In constructing an investment portfolio, the TCCL Investment Committee must determine a return profile that is predominantly comprised of income and distributions that will enable the value of the TCCL Retained Funds to increase in the manner specified in clause 59.9 and must have regard to the following:*
- (a) *TCCL Retained Funds may be invested in the following asset classes:*
- (i) *an at call or term deposit account (with a term ending no more than 5 years after the date of this deed) with an authorised deposit-taking institution in Australia;*
- (ii) *Australian government bonds, corporate bonds with a S&P credit rating of at least AA and maturity date falling on or before the fifth anniversary of the Amalgamation, or asset-backed securities with a S&P credit rating of at least AA;*



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- (iii) shares in any ASX 100 company (any share portfolio must be diversified);
 - (iv) amalgamation opportunities presented by the Board; and
 - (v) any other asset class approved in writing by the Board.
- (b) For the purposes of clause 59.11(a)(iv), the TCCL Investment Committee may provide funding to the Club for amalgamation opportunities but it is not legally obliged to do so;
- (c) The investments may be direct or indirect, provided that any indirect investment is in a fund which has been operational for at least five (5) years and holds all licenses required at law.
- (d) The TCCL Investment Committee must not make any direct investment in real estate, derivatives or structured products, without the prior written approval of the Board.
- (e) The TCCL Investment Committee must use reasonable endeavours to ensure the investment of the TCCL Retained Funds is diversified.
- (f) Unless prior written approval has been obtained from the Board, the TCCL Investment Committee must not:
- (i) spend more than three hundred and fifty thousand dollars (\$350,000.00) per annum (including the honorariums payable under clause 59.8) unless the circumstances in clause 59.17 apply; and
 - (ii) borrow funds, grant liens, debentures, securities, security interests and mortgages.
- (g) In addition to the investment of the TCCL Retained Funds, the TCCL Investment Committee can use the TCCL Retained Funds for:
- (i) all taxes payable in relation to the TCCL Retained Funds;
 - (ii) statutory compliance and operating costs of the TCCL Investment Committee (such as but not limited to committee members' expenses and honorariums, consultancy fees, legal fees, accounting, investment and filing fees with regulatory and investment bodies and insurance costs); and
 - (iii) the reasons specified in clause 59.16

59.12 The Board shall not be involved in the day-to-day management and investment of the TCCL Retained Funds. However:

- (a) the Board may conduct an investigation into the affairs of the TCCL Advisory Committee if it reasonably believes that there has been or will be a serious material breach of the MOU, Deed of Amalgamation or these Rules by the TCCL Investment Committee or there has been or will be a fraud, misappropriation of funds, or negligent act or omission by any member of the TCCL Investment Committee; and

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- (b) *if an actual serious material breach of the MOU, Deed of Amalgamation, or these Rules by the TCCL Investment Committee or an actual instance of fraud, misappropriation of funds, or an actual negligent act or omission by any member of the TCCL Investment Committee has occurred, the Board may take such action as it deems necessary provided that the Board cannot assume responsibility for the management and investment of the TCCL Retained Funds.*
- 59.13 *If the Board resolves to remove one or more members of the TCCL Advisory Committee pursuant to its powers under 59.12(b), the Board or the remaining committee members as the case may be shall appoint Catholic Club Members or members of the Board to fill those vacancies.*
- 59.14 *The TCCL Investment Committee must prepare regular financial reports and report to the Board in such manner and at such times as determined by the Board acting reasonably.*
- 59.15 *If there is a de-amalgamation of TCCL and the Club which is completed pursuant to the requirements of the Act following either:*
- (a) *a request made by TCCL's Board for de-amalgamation to the Board after the expiry of 4 years but before the expiry of 5 years after the TCCL Amalgamation Date; or*
- (b) *a decision by the Board to offer to de-amalgamate with TCCL at any time before expiry of 5 years after the TCCL Amalgamation Date,*
- the TCCL Retained Funds will be transferred by the Club to TCCL.*
- 59.16 *If at any time before the fifth anniversary of the TCCL Amalgamation Date, the Club is in breach (or TCCL reasonably suspects the Club is in breach) of the LOU, Deed of Amalgamation or this clause 59 insofar as the breach relates to the TCCL Retained Funds, then TCCL may issue a written demand to the Club to return some or all of the TCCL Retained Funds and the Club must comply with that demand, subject to TCCL providing a written undertaking to the Club that, in accordance with the Amalgamation Documents, it will transfer the TCCL Retained Funds back to the Club on the fifth anniversary of the TCCL Amalgamation Date unless the circumstances in clause 59.15 apply.*
- 59.17 *TCCL may use the TCCL Retained Funds and access the TCCL Retained Funds without the consent of the Club to pay for all such reasonable costs associated with any breach of these Rules, the MOU, Deed of Amalgamation or any other agreement between the clubs by the Club and/or the costs associated with a de-amalgamation and such expenditure shall not form part of and be in addition to the amount referred to in clause 59.11(f)(i).*
- 59.18 *This clause 59 will cease to apply and will be automatically repealed:*
- (a) *if there is no de-amalgamation referred to in clause 59.15, from the earlier of the date that TCCL notifies CTC that it does not intend to request a de-amalgamation and the fifth anniversary of the TCCL Amalgamation Date. The TCCL Retained Funds may then be used by the Club as permitted by law and these Rules; or*
- (b) *if there is a de-amalgamation referred to in clause 59.15 and the TCCL Retained Funds are transferred by the Club to TCCL, from the date the Retained Funds are transferred by the Club to TCCL.*



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59.19 Other than automatic repeal of this clause under clause 59.18 and despite any other clause of these Rules, this clause 59 may not be amended if such amendment is inconsistent with the TCCL Amalgamation Documents as determined by the TCCL Investment Committee. Despite any other clause in these Rules, any resolution to amend this clause 59 will also be subject to the following:

- (a) a resolution has been passed by Voting Members by a majority of not less than 75% present and voting at a general meeting called under clauses 23.1 and 23.2 (as modified by this clause 59.18); and
- (b) a separate resolution has been passed by Catholic Club Members referred to in clause 33.2 (who are members of the Club) by a majority of not less than 75% of present and voting at a general meeting called under clauses 23.1 and 23.2 (as modified by this clause 59.18); and
- (c) the requirements of clauses 23 and 24 are otherwise met (as modified by this clause 59.18), including the requirement for a second general meeting of Voting Members under clause 23.3 to confirm or reject any change or repeal.

59.20 If the Club replaces these rules with new rules before the automatic repeal of this clause 59, it must include in the new rules a rule identical to this clause 59.

EXPLANATORY NOTE:

- 1.1 Resolution 1 of this Special General Meeting must be passed by a [special resolution majority](#) (i.e. [at least 50-75%](#)) of the Voting Members who cast a vote.
- 1.2 Under clause 7.2 of the Memorandum of Understanding between The Catholic Club Ltd (ABN 35 000 982 436) (TCCL) and CTC dated 5 June 2020 (MOU), it was contemplated that, following completion of the amalgamation of TCCL and CTC, the TCCL Retained Funds would either be:
 - (a) if permitted by the Independent Liquor and Gaming Authority (**Authority**), retained and managed by TCCL for a minimum period of 5 years, following which it would be transferred to CTC after the expiry of 5 years from the date of completion (subject to there being no de-amalgamation); or
 - (b) if the Authority did not permit for the TCCL Retained Funds to be held by TCCL, the TCCL Retained Funds would be held by CTC and managed and invested by the TCCL Investment Committee in accordance with the management and investment requirements set out in clause 58 of the Club Rules (**Old Clause 58**).
- 1.3 At the time the Authority provided their consent to the amalgamation, it did not provide confirmation on whether TCCL was permitted to retain the TCCL Retained Funds, or whether it required the TCCL Retained Funds to be held by CTC.



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- 1.4 Despite the Authority being silent on which party was to retain the TCCL Retained Funds, since completion of the amalgamation, the TCCL Retained Funds have been retained and managed by TCCL.
- 1.5 As the TCCL Retained Funds were not retained by CTC following completion of the amalgamation, the entirety of Old Clause 58 was automatically repealed under clause 58.8 of the Club Rules.
- 1.6 Subject to approval of their respective members, TCCL and CTC have agreed that TCCL will transfer the TCCL Retained Funds to CTC to hold on trust for TCCL until the expiry of 5 years or the de-amalgamation of TCCL (if that occurs). The parties do not consider that the early transfer of the TCCL Retained Funds will have any adverse material effect on the amalgamation, or the commercial interests of TCCL and CTC.
- 1.7 As Old Clause 58 has effectively been repealed, to ensure that the TCCL Retained Funds are retained, managed and invested in accordance with the requirements under the MOU, the New Clause 59 has been proposed by the Board.
- 1.8 The New Clause 59 is in substantially the same form as the Old Clause 58, and provides that:
- (a) The TCCL Retained Funds will be held by CTC to hold in trust for TCCL,
 - (b) The current seven (7) Directors of TCCL will manage the TCCL Retained Funds as a committee with the amalgamated Club (**TCCL Investment Committee**),
 - (c) The TCCL Investment Committee will invest the TCCL Retained Funds in accordance with the investment principles set out in clause 59.11 of the Rules,
 - (d) The TCCL Investment Committee will be able to incur expenses including honorariums and all-inclusive remuneration payable to staff up to a maximum cap of \$350,000 per annum before having to seek the approval from the Board of City Tattersalls for any other expenses.
 - (e) The Club will transfer the TCCL Retained Funds back to TCCL if:
 - If there is a de-amalgamation of TCCL and the Club before 29 January 2026.
 - If there is a breach (or suspected breach) of the Rules, MOU or Deed of Amalgamation by CTC

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- (f) From 29 January 2026, the TCCL Retained Funds will automatically cease to be held on trust and will become property of City Tattersalls Club, and the TCCL Investment Committee will be dissolved.

1.9 The Board recommends this Resolution 1 of this Special General Meeting for approval.



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RESOLUTION 2 – SALE OF HOTEL AND AIR STRATUM

In addition to the consents and approvals already given by the members on ~~20~~31 July 2020, the members give CONSENT to the Board in the name of the Chairman, on behalf of and for the purposes of the Club, to:

- (a) sell, or otherwise dispose of, 100% of the Club's interest in the Hotel Stratum Lot (as defined below) and the airspace surrounding the buildings located at 196-204 Pitt Street from Level 5 upwards (the Hotel Stratum Lot and airspace being the **Hotel and Air Stratum**), if considered necessary by the Board and by any means considered appropriate by the Board, and subject to the requirements of the Registered Clubs Act 1976 (NSW); and
- (b) to use, invest, spend or otherwise deal with, the proceeds of such sale in pursuit of the objects of the Club and in exercise of any of the Board's powers under the Club Rules, as the Board considers appropriate, including to expend those funds in connection with the airspace development project, despite and in addition to the consents and approval already given by the members on 8 December 2015 and 31 July 2020.

The Hotel Stratum Lot means the stratum lot to be created which will contain certain basement 1 storage space, part of the ground floor of 202 to 204 Pitt Street, and Level 5 to 13 of the Project (excluding Level 6 of 194 Pitt Street) as defined in the Stage 2 Development Application submitted in March 2021 and the most recent amended plans published in the Club's website.

EXPLANATORY NOTE:

- 2.1 Resolution 2 of this Special General Meeting will be considered regardless of the outcome of any of the other resolutions considered at this Special General Meeting.
- 2.2 Resolution 2 of this Special General Meeting must be passed by a simple majority (i.e. 50%) of the Voting Members who cast a vote.
- 2.3 On ~~20~~31 July 2020, the members gave consent to the Board to sell, or otherwise dispose of, up to 100% of the Club's interest in the hotel to be developed as part of the airspace development project (**Hotel**), if considered necessary by the Board and to use, invest, spend or otherwise deal with, the proceeds of such sale in pursuit of the objects of the Club and in exercise of any of the Board's powers under the Club Rules, as the Board considers appropriate.
- 2.4 While the Board already has member approval to sell 100% of the Hotel, it seeks the members confirmation and additional approval to sell the Hotel and Air Stratum – which includes the Hotel and airspace rights surrounding the buildings located at 196-204 Pitt Street from Level 5 upwards.

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2.5 Important factors to consider in relation to this resolution include:

- (a) under the Development Management Agreement, the developer is only required to pay the Club a total of about \$100 million in cash or in kind. Since 2015, the cost and risk of completing property developments like the airspace development project have increased significantly, especially given recent world events, including the COVID-19 pandemic; and
- (b) to mitigate those risks, the Board has entered into a Head of Agreement with the Developer, under which the parties must negotiate and work towards the finalisation of detailed transaction documentation (**Detailed Documentation**) in relation to, among other things:
 - (i) the transfer by CTC to the Developer (or its nominee) of the legal title to the Hotel and Air Stratum; and
 - (ii) the capping of certain costs which are payable by CTC under the DMA (**CTC Development Costs Cap**) - being charges, expenses, fees and disbursements incurred by or on behalf of CTC in connection with, among other things, the design and construction of works at the Club's premises, cold shell works at 194 Pitt Street and cold shell base build works and base build heritage works associated with 202 to 204 Pitt Street (**CTC Development Costs**).
- (c) the proposed transfer of the Hotel and Air Stratum has created an additional stream of work for the Developer and CTC and some delay of the Project. The Stage 2 DA will need to be modified to make the Hotel Stratum Lot saleable to Developer and to allow CTC to better use and enjoy the remaining Club Stratum Lot. In recognition of this, CTC agreed to pay a termination fee equal to A\$1 million, if members do not approve this resolution, as compensation for the time, commitment and expense incurred by the Developer for evaluating and negotiating the transfer of the Hotel and Air Stratum.

2.6 Key terms of the HOA that relate to the transfer of the Hotel and Air Stratum include:

- (a) Unless otherwise agreed after obtaining legal and tax advice, the Hotel Component Transfer will take place through the exercise of a put option exercisable by CTC on completion of the design and construction of the Hotel Component (**Hotel Works**) or the exercise of a call option exercisable by the Developer (or its nominee) at any time (whether before, on or after the completion of the Hotel Works);
- (b) The consideration for the Hotel Component Transfer payable to CTC (**Consideration**) will be an amount equal to the aggregate of certain costs,



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charges, expenses, fees and disbursements incurred by or on behalf of the Developer and CTC in connection with the Hotel Works (**Hotel Development Costs**); and

- (c) The Hotel Development Costs which are payable by CTC under the DMA will be set off against the Consideration on the date of the Hotel Component Transfer.

2.7 Key terms of the HOA that relate to the CTC Development Costs Cap include:

- (a) The CTC Development Costs Cap will be calculated by adding a contingency (calculated as 20% of the estimated construction costs) (as estimated by the quantity surveyor jointly appointed by the parties under the DMA) to the CTC Development Costs. By way of example, if (a) the estimated CTC Development Costs amount to A\$75 million and (b) 20% of the estimated construction costs amounts to A\$10 million, the CTC Development Costs Cap will be the sum of the amounts in (a) and (b) (i.e. A\$85 million). Any CTC Development Costs actually incurred in excess of the CTC Development Costs Cap will be borne by the Developer; and
- (b) If the actual CTC Development Costs are less than the CTC Development Costs Cap, the Developer will be entitled to receive an amount equal to 50% of the difference between the actual CTC Development Costs and the CTC Development Costs Cap.
- (c) to have more flexibility in the management of its assets to ensure that the Club is in the best position to deliver the project to a standard that the members expect and to keep its debt within manageable limits.

2.8 **The Board recommends this Resolution 2 of this Special General Meeting for approval.**



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