

COPY



L A W Y E R S

MEMORANDUM OF UNDERSTANDING

NOWRA GOLF CLUB LIMITED (ACN 000 869 748)

of: Fairway Dr, North Nowra

(“NGC”)

and

BOMADERRY BOWLING CLUB LIMITED (ACN 000 952 705)

of: 154 Merroo Road, Bomaderry

(“BBC”)

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Date:

Thursday 9th March, 2017.

Parties

NOWRA GOLF CLUB LIMITED (ACN 000 869 748) ("NGC")

And

BOMADERRY BOWLING CLUB LIMITED (ACN 000 952 705) ("BBC")

Background

- A. NGC and BBC are each registered clubs pursuant to the Registered Clubs Act 1976.
 - B. NGC operates from leased premises at Fairway Dr, North Nowra.
 - C. BBC operates from premises at 154 Meroo Road, Bomaderry, 5 Bunberra St, Bomaderry and Princes Highway, Berry.
 - D. In accordance with the requirements of the Registered Clubs Act, NGC called for expressions of interest for an amalgamation from clubs within a radius of 50 kilometres of NGC.
 - E. BBC submitted an expression of interest to NGC.
 - F. The Board of Directors of NGC has resolved to pursue BBC's expression of interest and the respective Boards of each Club have agreed to the terms of this Memorandum of Understanding which is to be submitted to the respective memberships.
 - G. Subject to each of the memberships ratifying this Memorandum of Understanding the NGC and BBC propose to seek approval from the authority to amalgamate in accordance with the provisions of this Memorandum, the registered Clubs Act, the Liquor Act and the Corporations Act.
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1. The Proposal

- 1.1 The Registered Clubs Act and its regulations require that the parties to an amalgamation enter into a Memorandum of Understanding dealing with matters set out in Clause 7 of the Regulations.
- 1.2 For the purpose of enabling the respective memberships to understand the nature of the proposal to amalgamate the respective Boards have also set out additional information in this Memorandum.
- 1.3 If approved by the respective memberships at an Extraordinary General Meeting NGC and BBC propose to amalgamate in accordance with this Memorandum, the provisions of the Registered Clubs Act and its regulations, the Liquor Act and the Corporations Act.
- 1.4 The amalgamation will be effected by the continuation of BBC and the dissolution of NGC.
- 1.5 The process for the amalgamation will be as follows:

- (i) The members of NGC will be asked at an EGM to approve a resolution to approve the amalgamation proposal.
- (ii) If the membership of NGC approves the amalgamation at its EGM then BBC will convene an EGM of its membership to pass a resolution to approve the amalgamation proposal.
- (iii) The EGMs will be conducted in the manner set out in Clause 7 below.
- (iv) If the respective memberships at the EGM approve of the amalgamation then an amalgamation application will be made to the Authority in the manner referred to in Clause 8 below.
- (v) If the authority grants the amalgamation application then the assets, debts and liabilities of NGC will be transferred to BBC.
- (vi) The Amalgamated Club shall be conducted in accordance with the constitution of the BBC as amended pursuant to Clause 7 below.
- (vii) If terms satisfactory to the Board of the amalgamated club can be negotiated with the Lessors of the NGC premises at Fairways Drive (and subject to a business case for the continued operation of the NGC leased premises as a registered club being ratified by the Board of the amalgamated club) it is intended that the existing NGC leased premises will become additional licenced premises of the amalgamated club. Those premises will then continue to be available for use by members and their invited guests in accordance with the requirements of the Registered Clubs Act.
- (viii) The BBC premises will continue to operate in accordance with existing arrangements without change at the Meroo Road, Bomaderry premises, Bunberra St, Bomaderry premises and the Berry premises.
- (ix) Once the amalgamation has been completed NGC will be formally liquidated in accordance with the requirements of the Corporations Act.

2. Intentions Regarding the Future Direction of the Amalgamated Club [Clause 7(2)(c)]

- 2.1 It is the intention of the Clubs to continue to offer quality services and facilities to the community of the Shoalhaven through the continued operation of the existing facilities.
- 2.2 The Fairways Drive premises will continue to be available to members of the amalgamated club.
- 2.3 The future direction of the amalgamated club will, to a large extent, be in the hands of its membership. The respective Boards of the two clubs have identified a particular advantage of the amalgamation is that there are already many members of the Shoalhaven community who already hold memberships of both clubs. It is the hope of the amalgamation that the future direction of the Amalgamated Club will become a vision shared by all members.
- 2.4 BBC has been exploring over some years opportunities for expansion of its facilities. It is expected that the Board of the Amalgamated Club will continue to explore opportunities as they arise.
- 2.5 The principle focus for the Amalgamated Club will be to ensure that the community of the Shoalhaven continues to enjoy access to the highest level of facilities.

3. The Extent to Which Employees of the Amalgamated Club Will be Protected [Clause 7(2)(d)]

- 3.1 There are permanent and casual employees of NGC. It is expected that the existing workforce will be retained with shifts and hours to be adjusted to meet the business case requirement. As management will be undertaken generally from the BBC premises the management position at NGC may be made redundant.

4. Intentions Regarding Assets of the Dissolved Club [Clause 7(2)(e)]

- 4.1 As the NGC operates from leased premises and does not own any other real property there is no core property as that phrase is defined under the Registered Clubs Act in Section 41J of the Act.
- 4.2 The respective Boards recognise that because of the adverse trading conditions experienced by NGC it is anticipated that at the time of any amalgamation NGC will have only limited cash and investments after repayment of debt owed by NGC.
- 4.3 Upon approval to the amalgamation any cash or investments held by NGC will become part of the assets of the amalgamated club and will be available to pay the remaining debts of NGC assumed by the Amalgamated Club.
- 4.4 The BBC intends to retain the poker machine entitlements at the NGC premises.

5. Circumstances That Would Permit the Amalgamated Club to Cease Trading on the Premises of the Dissolved Club or to Substantially Change the Objects of the Dissolved Club [Clause 7(2)(f)]

- 5.1 The BBC does not intend to:
- (i) cease trading from NGC premises;
 - (ii) cease the golfing activities conducted at NGC premises.
- 5.2 The BBC intends to operate the Amalgamated Club in the manner referred to in Clause 2.
- 5.3 However, for the purposes of clause 7(2)(f) of the Regulations, the BBC and the NCG are required to agree to these matters.
- 5.4 Therefore, for the purposes of clause 7(2)(f) of the Regulations, the BBC and the NGC have agreed the Amalgamated Club would either cease trading from, change to the objects of or cease the golfing activities at the NGC premises in the following circumstances;
- (i) if the NGC premises is not profitable or if it is not financially viable for the Amalgamated Club to continue to trade from, continue the objects of or continue the golfing activities at the NGC premises;
 - (ii) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
 - (iii) upon the lawful order of any government authority; or

- (iv) if the NGC premises were destroyed or partially destroyed by fire, flood, storm, etc.

6. The Agreed Period of Time Before Any Action Referred to in paragraph (f) Can Be Taken by the Amalgamated Club [Clause 7(2)(g)]

- 6.1 The respective Boards do not perceive any action being required under paragraph (f).

7. Calling of Meetings to Ratify Amalgamation

- 7.1 The Registered Clubs Act provides (in Section 17AEB(d)) that the proposed amalgamation be approved in principle at separate EGMs of the ordinary members of each club. A simple majority of the members present and entitled to vote is required in order to pass the necessary resolution.
- 7.2 NGC will call an Extraordinary General Meeting of its membership for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation with BBC in accordance with Section 17AEB(d) of the Registered Clubs Act.
- 7.3 The NGC EGM will be held as soon as reasonably practicable after the signing of this Memorandum.
- 7.4 The Boards of the two clubs have received advice that pursuant to Section 17AEB(d) of the Registered Clubs Act the term "ordinary member" is defined as a person who is elected to membership of the Club in accordance with Section 30(1) of the Act (which relates to mandatory rules of registered clubs). According to this advice that means that all ordinary members are entitled to attend the EGM and vote on the resolutions.
- 7.5 As such, and by virtue of the provisions of the Registered Clubs Act the ordinary members of NGC for the purpose of voting at the EGM will be such persons who are in attendance at the EGM as ordinary members (as defined in the NGC Memorandum and Articles Association).
- 7.6 Subject to NGC passing the resolution referred to in Clause 7.2 above BBC will call an EGM of the ordinary members of BBC for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation of the two clubs in accordance with Section 17AEB(d) of the Registered Clubs Act.
- 7.7 The BBC EGM will be held as soon as reasonably practicable.
- 7.8 In addition to the amalgamation resolution referred to in clause 7.6 above the members of BBC will at the EGM consider and if thought fit pass a resolution, as a special resolution to amend the constitution of BBC (with effect from completion of the amalgamation) the following proposal:
- (a) That all present members of NGC who apply to become members of BBC be admitted to membership of BBC as ordinary members unless a NGC member applies for admission as a bowling member.
 - (b) A member of NGC will not be required to be proposed or seconded for membership of BBC.
 - (c) As soon as practicable after both clubs have passed resolutions approving in principle the amalgamation BBC will forward to each member of NGC who is not already a member of BBC a written invitation to become a member of BBC.

- (d) Any member of NGC who is not already a member of BBC and who accepts the invitation and agrees in writing to be bound by the constitution of BBC will be elected by resolution of the Board of BBC to membership of BBC as a social member with effect from the date of the completion of the amalgamation.
 - (e) Members of NGC who are applying for membership as bowling members shall upon payment of the requisite fees be elected by resolution of the Board of the BBC to membership as bowling members with effect from the date of completion of the amalgamation.
- 7.9 If, at the completion of the amalgamation process, there is any member of either BBC or NGC that has been refused admission to either club, being suspended from membership of either club under the respective constitution or is at time expelled from the premises of either club then that person shall not be entitled to attend or use the facilities of either BBC or NGC until such time as that person has:
- (a) Made application to and has been permitted to enter the premises of the amalgamated club; or
 - (b) Served any period of suspension imposed; or
 - (c) The Board of the amalgamated club has resolved to annul the expulsion.

8. Submission of Amalgamation Application

- 8.1 As soon as is reasonably practicable after the holding of the respective EGMs referred to in Clause 7 above each club shall forward to the solicitors for BBC the following:
- (a) A true copy of the notice of the calling of the EGM at which the resolution was passed; and
 - (b) A true copy of the Minutes of the EGM which will identify the number of members present at the meeting and whether or not the resolution was passed.
- 8.2 The solicitors for BBC will prepare and file the amalgamation application and submit it to the authority and provide a copy of the application to NGC.
- 8.3 NGC will cooperate in all respects and do all such things as may be required to assist in the preparation, lodgement and finalisation of all amalgamation documentation and will cause the secretary to sign the amalgamation application if required to do so.

9. Warranties and Operational Arrangements

- 9.1 NGC warrants to BBC that from the date of the execution of this Memorandum to the date of completion of the amalgamation NGC will:
- (a) Carry on its business in the usual ordinary course consistent with its obligations as a registered club and in a diligent manner.
 - (b) Will not incur any single debt or liability including the purchase of any capital equipment to a value of greater than \$1,000.00 plus GST without the prior approval of the Secretary Manager of BBC or its delegate.
 - (c) Keep the assets of NGC insured in such amount as represents their full replacement or reinstatement value and maintain insurance against fire and all other risks normally associated with the conduct of a registered club.

- (d) Accept the reasonable direction of the management of BBC regarding its day to day operations in relation to management practices and strategies necessary to reduce losses and to increase profitability and to preserve the value of the assets of NGC.
 - (e) Provide to the Secretary Manager of BBC at least weekly (and at such other times as reasonably requested) any details or documents relating to the operation and finance position of NGC.
 - (f) Without the prior written consent of BBC:
 - (i) Enter into terminate or alter any term of any material contract, arrangement or understanding including any Lease, licence or arrangement in relation to its operations or otherwise.
 - (ii) Except in the usual and routine conduct of its trading operations incur any actual or contingent liabilities.
 - (iii) Except in the usual and routine conduct of its trading operations dispose of or agree to dispose of, encumber or grant any option over or give security over any asset of NGC.
 - (iv) Employ any person whether or not on a full time or casual basis.
 - (v) Terminate the employment of any employee other than a casual employee.
 - (vi) Alter the terms of employment (including the terms of remuneration and/or superannuation) or any other benefit of any employee.
 - (vii) Make application for or borrow money from any third party.
 - (viii) Cause circumstances to arise which would increase the level of debt of NGC beyond that existing and as disclosed to BBC at the date of this Memorandum (other than a debt incurred in the conduct of the day to day operations of NGC).
 - (ix) Engage in discussions or negotiations with any person concerning the sale or any part of the assets of NGC and further advise BBC of the details and identity of any person who makes a solicitation to NGC in respect of any such proposal.
- 9.2 Each of the warranties contained in this clause are given as a separate and independent warranty by NGC and its Directors. The warranty shall remain in full force and effect notwithstanding completion of the amalgamation.
- 9.3 BBC shall be entitled to terminate this Memorandum and the Amalgamation at any time prior to completion of the amalgamation if there is any material breach of these warranties and any such termination shall be without limitation to other rights and entitlements that may rise in favour of BBC.
- 9.4 Upon execution of the Memorandum of Understanding by the respective clubs the management of each club shall confer regarding the management and operations of NGC with the intent of:
- (i) Identifying the business case for the continuation of trading from the Fairways Drive premises.
 - (ii) Identifying strategies and efficiencies to implement in the management of NGC with a view to maximising costs savings.

9.5 If before completion of the amalgamation:

- (i) An event occurs which has or may have a material effect on the profitability of NGC not otherwise disclosed in the course of these negotiations; or
- (ii) An event occurs which makes any warranty made or given untrue or misleading; or
- (iii) Any claim of any nature is threatened or asserted by or against NGC,

then BBC shall be entitled upon becoming aware of the altered circumstances to give notice to NGC terminating this Memorandum of Understanding and the amalgamation process.

9.6 Title to, property in and risk of NGC assets remains solely with NGC until such time as the amalgamation is completed in accordance with the Act. For the avoidance of doubt the parties acknowledge that no liability is accepted or will exist in BBC for and in respect of the continuation of trading by NGC from the date of this Memorandum and until the amalgamation process is completed.

10. Dissolution of NGC and Transfer of Assets

- 10.1 As soon as practicable after the authority grants the application and makes the amalgamation order (subject to the final order) NGC must ensure that its assets debts and liabilities are transferred to BBC (less the provision required for the purposes of liquidating NGC in the manner required by the Corporations Act).
- 10.2 The parties acknowledge that it is proposed that the transfer of assets, debts and liabilities of NGC will occur on the date of the final order.
- 10.3 For the purposes of this clause NGC must do all such things as may be necessary and execute all such documents as may be required to ensure that all of its assets are transferred to or assigned to BBC with effect from the date of the final order.
- 10.4 All transfers and assignment referred to in this clause will be executed by NGC and held in escrow by BBC pending completion of the amalgamation.
- 10.5 As soon as practicable after the completion of the amalgamation NGC must ensure that a liquidator is appointed to facilitate the liquidation of NGC including if necessary:
 - (i) The calling of a further general meeting at which the members will consider and if thought fit, pass all appropriate resolutions for the liquidation of NGC; and
 - (ii) Thereafter liquidate NGC and after payment of any remaining debts and liabilities transfer any remaining assets to BBC.

11. Access to Records

- 11.1 From the date of this Memorandum NGC will provide to BBC at all reasonable times access to the NGC Fairway Drive premises, all records and assets contained therein and any other information and material reasonably required by BBC.

12. Costs

- 12.1 Each party shall pay its own costs and in relation to the preparation, execution and completion of this Memorandum, the conduct of any EGM and all matters associated with the implementation of the amalgamation up until the date of final order.

13. Stamp Duty

- 13.1 Whilst acknowledging that Section 65(3) of the Duties Act provides that no duty is chargeable under transfer of dutiable property to give effect to an amalgamation the parties agree to provide such information and documents as the Chief Commissioner of the Office of State Revenue may require to enable the exemption to duty to apply.
- 13.2 If not withstanding any exemption from duty any other duty is payable to give effect to the provisions of this Memorandum then that duty shall be payable out of the assets of NGC.

14. Termination

- 14.1 BBC may terminate this Memorandum at any time without penalty by giving written notice to NGC if the members of NGC have not passed the resolution referred to in Clause 7 above within three (3) months of the date of this Memorandum.
- 14.2 Notwithstanding anything contained in this Memorandum, if completion of the amalgamation has not occurred by 30 June 2018 then either party may by giving written notice to the other and without penalty terminate this Memorandum but any such termination shall not effect other rights which have accrued up to the date of termination.

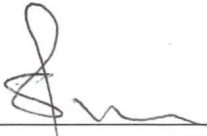
15. Notices


- 15.1 Any notice to be given to a party to this Memorandum must be:
- (i) In writing.
 - (ii) Directed to the recipient addressed as specified in this Memorandum.
 - (iii) Left at, or sent by pre-paid post, by facsimile or by attachment to an email sent to the address for notice as shown in this Memorandum.
- 15.2 A notice given in accordance with this clause will be deemed to be duly given:
- (i) On the day of delivery.
 - (ii) Two days after the date of posting if by pre-paid post.
 - (iii) If sent by facsimile or email when confirmation of sending is received.
 - (iv) As the case may be.

Execution page

Executed as a deed

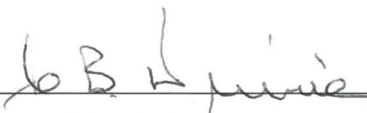
Executed by **NOWRA GOLF CLUB LIMITED (ACN 000 869 748)** in accordance with Section 127 of the *Corporations Act 2001 (Cth)*:


 Signature of director **PRESIDENT**
ANTHONY JOHN HUNTER
 Name of director (print) **PRESIDENT**


 Signature of director/secretary **Treasurer**
Jill Ellen Downie
 Name of director/secretary (print) **Treasurer**

Executed by **BOMADERRY BOWLING CLUB LIMITED (ACN 000 952 705)** in accordance with Section 127 of the *Corporations Act 2001 (Cth)*:


 Signature of director
PETER GLEN INGRAM
 Name of director (print)


 Signature of director/secretary
CHARLES DINNIE
 Name of director/secretary (print)