
THOMSON GEER

LAWYERS

Level 14, 60 Martin Place
Sydney NSW 2000 Australia

T +61 2 8248 5800 | F +61 2 8248 5899

MEMORANDUM OF UNDERSTANDING

DATED

1st November 2021

PARTIES

Ballina Bowling and Recreation Club Limited trading as Cherry Street Sports
ABN 30 000 984 412
(Cherry Street Sports)

AND

Lennox Head Community Sports & Recreation Club Limited
ABN 29 163 771 382
(Club Lennox)

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This Memorandum of Understanding is made on 11/11/2021

BETWEEN

BALLINA BOWLING AND RECREATION CLUB LIMITED (ABN 30 000 984 412) trading as Cherry Street Sports of 68 Cherry Street, Ballina NSW 2478 (**Cherry Street Sports**).

and

LENNOX HEAD COMMUNITY SPORTS & RECREATION CLUB LIMITED (ABN 29 163 771 382) of 10 Stewart Street, Lennox Head NSW 2478 (**Club Lennox**).

BACKGROUND

- A. Cherry Street Sports and Club Lennox operate as registered clubs in Ballina and Lennox Head.
- B. Club Lennox called for expressions of interest in amalgamation from other registered clubs.
- C. Cherry Street Sports submitted an expression of interest to Club Lennox.
- D. Club Lennox has accepted the expression of interest from Cherry Street Sports and, following further negotiation, Cherry Street Sports and Club Lennox have agreed to the terms set out in this Memorandum.
- E. Cherry Street Sports and Club Lennox propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Memorandum unless the context otherwise requires:

- (a) **Amalgamated Club** mean the registered club from the amalgamation of the Cherry Street Sports and Club Lennox, the corporate vehicle of which will be the Cherry Street Sports;
- (b) **Amalgamation** means the amalgamation of the Clubs in accordance with this Memorandum;
- (c) **Amalgamation Application** means the application by the Clubs for the transfer of Club Lennox's Liquor Licence to the Cherry Street Sports pursuant to Sections 60(6) and (7) of the Liquor Act;
- (d) **Assets** means all of the goodwill, land, buildings, personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines, contracts, agreements and all other property (including leases of property, including leases of land), tangible or intangible belonging to Club Lennox as at the Completion of the Amalgamation;
- (e) **Authority** means the Independent Liquor and Gaming Authority;
- (f) **Club Lennox Premises** means Club Lennox's leasehold premises located at 10 Stewart Street, Lennox Head NSW 2478, being lot 31 in deposited plan 11905;
- (g) **Club Lennox's CEO** means the individual who fulfils the Secretary or Secretary Manager's role at Club Lennox;

- (h) **Cherry Street Sports's CEO** means the individual who fulfils the Secretary or Secretary Manager's role at the Cherry Street Sports;
- (i) **Claim** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature, whether known or unknown;
- (j) **ClubGRANTS** means the ClubGRANTS scheme established under the Gaming Machine Tax Act 2001 for the granting of a rebate of gaming machine tax levied on registered clubs for expenditure on community development and support;
- (k) **Clubhouse** means the clubhouse building located at Club Lennox Premises;
- (l) **Clubs** means the Cherry Street Sports and Club Lennox;
- (m) **Completion of the Amalgamation** means the day on which the Final Order is granted;
- (n) **Confidential Information** means all information relating to a party, its business, employees or suppliers which is or might reasonably be considered by the other party to be confidential and which is not in the public domain, including all financial data and information relating to a party, business plans, unpublished financial accounts, data and reports, supply lists and information relating to the business of a party's suppliers;
- (o) **Conditions Precedent** means the following:
 - (i) For the benefit of both Clubs:
 - (A) the obtaining of the Final Order;
 - (B) the passing of the required resolutions by members of each of the Clubs approving in principle of the Amalgamation as specified in clauses 15(a) and 15(c);
 - (C) the passing of the special resolution by members of Cherry Street Sports as specified in clause 15(e);
 - (D) granting of the New Lease or Transfer of the Existing Lease in accordance with clauses 4 and 10(b);
 - (E) satisfactory completion by each of the Clubs of their Due Diligence inquiries as specified in clause 3.3;
 - (F) Club Lennox transferring the Assets, Debts and Liabilities to Cherry Street Sports in accordance with clause 18(b);
 - (ii) For the benefit of Cherry Street Sports:
 - (A) Cherry Street Sports being able to verify to its reasonable satisfaction that Club Lennox's absolute title to the material and substantial Assets are free of any security interest or other encumbrance and that the material and substantial Assets owned by Cherry Street Sports as at the date of this Memorandum will be owned by it at the time of Completion of the Amalgamation,
 - (B) Club Lennox having and owning the 26 gaming machine entitlements attached to its Club Licence; and
 - (C) The total Debts and Liabilities of Club Lennox not exceeding \$550,000 (or such higher amount as agreed by Cherry Sports).

- (p) **Debts** means the accumulated debts of Club Lennox at the time of Completion of the Amalgamation;
- (q) **Existing Lease** means registered lease AD833238 between Ballina Shire Council as lessor and the former Lennox Head Bowls & Sports Club Ltd (in liquidation) ABN 43 001 051 as lessee over the Club Lennox Premises, which was transferred to Ramsgate RSL Memorial Club Ltd by registered transfer of lease AD833239;
- (r) **Final Order** means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby Club Lennox's Liquor Licence is transferred to the Cherry Street Sports;
- (s) **Force majeure event** means an event which is beyond the reasonable control of a party and includes but is not limited to:
 - (i) an act of God;
 - (ii) a breakdown or destruction of plant and equipment;
 - (iii) a shortage of or inability to secure fuel, power, material or labour;
 - (iv) a flood, earthquake, rock fall or landslide;
 - (v) a government act or regulation including but not limited to, exchange control by government having jurisdiction over the parties effected;
 - (vi) a blockade, riot, civil insurgence, act of terrorism or war;
 - (vii) lightning, fire or explosion; or
 - (viii) epidemic/pandemic or quarantine restriction;
- (t) **GST** means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (u) **Liabilities** means all liabilities, losses, damages, outgoings, costs and expenses of Club Lennox (whatever description) as at Completion of the Amalgamation;
- (v) **Liquor Act** means the *Liquor Act 2007* (NSW) and its associated regulations;
- (w) **Liquor Licence** means the club licence issued to a registered club under the *Liquor Act*;
- (x) **Memorandum** means this Memorandum of Understanding;
- (y) **New Lease** means a new lease to be granted to Cherry Street Sports over the Club Lennox Premises in accordance with clauses 4(b) and 10(b);
- (z) **Order** means the provisional approval of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (aa) **Party** includes the management and Board of Directors of Club Lennox and the Cherry Street Sports respectively;
- (bb) **Records** means all originals and copies of documents, records, sales brochures and catalogues, lists of clients, books, files, accounts, plans and correspondence belonging to or used by Club Lennox in the conduct of Club Lennox's business including but not limited to corporate, accounting and statutory records;
- (cc) **Regulations** mean the Regulations to the RCA;
- (dd) **RCA** means the *Registered Clubs Act 1976* (NSW) and its associated regulations;

- (ee) **Sunset Date** means the date which is twelve (12) months after the date of this Memorandum.

1.2 Interpretation

In this Memorandum unless the context otherwise requires:

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

2 EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION

- (a) Cherry Street Sports and Club Lennox agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- (b) The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.
- (c) The amalgamation will be effected by the continuation of Cherry Street Sports and the dissolution of Club Lennox.

3 PROCESS FOR AMALGAMATION, CONDITIONS PRECEDENT AND DUE DILIGENCE

3.1 Memorandum subject to satisfaction of the Conditions Precedent

The amalgamation is subject to satisfaction of the Conditions Precedent by the Sunset Date and a party may terminate this Memorandum but only subject to clause 25 where a relevant Condition Precedent is not satisfied by the Sunset Date.

3.2 Process for the amalgamation

The process for the amalgamation will be as follows:

- (a) the Clubs will enter into this Memorandum; and
- (b) the members of Club Lennox and Cherry Street Sports will be asked to approve the amalgamation at separate general meetings of the ordinary members of each club. These meetings will be called and held in the manner referred to in clause 15 below;

- (c) the members of Cherry Street Sports will be asked to approve (by special resolution) amendments to Cherry Street Sports' Constitution in the manner provided for in clause 15(e) below;
- (d) once the approvals in paragraphs (b) to (c) inclusive have been obtained, the Amalgamation Application will then be made to the Authority. The Amalgamation Application will be made in the manner referred to in clause 16 below;
- (e) after the Amalgamation Application is granted and on the date of the Final Order:
 - (i) the Assets, Debts and Liabilities of Club Lennox will be transferred to the Cherry Street Sports in the manner referred to in clause 18 below;
 - (ii) all eligible members of Club Lennox will, with their consent, be admitted as members of the Cherry Street Sports and will be identified as a separate class of membership called "Club Lennox members". This will occur in accordance with the procedure set out in clause 15(e) below (that is, the category of membership will be inserted into the Cherry Street Sports' Constitution pursuant to the Special Resolution referred to in that clause);
 - (iii) employees of Club Lennox who have accepted an offer of employment from the Cherry Street Sports will become employees of the Amalgamated Club.
- (f) after Completion of the Amalgamation, the Cherry Street Sports will continue as the body corporate of the Amalgamated Club.
- (g) from Completion of the Amalgamation, Club Lennox Premises will become additional licensed premises of the Cherry Street Sports and will be available to all members of the Amalgamated Club. Club Lennox Premises will be operated in the manner set out in clause 4, clause 5(f) and clause 7 below;
- (h) after Completion of the Amalgamation, Club Lennox will be liquidated or otherwise voluntarily deregistered in the manner referred to in clause 18 below.

3.3 Due Diligence

- (a) Club Lennox may, at its own expense, undertake a due diligence review of the Cherry Street Sports financial position and operations.
- (b) Cherry Street Sports may, at its own expense, undertake a due diligence review of Club Lennox's financial position and operations, property, contractual and legal documents and Records.
- (c) Each Club will, if required by the other, provide a list of information (including, but not limited to, details of their Assets, Debts and Liabilities) and assistance to the other Club in order for the other Club to properly carry out and complete the due diligence review.
- (d) Each Club's due diligence review must be completed within 4 weeks of the date of this Memorandum.

4 LEASE OF CLUB LENNOX PREMISES

Cherry Street Sports enters into this Memorandum subject to having the right to occupy the Club Lennox Premises on and from Completion of the Amalgamation pursuant to either:

- (a) assignment and novation of the Existing Lease to Cherry Street Sports and extension of the Existing Lease term; or
- (b) granting of a New Lease to Cherry Street Sports by Ballina Shire Council;

in either case being of sufficient tenure and on terms acceptable (including but not limited, in relation to the rent) to the Amalgamated Club in its absolute discretion but for not less than 3 years after Completion of the Amalgamation.

5 THE MANNER IN WHICH the PREMISES AND OTHER FACILITIES OF CLUB LENNOX WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF CLUB LENNOX PREMISES AND FACILITIES
[Regulations – Clause 7(2)(a)]

- (a) The Club Lennox Premises will become additional premises of Cherry Street Sports.
- (b) The Amalgamated Club will operate and trade from the Cherry Street Sports Premises and Club Lennox Premises.
- (c) Cherry Street Sports will take over responsibility and control of the Club Lennox Premises with effect from Completion of the Amalgamation.
- (d) The Board of Cherry Street Sports will be the Board of the Amalgamated Club.
- (e) Cherry Street Sports CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- (f) In accordance with the Liquor Act, Cherry Street Sports will appoint an approved manager for the Club Lennox Premises.

6 A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB
[Regulations – Clause 7(2)(b)]

- (a) The traditions, amenities, culture, bowling facilities, bowling activities and memorabilia of Club Lennox (in digital format) will be maintained by the Amalgamated Club at the Club Lennox Premises.
- (b) The Amalgamated Club will continue to support the community organisations that were supported by Club Lennox (as at the date of this Memorandum) in amounts not less than the average of those provided to the community by Club Lennox over the three years preceding the date of this MOU. The Amalgamated Club will also explore opportunities to expand community support.
- (c) The Amalgamated Club will continue to provide support for Christmas Trees (for at least 2021), Love Lennox, Club Lennox Centenary celebrations and Christmas Carols in the Park.
- (d) The Amalgamated Club will honour all existing sponsorship arrangements of Club Lennox.
- (e) The Amalgamated Club will use its best endeavours to establish funding relationships with all Club Lennox community sports and community groups in line with the Amalgamated Club's current sporting agreements in place.
- (f) The Amalgamated Club will continue to provide meeting rooms free of charge for not-for-profit community organisations for meetings and get togethers supported by Club Lennox in line with the Amalgamated Club's current policies.

7 INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB
[Regulations – Clause 7(2)(c)]

The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, Cherry Street Sports will operate the Amalgamated Club and Club Lennox Premises in accordance with this clause 7.

7.1 Amalgamated Club Premises

The Amalgamated Club will operate and trade from the Cherry Street Sports Premises and Club Lennox Premises.

7.2 Club Lennox Premises

- (a) Club Lennox Premises will continue to trade for at least 3 years post completion of the Amalgamation. The Amalgamated Club intends to trade Club Lennox Premises for so long as it is financially viable to do so and provided Club Lennox Premises has tenure.
- (b) Subject to clauses 12 and 13, the Cherry Street Sports intends to:
 - (i) maintain Club Lennox Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at Club Lennox Premises with the usual facilities and amenities of a registered club; and
 - (ii) operate Club Lennox Premises as a successful and well supported local based bowling, sporting and community club;
 - (iii) undertake improvements to Club Lennox Premises and facilities (including the Clubhouse, bowling greens and surrounding areas. The timeframe, nature and budget for those improvements will be determined by the Board of the Amalgamated Club in its absolute discretion. The Amalgamated Club will endeavour to make the following improvements within a reasonable period after the Completion of the Amalgamation:
 - (A) upgrade existing air conditioning;
 - (B) internal renovations to suit trade and as funds permit;
 - (C) replacing or upgrading of the gaming machines installed in the Clubhouse;
 - (D) upgrade all IT and Systems to mirror the Amalgamated Club for ease of operations ;
 - (E) upgrading the building and premises to comply with Amalgamated Club standards as funds permit. While a dollar figure is hard to obtain, the Amalgamated Club will commit to facility upgrades to ensure the growth of revenue and compliance with the food safe work practices and council requirements;
 - (iv) improve trading at Club Lennox Premises;
 - (v) maintain and where possible enhance, the social facilities, services, amenities and activities at Club Lennox Premises;
 - (vi) upgrade the gaming system to enable Tiered loyalty at Club Lennox Premises; and
 - (vii) trade Club Lennox Premises for a minimum of 6 days a week with the aim of trying to operate 7 days a week from 10am.

7.3 Sub-Clubs and Affiliated Clubs

- (a) The Amalgamated Club will preserve all Club Lennox Sub-Club's identities including the two bowling green names to be preserved. For the avoidance of doubt the existing Sub Clubs are as follows:
 - (i) Lennox Head Men's Bowling Club

- (ii) Lennox Head Women's Bowling Club

New Sub-Clubs will be formed to the extent that there is sufficient demand from members.

- (b) All existing affiliated clubs of Club Lennox as at the date of this MOU (and which are not Sub-Clubs of Club Lennox) may, subject to eligibility apply for ClubGRANTS from the Amalgamated Club for support. For the avoidance, of doubt, the following are existing affiliated clubs of Club Lennox (and which are not Sub-Clubs of Club Lennox):

- (i) Lennox All Girl Surfers
- (ii) The Lennox Head Cricket Club
- (iii) Le-Ba Board Riders
- (iv) Lennox Head Lions Club
- (v) Lennox Head Bridge Club
- (vi) Lennox Head View Club (Day & Evening)
- (vii) Lennox Head Probus
- (viii) Rainbow Regional Dragon Boat Club
- (ix) Lennox Head Chamber of Commerce
- (x) Lennox Head Social Golf Club
- (xi) Lennox Head Fishing Club
- (xii) Lennox Head Sharks Football Club
- (xiii) Lennox Head Long boarders
- (xiv) Lennox Head Community Gardens
- (xv) Lennox Byron Junior Rugby League
- (xvi) Lennox Head Netball
- (xvii) Lennox Head Trojans
- (xviii) Lennox Head Trojans Women

7.4 Centenary Anniversary of Club Lennox

Cherry Street Sports will recognise and celebrate Club Lennox's centenary anniversary in 2023.

7.5 Payment of Subscriptions

Cherry Street Sports will treat any annual subscriptions which have been paid to Club Lennox for the subscription period current as at the date of the Completion of the Amalgamation as being annual subscriptions which have been paid to the Amalgamated Club. This will also apply to any multi-year membership subscriptions.

8 THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED

[Regulations – Clause 7(2) (d)]

- (a) As part of the Amalgamation, Club Lennox will be wound up/liquidated. As part of the winding up/liquidation of Club Lennox and but for the following paragraphs of this clause 8, the employment of all Club Lennox's employees by Club Lennox would otherwise come to an end.
- (b) Prior to the Completion of the Amalgamation, Cherry Street Sports will offer employment to each of Club Lennox's employees subject in each case to satisfactory interviews and satisfactorily undertaking and passing normal pre-employment testing and meeting the Amalgamated Club's general standards and prerequisites for employment.
- (c) Subject to clause 8(b) the Amalgamated Club will offer new employment to existing Club Lennox employees on terms no less favourable than those provided by an applicable industrial instrument and consistent with the Amalgamated Club's own practices, policies and procedures. The Amalgamated Club will use its reasonable endeavours, with recognition of past service, such that no employee of Club Lennox receives lesser benefits than they presently receive from Club Lennox. Club Lennox employees may be offered employment with different titles, responsibilities, hours of work, place of work and times of work as required to meet the demands of the business of the Amalgamated Club.
- (d) Any employee of Club Lennox who accepts an offer of employment with the Amalgamated Club will receive continuity of employment and their accrued entitlements as employees of Club Lennox will be carried over and be honoured by the Amalgamated Club.
- (e) Any employee of Club Lennox who does not accept an offer of employment with the Amalgamated Club will be paid their full entitlements by Club Lennox when their employment with Club Lennox comes to an end.
- (f) Each employee of the Cherry Street Sports will continue to be employed by the Amalgamated Club after the Completion of the Amalgamation, subject to the terms and conditions of employment between each of those employees and the Cherry Street Sports.

9 INTENTIONS REGARDING THE FOLLOWING ASSETS OF CLUB LENNOX:

- 1. **Any core property;**
- 2. **Any cash or investments;**
- 3. **Any Gaming machine entitlements**

[Regulations – Clause 7(2)(e)]

9.1 Core Property

- (a) For the purposes of the RCA, Club Lennox Premises is the "core property" of Club Lennox.
- (b) Subject to this Memorandum, the Cherry Street Sports will retain the core property of Club Lennox and operate the Amalgamated Club in the manner referred to in clause 7.

9.2 Cash and Investments

The cash and investments of Club Lennox will be transferred (in accordance with clause 18) to the general reserves of the Amalgamated Club.

9.3 Gaming Machine Entitlements

Club Lennox has twenty six (26) gaming machine entitlements. The ownership of those twenty six (26) gaming machine entitlements will be transferred to the Amalgamated Club with effect from the Completion of the Amalgamation.

10 RISKS OF NOT PRESERVING CLUB LENNOX'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED [Regulations – Clause 7(2)(e1)]

- (a) The Core Property of Club Lennox is its leasehold interest in the Club Lennox Premises with Ballina Shire Council. Subject to clauses 11, 12 and 13 and the RCA, the Amalgamated Club will not dispose of the core property of Club Lennox during the first three (3) years after Completion of the Amalgamation.
- (b) It is a condition precedent for Completion of the Amalgamation for the granting of a New Lease or assignment and novation of the Existing Lease, in either case being of sufficient tenure and acceptable terms to be granted to the Amalgamated Club. Further, if after Completion of the Amalgamation the Amalgamated Club is subsequently denied a new lease or extension of an existing lease of sufficient tenure on acceptable terms, or the rent under the lease is increased such that the venue is no longer viable in its own right, then the Amalgamated Club will have no obligation to continue trading at Club Lennox Premises.
- (c) The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the core property of Club Lennox are those set out in clause 12(d).
- (d) The only risk is cessation of the Existing Lease (as amended or extended) or the New Lease and that is addressed by Cherry Sports Club being bound to honour the terms of any such lease.
- (e) If the risks (or any of them) in clause (d) are realised after the first three (3) years after Completion of the Amalgamation, the Amalgamated Club will use its best endeavours to find ways to address those risks so that the disposal of core property will be considered only after all other ways have been exhausted and provided the disposal is in accordance with the RCA.

11 DISPOSAL OF CLUB LENNOX'S MAJOR ASSETS [Regulations – Clause 7(2)(e2)]

- (a) For the purposes of the RCA, Club Lennox Premises (including the bowling greens) are the "core property" of Club Lennox.
- (b) Subject to clauses 9, 12 and 13 of this Memorandum, the Amalgamated Club will not dispose of the major assets of Club Lennox during the first three (3) years after Completion of the Amalgamation.

12 THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF CLUB LENNOX OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF CLUB LENNOX [Regulations – Clause 7(2)(f)]

- (a) The Amalgamated Club does not intend to:
 - (i) Cease trading from Club Lennox Premises; or
 - (ii) Cease the bowling activities conducted at Club Lennox Premises.

However the objects of Club Lennox will, in effect from Completion of the Amalgamation, be subsumed by and will become objects of the Amalgamated Club.

- (b) The Amalgamated Club intends to operate Club Lennox Premises in the manner referred to in clause 7.
- (c) However, for the purposes of clause 7(2) (f) of the Regulations, Cherry Street Sports and Club Lennox are required to agree to the matters set out in clause 12(d).
- (d) For the purposes of clause 7(2)(f) of the Regulations, Cherry Street Sports and Club Lennox have agreed that, subject to the Amalgamated Club's obligations under clause the Amalgamated Club would either cease trading from or cease the bowling activities at Club Lennox Premises in the following circumstances:
 - (i) if, after the first three (3) years after Completion of the Amalgamation, the Board of the Amalgamated Club determines that it is not financially viable to continue to trade from or continue the bowling activities at Club Lennox Premises; or
 - (ii) if the Amalgamated Club after Completion of the Amalgamation is at any time denied a new lease or extension of an existing lease of sufficient tenure on acceptable terms, or the rent under the lease is increased such that the venue is no longer viable in its own right; or
 - (iii) Upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs; or
 - (iv) Upon the lawful order of any government authority; or

if the premises are destroyed or partially destroyed by fire, floods, storms or any Force majeure event, except where appropriate insurance cover is available to reinstate Club Lennox Premises or where it is otherwise economically viable to do so.

13 AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM CLUB LENNOX PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF CLUB LENNOX PREMISES [Regulations – Clause 7(2)(g)]

Cherry Street Sports does not intend to cease trading from Club Lennox Premises. Cherry Street Sports intends to operate the Amalgamated Club in the manner referred to in clause 7 and would only cease to do so in the circumstances referred to in clause 12.

- (a) The objects of the Cherry Street Sports will become the objects of Club Lennox with effect from Completion of the Amalgamation.
- (b) However, for the purposes of clause 7(2) (g) of the Regulations, the Cherry Street Sports and Club Lennox are required to agree to the matters set out in clause 13(c).
- (c) For the purposes of clause 7(2) (g) of the Regulations, the Cherry Street Sports and Club Lennox have agreed that the Amalgamated Club will continue:
 - (i) To trade from Club Lennox Premises;
 - (ii) To continue the activities at Club Lennox Premises (including bowling activities),

for at least three (3) years, (except in the circumstances referred to in clause 12(d)).

14 BINDING EFFECT OF MEMORANDUM

Cherry Street Sports and Club Lennox agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

15 CALLING OF MEETINGS AND ADMISSION OF CLUB LENNOX MEMBERS TO MEMBERSHIP OF THE CHERRY STREET SPORTS

- (a) Club Lennox will call a general meeting of the ordinary members of Club Lennox for the purposes of considering and if thought fit passing a resolution approving in principle the Amalgamation in accordance with section 17AEB (d) of the RCA.
- (b) The meeting referred to in clause 15(a) must be held as soon as reasonably practicable after the date of this Memorandum but in any event within three (3) months of the date.
- (c) Cherry Street Sports will call a general meeting of the ordinary members of Cherry Street Sports for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB(d) of the RCA.
- (d) The meeting referred to in clause 15(c) will be held as soon as reasonably practicable after the date of this Memorandum.
- (e) In addition to the resolution referred to in clause 15(c), the Cherry Street Sports will, at the meeting referred to in clause 15(c), submit to those members eligible to attend and vote, on a special resolution to amend the Constitution of the Cherry Street Sports to give effect to the following:

*"Those members who were financial full members of Lennox Head Community Sports & Recreation Club Limited ABN 29 163 771 382 (**Club Lennox**) and whose names were entered in the Register of Members of Club Lennox on the date on which the Independent Liquor and Gaming Authority transfers the club licence of Club Lennox to the Club shall, for the purposes of section 17AC(2) of the Registered Clubs Act, be identified in the Club's Register of Members as Club Lennox Members."*
- (f) All eligible members of Club Lennox will be able to apply for membership of the Amalgamated Club in the manner referred to in clauses 15(g) to 15(h) .
- (g) As soon as practicable after the Order, the Amalgamated Club will forward to each member of Club Lennox, who is not already a member of Cherry Street Sports, a written invitation to become a member of the Amalgamated Club.
- (h) Any person who, at Completion of the Amalgamation, is a Life member of Club Lennox will:
 - (i) not become a Life member of the Amalgamated Club; and
 - (ii) continue to be recognised as a Life member of Club Lennox but only in respect of Club Lennox Premises;
 - (iii) be admitted to Life membership of the bowling sub clubs which are to be created by the Amalgamated Club;
 - (iv) only be required to pay to the Amalgamated Club the minimum annual subscription required by the RCA (\$2.00 plus GST).

16 AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY

- (a) Cherry Street Sports and its lawyers will prepare and file the Amalgamation Application.
- (b) Club Lennox will co-operate with Cherry Street Sports and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application, including the notices of meeting and the minutes of the meeting referred to in clause 15(a).

17 WARRANTIES AND OPERATIONAL ARRANGEMENTS

- (a) Club Lennox warrants to the Cherry Street Sports that from the date of this Memorandum to the date of Completion of the Amalgamation, Club Lennox will:
- (i) carry on its business in the usual ordinary course and in a diligent manner and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of five thousand dollars (\$5,000.00) plus GST without the prior approval of the Cherry Street Sports' CEO or the CEO's delegate;
 - (ii) remittance of all liabilities within trading terms or when due;
 - (iii) maintain the Assets in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
 - (iv) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of the Assets;
 - (v) provide the Cherry Street Sports' CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Club Lennox;
 - (vi) not do anything which may damage the goodwill of its business or that of the Cherry Street Sports;
 - (vii) not without the prior written consent of the Cherry Street Sports:
 - (A) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
 - (B) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;
 - (C) dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of the Assets (including without limitation its real property or gaming machine entitlements);
 - (D) other than disposals of Stock in the ordinary course of business, dispose of, create any encumbrance over, or declare itself trustee of any asset of Club Lennox;
 - (E) employ any persons other than a casual employee;
 - (F) terminate the employment of any employee (other than a casual employee);
 - (G) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
 - (H) seek to borrow or borrow money from any third party;
 - (I) increase the level of debt of Club Lennox beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of Club Lennox;

- (J) except as required by law, publish any document or material in relation to this MOU and the proposed amalgamation; or
 - (K) engage in discussions or negotiations with anyone other than the Cherry Street Sports concerning an amalgamation or the sale or disposal of all or any part of the Assets, and Club Lennox must advise the Cherry Street Sports of any solicitation by any third party to participate in any such discussion or negotiation.
- (b) Each of Club Lennox's warranties contained in clause 17(a) remains in full force and effect notwithstanding Completion of the Amalgamation.
 - (c) Cherry Street Sports' CEO and Club Lennox's CEO will have regular discussions about the management and operations of Club Lennox with the object of:
 - (i) providing for an orderly transfer of the management and operations of Club Lennox to the Cherry Street Sports on the date of Completion of the Amalgamation; and
 - (ii) achieving efficiencies and cost savings in Club Lennox;
 - (iii) implementing operational changes in preparation for Completion of the Amalgamation.
 - (d) If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
 - (i) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Club;
 - (ii) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
 - (iii) any Claim of any nature is threatened or asserted by or against the subject Club; or
 - (iv) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,

then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.
 - (e) Title to, property in and risk of Club Lennox's Assets remain solely with Club Lennox until such time as they are passed to the Amalgamated Club in accordance with clause 17.

18 DISSOLUTION OF CLUB LENNOX AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO THE CHERRY STREET SPORTS

- (a) Prior to the Completion of the Amalgamation, Club Lennox must do all things necessary to enable the Cherry Street Sports to be the bona fide occupier of Club Lennox Premises on Completion of Amalgamation.
- (b) At the same time as Final Order, or if the parties agree, as soon as practicable after the Final Order, but subject to the Final Order, Club Lennox must ensure the Assets, Debts and Liabilities of Club Lennox are transferred to the Cherry Street Sports (less an amount sufficient for the purposes of any liquidation of Club Lennox in the manner referred to in clause 18(f) and for directors' and officers' liability insurance pending deregistration). Cherry Street Sports shall be responsible for any additional funds reasonably incurred for the liquidation of Club Lennox, as well as funds for any directors and officers liability insurance, in the event the funds set aside by Club

Lennox for that purpose are insufficient. The parties acknowledge that it is proposed for the transfer of the Assets, Debts and Liabilities referred to in this clause 18(b) to occur on the date of the Final Order wherever possible.

- (c) For the purposes of clause 18(b), Club Lennox must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to the Cherry Street Sports with effect from the date of Final Order wherever possible. Such transfers and assignments will without limitation be in respect of:
 - (i) all real property; and
 - (ii) all contract rights including without limitation leases, licences, hire purchase agreements and existing service agreements in respect of Club Lennox Premises (including the agreements with the current greenkeeper and caterer);
 - (iii) all intellectual property rights (including business names);
 - (iv) all physical assets, furniture and fittings and stock in trade, owned or entered into by Club Lennox.
- (d) The transfers and assignments referred to in clause 18(c) must be executed by Club Lennox before Completion of the Amalgamation and be given to and be held in escrow by the Cherry Street Sports pending Completion of the Amalgamation.
- (e) Club Lennox must ensure that the Assets are transferred to the Cherry Street Sports free of charges, security interests and encumbrances of any other nature to enable the Cherry Street Sports to become the absolute and beneficial owner of those Assets with effect from Completion of the Amalgamation.
- (f) After the Cherry Street Sports has advised Club Lennox that it is satisfied that all matters related to the Amalgamation have been completed, Club Lennox must, as soon as reasonably practicable, ensure Club Lennox is either voluntarily deregistered or liquidated and any surplus Assets (if any) are transferred to the Cherry Street Sports after such deregistration or liquidation.
- (g) Each of the parties warrants to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required, for the preparation, lodgement and finalisation of the matters referred to in this clause 18.

19 ACCESS TO RECORDS

- (a) From the date of this Memorandum, Club Lennox will provide to the Cherry Street Sports at all reasonable times access to Club Lennox Premises, Records and other information and material reasonably required by the Cherry Street Sports (including for the purpose of any due diligence referred to in clause 3.3(b)).
- (b) From the date of this Memorandum, the Cherry Street Sports will provide to Club Lennox at all reasonable times access to Records and other information and material reasonably required by Club Lennox for the purposes of the due diligence referred to in clause 3.3(a)).

20 CONFIDENTIALITY

- (a) A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- (b) Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.

- (c) A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- (d) This clause 20 survives completion of this Memorandum.

21 RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- (a) A party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause 21.
- (b) A party claiming a dispute has arisen under or in relation to this Memorandum or the amalgamation process must give written notice to the other party specifying the nature of the dispute.
- (c) On receipt of that notice by the other party the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques, such as mediation, expert evaluation or expert determination or other techniques as may be agreed by them.
- (d) If the parties do not within seven (7) days of the receipt of the notice referred to in clause 21(b) or any extended period agreed in writing between the parties as to:
 - (i) the dispute resolution technique or procedures to be adopted;
 - (ii) the timetable for steps in those procedures; and
 - (iii) the selection and compensation of an independent person required for such dispute resolution technique or procedures,

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

- (e) If the dispute is not resolved within twenty eight (28) days after notice is given under clause 21(b) a party which has complied with the provisions of this clause 21 may by written notice to the other terminate any dispute resolution process undertaken pursuant to this clause and may then refer the dispute to arbitration or commence Court proceedings in relation to the dispute.
- (f) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 21 is to settle the dispute concerned. Neither party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause for any purpose other than in an attempt to settle the dispute.

22 COSTS

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

23 STAMP DUTY

- (a) The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.
- (b) Despite the exemption from duty referred to in clause 23(a) the parties agree that any duty payable by either party to bring into effect the provisions of this Memorandum shall be paid by the Cherry Street Sports.

24 GENERAL

- (a) This Memorandum constitutes the whole and entire agreement between the parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.
- (b) No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.
- (c) The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.
- (d) If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.
- (e) Neither party may assign this Memorandum or any benefit under it without the prior written consent of the other which it may refuse in its absolute discretion.
- (f) Each party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.
- (g) This Memorandum is governed by and is to be construed in accordance with the law of New South Wales.

25 TERMINATION

- (a) Cherry Street Sports may terminate this Memorandum, without penalty, by giving written notice to Club Lennox if:
 - (i) any of the Conditions Precedent which are stated for its benefit are not satisfied by the Sunset Date;
 - (ii) the due diligence review undertaken by it on Club Lennox (as referred to in clause 3.3(b)) is not satisfactory to the Board of the Cherry Street Sports. The Board of the Cherry Street Sports can waive this requirement at any time.
 - (iii) Club Lennox breaches any warranty contained in clause 17(a).
- (b) If:
 - (i) any of the Conditions Precedent which are stated to be for the benefit of both Clubs are not satisfied by the Sunset Date;
 - (ii) the members of Club Lennox have not passed the resolution referred to in clause 15(a) within six (6) months of the date of this Memorandum or such other later date agreed by the parties in writing; or
 - (iii) the members of the Cherry Street Sports have not passed the resolutions referred to in clauses 15(c) and 15(e) within six (6) months of the members of Club Lennox passing the resolution referred to in clause 15(a) or such other later date agreed by the parties,

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

- (c) Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 25 by a party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 25.

- (d) If this Memorandum is terminated in accordance with this clause 25 the Amalgamation terminates.

26 NOTICES

- (a) A notice, approval, consent or other communication to a person relating to this Memorandum must be in writing and executed by duly authorised persons.
- (b) If the notice is to the Cherry Street Sports then it must be addressed as follows:
- (i) **Name:** Cherry Street Sports Limited
 - (ii) **Attention:** Tere Sheehan
 - (iii) **Address:** 68 Cherry Street, Ballina NSW 2478
 - (iv) **Email:** tere@cherrystreet.com.au
- (c) If the notice is to Club Lennox then it must be addressed as follows:
- (i) **Name:** Lennox Head Community Sports & Recreation Club Limited
 - (ii) **Attention:** David Mckinnon
 - (iii) **Address:** 10 Stewart Street, Lennox Head NSW 2478
 - (iv) **Email:** manager@clublennox.com.au
- (d) Notice is sent by the sender and received by the receiver:
- (e) if the notice is hand delivered, upon delivery to the receiving party; or
- (f) if the notice is sent by email, upon the successful completion of the relevant transmission;
- (g) if the notice is sent by post, two (2) business days after the notice is posted.

27 PROCESS FOR THE VARIATION OF THIS MEMORANDUM

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

28 WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT

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

29 NOTES

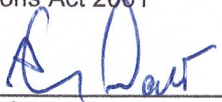
- (a) Before this Memorandum was executed, the Clubs each displayed notices to members which are required under section 17AE of the RCA and clause 4(5) of the Regulations.
- (b) This Memorandum is to be:
- (i) made available to the ordinary members of Club Lennox and the Cherry Street Sports at least twenty one (21) days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.

- (ii) made available for inspection on the premises of each club and on the website of each club for at least twenty one (21) days before any meeting as referred to in paragraph (i) of these Notes is held.
- (iii) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by Club Lennox to the Cherry Street Sports.

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Executed as a deed.


Executed by **BALLINA BOWLING AND RECREATION CLUB LIMITED ABN 30 000 984 412** pursuant to Section 127 of the Corporations Act 2001



Director / Secretary

Kevin M WATTS

Name of Director/Secretary

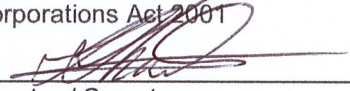


Director

LINDSAY CARKE

Name of Director


Executed by **LENNOX HEAD COMMUNITY SPORTS & RECRETATION CLUB LIMITED ABN 690 005 560 293** pursuant to Section 127 OF the Corporations Act 2001



Director / Secretary

TERE SHEEHAN

Name of Director/Secretary



Director / Secretary

JOHN WHITTY

Name of Director/Secretary