

DATED 23 OCTOBER 2009

BETWEEN

Catalina Country Club Limited ACN 000 256 155

AND

Batemans Bay Bowling and Recreation Club Limited
ACN 001 039 023

Memorandum of Understanding



MEYER VANDENBERG
LAWYERS

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THIS MEMORANDUM OF UNDERSTANDING is made on the 23rd day of OCTOBER 2009.

PARTIES

1. **Catalina Country Club Limited ACN 000 256 155** of c/- The Club House 154 Beach Road Batemans Bay in the New South Wales;
(**'Catalina'**)
2. **Bateman's Bay Bowling & Recreation Club Limited ACN 001 039 023** of 3 Vesper Street Batemans Bay in the New South Wales;
(**'Bowling Club'**)

BACKGROUND

- A. Catalina and the Bowling Club both operate registered clubs in the Bateman's Bay area of New South Wales.
- B. The Bowling Club comprises four bowling greens and clubhouse offering dining and gaming facilities.
- C. Catalina is a golf club and wishes to expand its provision of sporting facilities to include the game of bowls.
- D. The Bowling Club has called for expressions of interest in amalgamation from other registered clubs and Catalina responded to that call and submitted an expression of interest which was accepted by the Bowling Club.
- E. In accordance with the provisions of the Registered Clubs Act, the Regulations, and subject to the approval of the members of each Club and the Authority, it is proposed to amalgamate the two clubs.
- F. The Regulations require the amalgamating clubs to enter into a memorandum of understanding which addresses the matters listed in clause 6(2)(a) through (g) of the Regulations.
- G. This Memorandum of Understanding (MOU) is prepared in accordance with the provisions of the Regulations.

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Memorandum unless the context otherwise requires:

"Amalgamated Club" means the amalgamated registered club of Catalina and the Bowling Club;

"Amalgamation" means the day when the members of both clubs approve the amalgamation.

"the Authority" means the Casino, Liquor and Gaming Control Authority;

"Clubs" means both Catalina and the Bowling Club;

"Completion of the Amalgamation" means the day by which all of the assets of the Bowling Club are transferred to Catalina and Catalina becomes the registered proprietor of the land and buildings occupied by the Bowling Club;

"Corporations Act" means the *Corporations Act 2001*, including any amendments and the regulations to the Corporations Act;

“Deed of Amalgamation” means the Deed of Amalgamation between Catalina and the Bowling Club;

“Liquor Act” means the Liquor Act 2007, including amendments and Regulations made under it;

“Management Period” means the period from when the members of both clubs approve the amalgamation until the Completion of the Amalgamation.

“Party” means a party to this MOU;

“Premises” means 3 Vesper Street Batemans Bay in New South Wales; and

“Regulations” means the Regulations to the *Registered Clubs Act 1976* (NSW).

“Transitional Board” means the Catalina Board plus any Bowling Club representation from the commencement of the Management Period to the first AGM of the new entity.

1.2 In this Memorandum unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, trust, partnership, joint venture, association, corporation, organisation, society, firm, authority or other entity includes any of them;
- (e) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it; and
- (f) a reference to a Party to a document includes that Party’s successors, permitted assigns, administrations and substitutes.

2 EACH CLUBS POSITION REGARDING THE PROPOSED AMALGAMATION

- 2.1 The Clubs agree to amalgamate in accordance with the provisions of the Registered Clubs Act and the Liquor Act.
- 2.2 The amalgamation is intended to preserve and where possible enhance the existing facilities of the Clubs.
- 2.3 The amalgamation will be effected by the continuation of Catalina and the dissolution of the Bowling Club and the transfer to Catalina of the Bowling Club’s licence under the Liquor Act.
- 2.4 Subject to the Deed of Amalgamation, the processes for the amalgamation will be as follows:
 - (a) The members of the Bowling Club and Catalina will be asked to approve the amalgamation at separate general meetings of the members of each Club;

- (b) When approvals from the membership of each Club has been obtained, an application will be made under the Liquor Act to transfer the Bowling Club's licence to Catalina;
- (c) All the assets of the Bowling Club will be transferred to Catalina and Catalina will assume the liabilities of the Bowling Club as at the date of completion of the amalgamation, subject to any exceptions noted in the Deed of Amalgamation;
- (d) Catalina is to continue as the body corporate of the Amalgamated Club;
- (e) The Bowling Club's premises shall become additional licensed premises of Catalina and will be available to all members of the Amalgamated Club;
- (f) All current financial members of the Bowling Club, regardless of membership category, will be recorded as 'Bowling Member' as a separate class of members and are to be identified as members of the dissolved club. Bowling Members will automatically be admitted as social (non-golfing) members of Catalina and Catalina members will receive similar reciprocal social membership rights at the Bowling Club premises.
- (g) Both clubs acknowledge that Life Members of the Bowling Club will continue as life members of the Bowling Club in relation to the Bowling Club premises only and that these life members (being people who are Life Members as at the date of this MOU) shall be entitled to the usual entitlements of Life Membership insofar as they apply to the Bowling Club premises;
- (h) After the MOU is approved in principle by the members of each Club and prior to Completion of the Amalgamation the following will occur:
 - (i) the Parties will make an application under section 60(7) of the Liquor Act for provisional transfer of the licence;
 - (ii) Catalina will appoint a nominee as the manager of the Bowling Club ("the manager");
 - (iii) the Bowling Club will do all things necessary to:
 - A. have the manager appointed Secretary;
 - B. delegate to the manager the usual powers to enable the manager to conduct the day to day operations of the Bowling Club;
 - (iv) the manager will report on a regular basis or as required to the Board of the Bowling Club on matters relating to the operations of the Bowling Club.

3 MANAGEMENT OF PREMISES AND FACILITIES AND DEGREE OF MANAGEMENT AUTONOMY (REG 6(2)(a))

3.1 The Bowling Club Premises and facilities will become additional premises of Catalina.

- 3.2 The Amalgamated Club will operate from premises being the existing Catalina premises and the existing Bowling Club Premises.
- 3.3 Subject to this clause, the intent of the amalgamation is to retain and enhance the Bowling Club's operations by:
- (a) Continuing the Bowling Club's operations at the Premises;
 - (b) Applying Catalina's business processes, management skills, human resources and acumen to the operations of the Bowling Club;
 - (c) Making available Catalina's human resources and infrastructure to enhance the Bowling Club premises; and
 - (d) Completing within 12 months of completion of amalgamation a strategic plan for the amalgamated entity.
- 3.4 Catalina's CEO will become the CEO of the Amalgamated Club and will be the Secretary of the Amalgamated Club.
- 3.5 The CCC Board at the commencement of the Management Period will become the Transitional Board for the period until the first AGM of Amalgamated Club is held. The BBBC Board at the time of Management Control will become known as the BBBC Advisory Committee (BBBCAC). The Chair or Delegate of the BBBCAC shall be permanently invited as non-voting participant in all CCC Board proceedings. A BBBC delegate, appointed by the BBBCAC will be invited to participate in all CCC Finance & Business Development Committee (F&BDC) meetings. Representation on other extant CCC committee shall be considered on a case by case application. The Chair of the BBBCAC will have the responsibility of bringing BBBC issues and concerns to the CCC Transition Board and will also have the responsibility of reporting back to the BBBCAC.
- 3.6 The Bowling Club committees at the commencement of the Management Period will retain their functions and operations for the duration of the Transition Period reporting to the BBBCAC.
- 3.7 A subcommittee of Bowling Club and Catalina members will be formed to make recommendations for the new constitution including the future Board structure, voting rights, membership categories, and committee structures.

4 PRESERVATION OF TRADITIONS, AMENITIES AND COMMUNITY SUPPORT (REG 6(2)(b))

- 4.1 Subject to the Deed of Amalgamation, Catalina will:
- (a) Maintain the traditions and ethos of the Bowling Club as observed and performed by the Bowling Club as at the date of this MOU;
 - (b) Promote and encourage bowling in such a manner as to attract membership and patronage to the Premises of the Bowling Club;
 - (c) Maintain the Bowling Club Premises, facilities and amenities for gaming, food and beverage and service of alcohol and community functions;
 - (d) Ensure the furtherance of the Bowling Club's involvement in supporting its local community by providing quality sporting facilities;

- (e) Maintain the Bowling Club's memorabilia and honour boards in place at the Bowling Club's premises either in current format or some other format as approved by the Board of the Amalgamated Club;
- (f) Recognise the major events and competitions of the Bowling Club as recommended by the BBBCAC and endorsed by the Transitional Board
- (g) Continue to support community groups supported by the Bowling Club as determined by the Transitional Board noting that the level of donation and the recipients of donations and may change from time to time;
- (h) Allow for the Bowling Club Premises to be referred to as "Bateman's Bay Bowling Club" or any other approved name subject to the premises being jointly branded and promoted with the Catalina Club's branding.

5 FUTURE DIRECTION OF AMALGAMATED ENTITY (REG 6(2)(c))

5.1 The future direction of the Amalgamated Club will be:

- (a) To increase the membership of the combined entity in both sporting fields of golf and bowls,
- (b) Host regional, state or national events;
- (c) Operate an efficient and environmentally sustainable clubhouse facilities;
- (d) To promote the facilities at Catalina's premises and the Premises of the Bowling Club
- (e) To improve the trading position of the Bowling Club Premises so that the cost centres at each facility are financially viable without subsidy or financial support from the other.

6 EMPLOYEES (REG 6(2)(d))

- 6.1 Before Completion of the Amalgamation the Bowling Club will not without the prior written consent of Catalina's CEO engage any new employee whether on a full time or part time basis, nor alter the terms of remuneration of such employees. Casual employees may be engaged to carry out ordinary day to day operations of the Bowling Club business.
- 6.2 After approval by both Clubs of this MOU, Catalina will assess the ongoing operational staffing requirements of the Premises and business operated on the Bowling Club's premises to assess the level and type of staffing required to conduct the business within the context of a proposed Amalgamated Club.
- 6.3 After the execution of the Deed of Amalgamation, Catalina will offer each Bowling Club employee continued employment with Catalina pursuant to the Catalina Enterprise Agreement if applicable and otherwise on terms no less favourable than those applying to the employee's employment with the Bowling Club, to take effect upon amalgamation, except where the offer of employment is considered unnecessary to the operational requirements of the Amalgamated Club.

- 6.4 Redundancies will be processed in accordance with the relevant employee's employment agreement or award.
- 6.5 Catalina will assume the responsibility for the existing employee entitlements of each Bowling Club employee who accepts Catalina's offer to continue employment (the Employees). The amalgamated club shall treat those employees of the Bowling Club who continue in employment with the Amalgamated Club as if the entitlements accrued during employment with the Bowling Club had been accrued whilst in the employment of the Amalgamated Club.
- 6.6 Catalina's obligations under this clause do not affect the ability of either club to dismiss an employee in accordance with the Club's rights under common law or statute.
- 6.7 The Bowling Club must deliver to Catalina on or as soon as practicable prior to completion a statement setting out the accrued entitlements of Bowling Club employees up to Completion of Amalgamation.

7 INTENTIONS WITH RESPECT TO THE BOWLING CLUB'S ASSETS (REG 6(2)(e))

- 7.1 "Core property" of the Bowling Club consists of the licensed premises of the Bowling Club, together with all land and buildings held in the name of the Bowling Club as further described in the Bowling Club's annual report for 2008.
- 7.2 Subject to clauses 8 and 9 below, and any Deed of Amalgamation, Catalina will not dispose of the Bowling Club's core assets within three years after amalgamation.
- 7.3 The cash and investments (if any) of the Bowling Club on completion will be transferred to the general reserves of the Amalgamated Club.
- 7.4 The poker machine entitlements and the poker machines held by the Bowling Club will be transferred to the Amalgamated Club.

8 CIRCUMSTANCES THAT WOULD PERMIT THE AMALAGAMATED CLUB TO CEASE TRADING ON THE BOWLING CLUB PREMISES OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE BOWLING CLUB (REG 6(2)(f))

- 8.1 Change of Premises. The Amalgamated Club proposes to continue to trade at the Premises; however it would be permitted to cease trading in the following circumstances:
- (a) Upon the order of a court or body with jurisdiction to administer laws in relation to, liquor, gaming and registered clubs that would have the effect of compelling trading to cease;
 - (b) On the lawful order of any local government authority compelling trading to cease;
 - (c) If the Premises were destroyed or partially destroyed by fire, flood, storm etc so that it was not possible to continue to trade to the premises;

- (d) Where it is no longer financially viable to continue to trade (subject to clause 9 below);
- (e) Upon the expiration of the period referred to in clause 9;
- (f) If there was any significant change in legislation that adversely impacted on the viability of the Bowling Club business such that it was no longer viable to continue to trade;

8.2 Change of Objects

- (a) It is not anticipated there will be any change to the objects of the Bowling Club
- (b) Catalina will adopt the objects of the Bowling Club, insofar as they relate to the Bowling Club premises and make the necessary amendments to its constitution prior to amalgamation, if necessary.
- (c) The objects adopted by Catalina during this amalgamation process will only be amended subject to the approval of the members and in accordance with its constitutional requirements.

9 **AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE BOWLING CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE BOWLING CLUB (REG 6(2)(G))**

- 9.1 The Amalgamated Club will continue to trade from the Bowling Club Premises for a period of 3 years from the date of Completion of Amalgamation subject to clause 8.1.

10 **STATUS OF THE MOU, COMPLETION AND TERMINATION**

- 10.1 This MOU is intended to be legally binding and may be terminated only as set out in this MOU or the Deed of Amalgamation.
- 10.2 Where members of the Bowling Club and Catalina have not passed resolutions at separate meetings of ordinary members of each Club within 12 weeks from the date of this MOU, either Club may terminate the memorandum of understanding by giving 14 days notice to the other club.
- 10.3 Notwithstanding clause 10.2, either club has the right to terminate this MOU, and the Deed of Amalgamation if completion of the amalgamation does not take place within eleven (11) months from the date of the MOU. Termination under this sub-clause shall not be effected unless the Club moving for termination gives the other Club not less than twenty-one (21) days notice in writing of its intention to terminate pursuant to this clause.
- 10.4 Any delay of forbearance or withdrawal of a notice to terminate shall not prejudice its rights to terminate pursuant to this clause.

11 **DEED OF AMALGAMATION**

- 11.1 Catalina and the Bowling Club will negotiate in good faith to complete a Deed of Amalgamation to supplement the terms and conditions of the MOU and in particular provide:

- (a) For commercial matters not required by the Regulations to be included in this MOU; and
- (b) Further detail about the processes which each club will undertake to achieve amalgamation and how the Transitional Board will function.

12 COSTS

- 12.1 Each party will bear its own costs with respect to the preparation, consultation and execution of the MOU and the Deed of Amalgamation and any steps that are incidental thereto;

13 NOTICES

- 13.1 A notice to be given by one club to the other pursuant to this memorandum of understanding shall be:

- (a) In writing
- (b) Directed to the recipients address specified in this MOU or as varied by written notice
- (c) Left at or sent by registered post, hand delivery or by facsimile transmission to that address


- 13.2 A notice will be deemed duly given:

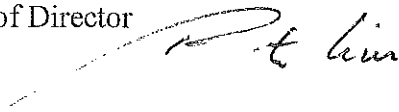
- (a) On the day of delivery
- (b) Two days after the date of posting by pre-paid post
- (c) If sent by facsimile, when the answer back or message confirmation is received.

14 WINDING UP OF THE BOWLING CLUB

- 14.1 After completion of the amalgamation the Bowling Club will call a general meeting of members for the purposes of passing a resolution for the voluntary liquidation of the Bowling Club;

Executed by CATALINA COUNTRY)
CLUB LIMITED ACN 000 256 155 in)
accordance with section 127 of the)
Corporations Act 2001:)

Name: KIM ODLER
Signature of Director


Name: PETER J. CRISS
Signature of Director


Executed by BATEMAN'S BAY)
BOWLING & RECREATION CLUB)
LIMITED ACN 001 039 023 in)
accordance with section 127 of the)
Corporations Act 2001:)


Name: TREVOR EAMES
Signature of Director

Name: PATRICIA A BILL
Signature of Director
