

**EXPLANATORY SUMMARY OF
MEMORANDUM OF UNDERSTANDING AND DEED OF AMALGAMATION
IN RELATION TO PROPOSED AMALGAMATION BETWEEN
KILLARA BOWLING CLUB LTD AND LINDFIELD BOWLING CLUB LTD**

Call for Expressions of Interest in Amalgamation

1. On 13 August 2019 Killara Bowling called for expressions of interest for amalgamation to all registered clubs in New South Wales. Under the *Registered Clubs Act*, the requirement is to call for expressions of interest to all clubs within a 50km radius, but the reality is that ClubsNSW sends out the call electronically to all registered clubs.

Why did the Board of Killara Bowling call for expressions for amalgamation?

2. Killara Bowling Club was in financial distress and had been experiencing reduced bowling numbers over several years. Revenue had been decreasing mainly from lower bowling participation and lower bank interest on deposits. Expenses have remained largely unchanged.

Who responded to the call for expressions of interest?

3. Expressions of interest were received from Lindfield Bowling Club, Hornsby RSL Club, Killara Golf Club, Killara Lawn Tennis Club, North Sydney Leagues Club, St Ives Bowling & Recreation Club, Toongabbie Sports and Bowling Club, Turramurra Bowling Club and Warrawee Bowling Club.

Why did the Board of Killara Bowling Club prefer the expression of interest of Lindfield over the expressions of interest from other clubs that responded?

4. Lindfield is a club dedicated to bowling with a solid bowling membership. It is financially strong and will not require Killara's cash reserve to amalgamate. It has regular income from club hire and communication tower lease. It has 3 excellent full-size bowling greens, a substantial clubhouse and a live-in caretaker. It has a record of successfully managing amalgamations with other bowling clubs and it has a very similar culture to that at Killara.

How an Amalgamation can be Effected

5. Under the *Registered Clubs Act* two registered clubs can amalgamate provided that the amalgamation is effected by the dissolution of one club and the continuation of the other, or by the dissolution of both and the formation of a new club.
6. To date, all amalgamations of registered clubs have been formed by the dissolution of one club and the continuation of the other. The proposed amalgamation between Killara Bowling and Lindfield is following this model.

Why is there a Memorandum of Understanding and a Deed of Amalgamation?

7. Under the *Registered Clubs Regulation 2015* two clubs that are proposing to amalgamate are required to enter into a Memorandum of Understanding (MOU) that addresses specific matters in those Regulations.
8. However, an amalgamation involves many other commercial and legal issues about which there needs to be agreement between the two clubs.

9. Accordingly, the matters that are required to be dealt with in the MOU are addressed in that document and all other issues, whether commercial or legal, are addressed in the Deed of Amalgamation (Deed).
10. The principle matters covered by the MOU and the Deed are summarised below.

Dissolution of Killara Bowling Club

11. The amalgamation will be effected by the dissolution of Killara Bowling (as the last step in the amalgamation process) and the continuation of Lindfield as the corporate vehicle of the Amalgamated Club.

Name of Amalgamated Club

12. The Amalgamated Club will be renamed "Lindfield Killara Bowling Club Limited" subject to the Amalgamated Club obtaining the necessary government consents and approvals.

Secretary of Amalgamated Club

13. From Amalgamation Completion (for an explanation of this term refer to paragraphs 53 and 54 below) until the Annual General Meeting of the Amalgamated Club held in 2022, the Secretary of Lindfield will be the Secretary of the Amalgamated Club.
14. After the Annual General Meeting of the Amalgamated Club to be held in 2022, a person shall be appointed as Secretary by the Board of the Amalgamated Club (who may be an employee of the Amalgamated Club).

Board of Amalgamated Club

15. From Amalgamation Completion to the Annual General Meeting of the Amalgamated Club held in 2022, the Board of the Amalgamated Club will consist of (9) Directors comprising the Chairperson of Lindfield as at Amalgamation Completion (who will be the chairperson of the Amalgamated Club), four (4) other directors of Lindfield as at Amalgamation Completion and four (4) directors of Killara as at Amalgamation Completion.
16. With effect from the Annual General Meeting held in 2022, the Board of the Amalgamated Club will be elected annually and will consist of seven (7) elected directors and up to two additional directors to be appointed by the Board as permitted by the Registered Clubs Regulation 2015.

December 2021 - Note:

This Explanatory Summary was written in January 2021. Paragraphs 15 and 16 refer to the changes that will take place to the Board of the Amalgamated Club. The timeline for these changes is probably not going to be achieved, as it refers to the Annual General Meeting of the Amalgamated Club in 2022. The amalgamation may not now be completed by that date. This will need to be worked through in a practical way should the need arise.

Continuing traditions, amenities and community support

17. The Amalgamated Club will maintain the history of both Lindfield and Killara Bowling which will be made available to members on request.
18. The Amalgamated Club will:
 - (a) with effect from Amalgamation Completion, make available to all members digital records of honour boards (which may be done by way of publication on its website); and

- (b) ensure that dedication plaques or memorials and similar objects of both clubs will be appropriately stored at the premises of the Amalgamated Club after Amalgamation Completion;
 - (c) promote activities to maintain, and where possible increase bowling membership and patronage of members and their guests at the premises of the Amalgamated Club (the Lindfield premises).
19. For at least the first three (3) years after Amalgamation Completion, the Amalgamated Club may support the following tournaments:
- (a) Cyril South Trophy against various clubs; and
 - (b) Internal NSW vs Rest Bob Sinclair place of origin;
 - (c) Gissing Consistency Trophy;
 - (d) Langker Painting vs Warrawee;
 - (e) Roseville Shield;
 - (f) Super 6s Carnival;
 - (g) Lindfield Shield;
 - (h) Roseville 6s;
 - (i) Bridge Trophy vs Forestville RSL;
 - (j) Dalton and Travellean Cups with Neutral Bay;
 - (k) Ray Reilly Trophy with Willoughby Park.
20. The playing shirts for all bowlers in respect of the Amalgamated Club will bear the names "Lindfield" and "Killara" in an identical font, font size and colour.
21. The Amalgamated Club's bowling teams will be known as "Lindfield Killara Rollers".
22. The Amalgamated Club will include the words "Lindfield" and "Killara" in all nomenclature, merchandise and collateral material which relate to the Amalgamated Club or any sub-clubs of the Amalgamated Club.
23. The Amalgamated Club will provide ex-Killara bowling members with a new bowls uniform comprising one shirt, one pair of trousers and a cap, at the cost of the Amalgamated Club.
24. After Amalgamation Completion:
- (a) the Amalgamated Club will establish sub-clubs in respect of each of the corresponding sub-clubs in existence at Killara Bowling as at Amalgamation Completion;
 - (b) the Amalgamated Club will provide accommodation facilities for those new sub-clubs;
 - (c) the Amalgamated Club will develop a new set of rules for each of the new sub-clubs; and
 - (d) each of the new sub-clubs will be subject to the constitution of the Amalgamated Club and the direction of its Board.

Future Directions of Amalgamated Club

25. The future direction of the Amalgamated Club will be subject to the overall general strategic plan of the Amalgamated Club and its finances.
26. The Amalgamated Club will:

- (a) continue to provide core services of lawn bowls to members;
- (b) promote and develop the premises of the Amalgamated Club;
- (c) provide high quality facilities and services to members of the Amalgamated Club;
- (d) improve the trading position and increase the value of the Assets of the Amalgamated Club;
- (e) consider entering into sponsorship arrangements with First National Real Estate and Johnson and Creightons Funeral Service.

Employee of Killara Bowling and Lindfield

- 27. As at the date of the MOU, Ms Suzen Cleary is the only employee of Killara Bowling.
- 28. If Ms Cleary is still an employee of Killara Bowling at Amalgamation Completion, she will be offered employment with the Amalgamated Club in accordance with and on the terms set out in the MOU.
- 29. Lindfield will also determine which of its employees will be required for the ongoing operation of the Amalgamated Club, and the Amalgamated Club may continue to employ those employees after Amalgamation Completion, subject to the terms and conditions of employment between each such employee and Lindfield.

Intentions regarding core property, cash and investments and poker machine entitlements of the Killara Bowling

Core Property

- 30. The Killara Bowling Premises is currently core property of Killara.
- 31. Ordinary Resolution 2 proposes for members of Killara Bowling to declare the Killara Bowling Premises as non-core property of the Club.
- 32. If Ordinary Resolution 2 is passed, then on Amalgamation Completion, the Killara Bowling Premises will be non-core property of Killara Bowling and Killara Bowling will not have any core property.
- 33. The Killara Bowling Premises will remain non-core property of the Amalgamated Club after the club licence for the Killara Bowling Premises is surrendered.

The difference between core and non-core property

- 34. Under section 41E of the *Registered Clubs Act* the real property (land) owned or occupied by a registered club is either core or non-core property.
 - (a) Core property comprises:
 - (i) The licensed premises of the Club.
 - (ii) Any facility provided by the Club for the use of the Club's members and their guests (eg. bowling greens and car park).
 - (iii) Any other property declared by majority vote of the ordinary members at a general meeting to be core property.
 - (b) Non-core property is any other property owned or occupied by the Club that is not core property.

- (c) The ordinary members may by majority vote at a general meeting, declare core property to be non-core property and that is what members are being asked to do by voting on Ordinary Resolution 2 in the accompanying Notice of Meeting.
- (d) A registered club cannot dispose of (including sell) any core property unless:
 - (i) the property has been valued by a qualified valuer;
 - (ii) the disposal has been approved by majority vote at a general meeting of the ordinary members of the Club;
 - (iii) any sale is by way of public auction or open tender conducted by an independent real estate agent or auctioneer.
- (e) The Registered Clubs Regulation 2015 provides some exemptions to the requirements of section 41E but they are not relevant in relation to this proposed amalgamation.
- (f) Non-core property of a registered club can be disposed of by the governing body (Board) of that club subject of course to any restrictions or requirements in the Constitution of the Club.

Killara Bowling Premises

- 35. The Amalgamated Club will not trade from the Killara Bowling Premises. It will trade only from Lindfield's premises.
- 36. The Amalgamated Club proposes to sell the Killara Bowling Premises as soon as reasonably practicable after Amalgamation Completion.

Proceeds from Sale of Killara Bowling Premises and De-Amalgamation

- 37. In relation to the proceeds from the sale of the Killara Bowling Premises, the following shall apply:
 - (a) twenty percent (20%) of the net proceeds from the sale of the Killara Bowling Premises will be applied to the capital projects and works to be undertaken by the Amalgamated Club; and
 - (b) the remaining eighty percent (80%) of the net proceeds from the sale of the Killara Bowling Premises shall comprise the total capital amount (**Corpus**) which shall be placed into a special fund (**Mandated Fund**);
 - (c) the Mandated Fund shall be overseen and managed by an investment committee appointed by the Board of the Amalgamated Club (**Investment Committee**);
 - (d) the Investment Committee will use best endeavours to invest the Corpus in conservative and balanced local and overseas funds, and act in accordance with the Investment Committee charter adopted by the Board of the Amalgamated Club;
 - (e) subject to sub paragraph (f) below, the Amalgamated Club may use only the income earned in excess of the Corpus amount (as indexed by CPI) for its purposes, which may include capital works or for its ordinary trading;
 - (f) the Amalgamated Club may use or expend the Corpus to make payment of any liability for tax incurred in respect of the Killara Bowling Premises relating to any period prior to Amalgamation Completion or for all costs incurred in connection with any de-amalgamation as referred to below;

- (g) after twenty (20) years, the Amalgamated Club may use all amounts in the Mandated Fund for any of its purposes at the discretion of the Board of the Amalgamated Club.
38. If Killara Bowling de-amalgamates from the Amalgamated Club within the first three (3) years after Amalgamation Completion the Amalgamated Club will, on the completion of the de-amalgamation, pay to the corporation nominated and approved by the ex-Killara members for the purposes of effecting a de-amalgamation that portion of the Corpus and income of the Mandated Fund that has not been spent by the Amalgamated Club.

Lindfield Premises

39. The Lindfield Premises must be preserved for at least twenty (20) years after Amalgamation Completion (**Preservation Period**).
40. The Amalgamated Club must not sell, transfer or otherwise dispose of the Lindfield Premises, or any part of the Lindfield Premises, during the Preservation Period:
- (a) except if in the Board's discretion (acting in good faith and reasonably) to prevent any Insolvency Event in respect of the Amalgamated Club; and
 - (b) if the members of the Amalgamated Club approve any sale, transfer or disposal in-principle in general meeting and, if applicable, the Amalgamated Club complies with the requirements of the Registered Clubs Act.

Cash and Investments

41. The cash and investments of Killara Bowling (if any) will be transferred to the Amalgamated Club on Amalgamation Completion.

Poker Machine Entitlements

42. Killara and Lindfield do not own any poker machine entitlements and there is no intention to acquire them.

Transfer of Assets, Debts and Liabilities

43. On Amalgamation Completion, the assets, debts and liabilities of Killara Bowling Club will be transferred to and accepted by Lindfield.

Admission of the Killara Bowling's Members to Membership of Amalgamated Club

44. At its general meeting to approve the amalgamation, eligible members of Lindfield will vote on a special resolution to amend Lindfield's Constitution so that members of Killara Bowling can become members of Lindfield (as the Amalgamated Club) with effect from Amalgamation Completion.
45. Lindfield will permit all:
- (a) Bowling members (male and female) to be admitted to membership of the Amalgamated Club as Ex Killara Bowling members; and
 - (b) Social (Non Bowling) members (male and female) to be admitted to membership of the Amalgamated Club as Social members;
 - (c) Junior Bowling members (male and female) to be admitted to membership of the Amalgamated Club as Junior members.
46. Life members of Killara Bowling will become Life members of the Amalgamated Club but they will be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act (currently \$2.00 plus GST).
47. Members of Killara Bowling who become members of the Amalgamated Club will not be required to pay any fee or subscription in addition to any fee or subscription pre-

paid to Killara Bowling in respect of their membership for the financial year of Killara Bowling in which the Amalgamation takes place.

The Amalgamation Process

48. Each club must hold a meeting of its members to approve the amalgamation in the same terms as the first Ordinary Resolution set out in the Notice of Meeting herewith.
49. Once the members of both clubs have approved the amalgamation at separate meetings, an application will be made to the Independent Liquor and Gaming Authority (**the Authority**) for its approval of the amalgamation. Lindfield will have the carriage of that application.
50. Under section 17AEB of the *Registered Clubs Act*, before the Authority approves of an amalgamation of two registered clubs it must be satisfied that:
 - (a) the parent club (i.e., Lindfield) will meet the requirements in section 10(1) of the *Registered Clubs Act* (which all registered clubs must meet);
 - (b) the parent club (i.e., Lindfield) will be financially viable (in this regard see paragraphs 51 and 52 below);
 - (c) the proposed amalgamation is in the interests of the members of each of the clubs that are amalgamating; and
 - (d) the proposed amalgamation has been approved in principle at separate extraordinary meetings of the ordinary members of each of the clubs proposing to amalgamate (in this regard, so far as Killara Bowling is concerned, this will be satisfied if the First Ordinary Resolution as set out in the accompanying Notice of Meeting is passed).

Financial Viability of Lindfield

51. This is a matter that will need to be addressed by the Board of Lindfield and its advisers. However, the Board of Killara Bowling is satisfied that as the parent club in the amalgamation, Lindfield will be financially viable.
52. The reasons for this view by the Board of Killara Bowling are in summary:
 - (a) A comprehensive review of Killara and Lindfield Bowling Clubs' financial capacities has been carried out by an independent expert Russell Corporate Advisory.
 - (b) The expert report stated that Killara Bowling Club is not viable as a stand-alone entity without significant revenue growth. Lindfield has capacity to undertake the amalgamation with Killara and to support Killara if required until amalgamation completion.
 - (c) See also paragraph 4 above.

Amalgamation Completion

53. Once the approval of the Authority to the amalgamation has been obtained (and subject to due diligence and all other necessary steps being completed) there will be a formal commercial settlement. On the day of that commercial settlement the following things (among others) will happen:
 - (a) Killara Bowling will transfer its assets (including real property assets), debts and liabilities to Lindfield;

- (b) All members of Killara Bowling Club who have consented to become members of Lindfield will be admitted to membership of Lindfield;
 - (c) Ms Cleary will become an employee of the Amalgamated Club if she accepts an offer of employment from Lindfield;
 - (d) Killara Bowling's club licence will be transferred to Lindfield.
54. This event is known as "Amalgamation Completion".
56. After Amalgamation Completion, Killara Bowling will then proceed to a members' voluntary winding up.

Questions

56. If members have questions about the proposed amalgamation they are requested to direct them to the Honorary Secretary.

Member Information Meeting – 10th January 2022 at 6.30pm

There will be an information meeting for members to attend on Monday 10th January 2022 at 6.30pm at Killara Bowling Club, 6 Arnold St, Killara, 2071. At this meeting the Board will outline what options have been investigated since the vote in March 2021.

Vote – 17th January 2022 at 6.30pm

There will be a vote of members on **Monday 17th January 2022** commencing at **6:30pm** at Killara Bowling Club, 6 Arnold St, Killara, 2071. **This meeting is for the vote.**

At the date of sending this information, the NSW Government has announced the lifting of COVID restrictions for unvaccinated people, as at 15th December 2021, this meaning that all Members will be able to attend. If there is change to this by the NSW Government, the meeting and vote will proceed on the 10th and 17th January, and the Club will comply with any such changes.

By Direction of the Board

Date: 20th December 2021



Adrian Meredith
Honorary Secretary