

MEMORANDUM OF UNDERSTANDING BETWEEN PROPOSED AMALGAMATING CLUBS

Date 2018

Parties

Name	Cessnock Rugby League Supporters Club Ltd	
ABN	25 001 559 548	
Description	Leagues	
Notice details	Address	1 - 7 Darwin Street Cessnock NSW 2325
Name	Cessnock Ex-Services' Club Ltd (Subject to Deed of Company Arrangement)	
ABN	43 000 938 796	
Description	Exies	
Notice details	Address	c/- Russell Corporate Advisory Suite 302, Level 3, 53 Walker Street North Sydney NSW 2060

Background

- A Leagues and Exies are registered clubs under the *Registered Clubs Act (the Act)* and are both situated in the Cessnock Local Government Area. Leagues holds two club liquor licences and Exies holds club liquor licence LIQC300238776.
- B Leagues and Exies enter into this Memorandum of Understanding with respect to a proposed Amalgamation between them, pursuant to clause 7 of the *Registered Clubs Regulations (the Regulations)*.
- C On 11 April 2017, Exies appointed a voluntary administrator pursuant to section 436A of the *Corporations Act 2001*.
- D Exies is subject to a Deed of Company Arrangement dated 15 June 2017 (**the DOCA**) and Gregory Alexander Russell is the Deed Administrator under the DOCA.
- E Exies ceased to trade on 8 November 2017 at which time its premises at 201 Vincent Street Cessnock NSW 2325 (**Exies' Former Premises**) closed and those premises were subsequently sold to a third party following a public campaign calling for expressions of interest.
- F Exies Former Premises were sold on 5 March 2018.
- G The DOCA requires the Deed Administrator to endeavour to establish a Deed Fund for the benefit of Exies' creditors through exploring a range of alternative strategies, one being amalgamation with another registered club.
- H Most relevantly, Exies called for expressions of interest in amalgamating from each other registered club that has premises within a radius of 50 kilometres of Exies' premises, on 21 April 2017 pursuant to clause 4 of the Regulations. Exies previously issued a similar request for expressions of interest on 3 February 2015.

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- I The Deed Administrator on behalf of Exies has determined that at this stage the preferred proposal is Leagues' proposal for Amalgamation.
- J As required by the Regulations, this Memorandum states each club's position regarding the proposed Amalgamation and deals with or includes the matters prescribed by the Regulations.
- K Under the proposed Amalgamation:
- (a) Leagues will continue as the Amalgamated Club and Exies will be dissolved, and
 - (b) Exies will transfer all of its rights and assets including its club liquor licence, to Leagues as the continuing Amalgamated Club, subject to Leagues making a cash contribution as specified below that will be retained for the benefit of Exies' creditors.
- L Each of Leagues and Exies is convening a separate meeting of its own members to vote on whether to approve the proposed Amalgamation in principle. Leagues and Exies each needs those approvals in order to proceed with the proposed Amalgamation.

Definitions and interpretation

1.1 Definitions

In this document the following words and expressions have the meaning shown unless the context requires otherwise:

Act	has the meaning stated in the Background section
Amalgamated Club	means Leagues as the proposed parent club that will continue after Amalgamation Completion
Amalgamation	means amalgamation of Leagues and Exies in accordance with this Memorandum, the Act and all other relevant legislation
Amalgamation Completion	means completion of the proposed amalgamation of Leagues and Exies including final completion of the transfer of Exies' Assets including its club liquor licence to Leagues and the assumption of Exies' liabilities by Leagues, if any, to the extent required by the Amalgamation Deed
Assets	means, in relation to Exies, 67 gaming machine entitlements, any Deed Fund surplus, and all of Exies' other tangible and intangible assets including goodwill and any accrued legal rights, but excluding the Deed Fund
Authority	means the Independent Liquor & Gaming Authority
Business Day	means any day other than a Saturday, Sunday, or a bank holiday or a public holiday in New South Wales and a reference to a date which does not fall on a Business Day is

to be construed as a reference to the immediately preceding Business Day

Business Hours	means 9am to 5pm inclusive on any Business Day
Claim	<p>means any right, action, application, arbitration, cause of action, complaint, cost including legal costs, damage, debt due, demand, determination, enquiry, judgment or verdict, or liability:</p> <ul style="list-style-type: none">(a) at law;(b) in equity;(c) arising under any statute or statutory duty; or(d) arising under any Award or enterprise agreement or other instrument made or approved under any law <p>including for breach of contract; breach of statutory condition, warranty, representation or guarantee; breach of fiduciary or other duty, statutory or otherwise; or for any misleading or deceptive conduct (including contrary to section 18 of the <i>Australian Consumer Law</i>); or in tort including negligence or negligent misstatement; or for any remedy under or in connection with the <i>Trade Marks Act 1995 Cth</i> or the <i>Consumer and Competition Act 2010 Cth</i> but in the case of Exies excludes any "Claim" within the meaning of the DOCA (being claims that will be settled under the DOCA)</p>
Completion Date	means the day on which Amalgamation Completion takes place
Deed Administrator	means the administrator appointed under the DOCA, currently Gregory Alexander Russell or in the event that Exies is put into liquidation prior to Amalgamation Completion, the liquidator of Exies
Deed Fund	means the fund set up by the Deed Administrator under the DOCA currently comprised of cash on deposit and if the proposed Amalgamation proceeds, the Fund Contribution to be made by Leagues and which will be payable by Leagues on amalgamation completion regardless of whether or not Exies is still subject to a deed of company arrangement or in liquidation or in the event that Exies is put into liquidation prior to Amalgamation Completion means the Fund Contribution held by Exies' liquidator.
Deed Fund Balance	means any surplus amount remaining (before or after the Completion Date) in the Deed Fund after distribution of the Deed Fund in accordance with the DOCA or in the event that Exies is put into liquidation prior to Amalgamation Completion means the surplus of the funds received from Leagues and held by Exies' liquidator, after external administration costs have been paid in full and creditor claims have been met at a rate of 100 cents in the dollar
DOCA	has the meaning stated in the Background section
Fund Contribution	means an amount as determined by the Deed Administrator and notified to Leagues but not exceeding \$1.5 million, to be

paid by Leagues on Amalgamation Completion to the Deed Administrator as a contribution to the Deed Fund or in the event that Exies is put into liquidation prior to Amalgamation Completion, to Exies' liquidator to be held in trust in connection with that liquidation, to be applied to payment of all external administration costs and all creditors of Exies in full,

Regulations

has the meaning stated in the Background section

Statutory records

means in relation to Exies, all of the books and records that Exies is required by law to maintain in relation to its corporate affairs including its records maintained to meet the minimum requirements of the *Corporations Act 2001 Cth* or any taxation legislation

1.2 Interpretation

In the interpretation and application of this document, unless the context otherwise requires:

- (a) any reference to the background, or any schedule, attachment or exhibit, is a reference to that thing which is part of this document
- (b) in calculating any period of time commencing from a particular day, the period commences on the following day and the following day counts as part of that period
- (c) where an expression, word or phrase is given a particular meaning, then other parts of speech based on that expression, word or phrase and other grammatical forms of that expression, word or phrase, have corresponding meanings
- (d) the rule of interpretation which sometimes requires that a document be interpreted to the disadvantage of the party which put the document forward, does not apply
- (e) a reference to this document or any other agreement, arrangement or document, includes any variation, novation, supplementation or replacement of them
- (f) where an expression is defined anywhere in this document, it has the same meaning throughout
- (g) a reference to any gender includes all genders
- (h) headings are for convenience of reference only and do not affect interpretation
- (i) a mention of anything after include, includes or including, does not limit what else might be included
- (j) if an example is given of anything, including an example of a right, obligation or concept, the example does not limit the scope of that thing
- (k) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and also any subordinate legislation issued under, that legislation or legislative provision

- (l) a reference to dollars or \$ is to an amount in Australian currency
- (m) the singular includes the plural and vice versa
- (n) a reference to any party to this document or to any other document or arrangement, includes that party's legal personal representatives, substitutes (including, without limitation, any person taking by novation), successors and permitted assigns
- (o) a reference to a person includes a body corporate, partnership, joint venture, incorporated or unincorporated association, authority, state, government, or government or quasi-government body
- (p) a reference to anything (including any amount) is a reference to the whole or any part of it (except that nothing in this provision excuses a party from performing the whole of an obligation just because they have performed part of the obligation)
- (q) an agreement, undertaking, representation or warranty by or in favour of two or more persons, binds or is for the benefit of all of them jointly and each of them individually.

2. Course of the proposed amalgamation

- (a) Leagues and Exies will convene separate general meetings to seek member approval for the proposed amalgamation between the clubs.
- (b) If the members approvals referred to in clause 2(a) are obtained, Leagues and Exies will then cooperate in making the necessary application to the Authority for consent to the transfer of Exies' club liquor licence and Leagues will have the carriage of that application. Exies will cooperate in that application.
- (c) If and when provisional approval of that application is obtained from the Authority, Leagues will invite all of Exies Life, Club and Pensioner members to become Cessnock Ex-Services Club members of Leagues with the same rights and privileges as Leagues' Supporter Members.
- (d) Life Members of Exies who become Ordinary Members of Leagues will be noted in the records of Leagues as having formerly been Life Members of Exies but they will not be Life Members of Leagues.
- (e) Exies members who become members of Leagues will not be liable to pay the Leagues' annual subscription for the then-current Leagues' membership year but will be liable to pay future Leagues' annual subscriptions.

3. Amalgamation Completion

- (a) If the Authority approves the transfer of Exies' club liquor licence to Leagues then Leagues and Exies will proceed to Amalgamation Completion as follows and subject to any additional provisions of any Amalgamation Deed between them.
- (b) Amalgamation Completion is conditional on:

- (i) the Deed Administrator now not pursuing any of the other asset realisation options under the DOCA for the creation of a Deed Fund, other than amalgamation with Leagues;
 - (ii) Leagues making the Fund Contribution;
 - (iii) the Deed Administrator not being under any compulsion not to proceed to Amalgamation Completion;
 - (iv) the Amalgamated Club obtaining at Amalgamation Completion absolute title free of any security interest or other encumbrance (including without limitation free of any caveat or personal property security) to Exies' 67 gaming machine entitlements listed in the Assets;
 - (v) the Amalgamated Club obtaining at Amalgamation Completion absolute title to all of the Assets;
 - (vi) approval by the Authority of the transfer to Leagues of Exies' club liquor licence; and
 - (vii) the Amalgamation being completed in conformity with this Memorandum of Understanding.
- (c) After Amalgamation Completion the Deed Administrator will complete the effectuation of the DOCA, if still on foot, and then cause the DOCA to terminate in accordance with clause 18 of the DOCA.
 - (d) After that termination of the DOCA, and if not already in liquidation, Exies will convene a further meeting of its members to resolve to wind-up Exies or otherwise will apply for deregistration.
 - (e) Leagues will bear or pay all proper costs and expenses of Exies and the Deed Administrator in connection with the members voluntary winding up and deregistration of Exies, currently estimated to be in the order of \$25,000. This applies despite the provision of clause (b)(ii) above and is additional to the amount that Leagues can be required to contribute by way of the Fund Contribution.
 - (f) Leagues acknowledges that the Deed Administrator may determine to cause Exies to be put into liquidation prior to Amalgamation Completion. That will not be a basis for Leagues to terminate the proposed Amalgamation and in that event references in this MOU to and in connection the Deed Fund and the Fund Contribution, will be interpreted accordingly.

4. Manner in which Exies' premises and other facilities will be managed and the degree of autonomy that will be permitted in the management of those premises and facilities

- (a) Exies has ceased to trade and has sold its former premises, however Leagues is in negotiation with the owner of Exies' Former Premises regarding a possible lease of a portion of Exies' Former Premises.
- (b) The Amalgamated Club will use its reasonable endeavours to enter into a lease (on terms acceptable to the Leagues Club in its absolute discretion) with the owner of Exies' Former Premises and recommence trading at Exies'

Former Premises (or a portion thereof) ("**Exies Venue**") as soon as reasonably practicable after Amalgamation Completion.

- (c) Leagues also currently proposes to continue operating from its other existing premises (being Cessnock Rugby Leagues Supporters Club and Paxton Bowling Club Ltd).
- (d) The Amalgamated Club will be managed and administered in accordance with the Act by Leagues' Board.
- (e) Leagues' Chief Executive Officer will be the Approved Secretary of the Amalgamated Club with ultimate executive responsibility also for the Exies Venue if trading resumes at Exies' Former Premises.
- (f) The Amalgamated Club will engage and appoint a premises manager for the Exies Venue who will need to be approved by the Authority.
- (g) If the Amalgamated Club enters into a lease agreement with the owner of Exies' Former Premises, then Leagues will trade from the Exies Venue after Amalgamation Completion for as long as it is financially viable but for at least a minimum period of three (3) years.
- (h) For the purposes of determining financial viability in clause (g), trading from the Ex-Services Club's premises will be deemed to not be financially viable if, in any three (3) consecutive quarters (commencing after the initial three (3) year period after Completion of the Amalgamation), the EBITDARD percentage for the Exies Venue is less than 15% or the net profit for Exies Venue is below breakeven point (that is operating at a net loss), taking the Exies Venue as a standalone operation without any charge for administrative or other general expenses of the Amalgamated Club.
- (i) If the Amalgamated Club does not enter into a lease for Exies' Former Premises, the Amalgamated Club will only trade from the existing premises of Leagues (being Cessnock Rugby Leagues Supporters Club and Paxton Bowling Club Ltd).

5. Traditions, amenities and community support preserved or continued by the Amalgamated Club

It is proposed that the Amalgamated Club will work with the members of Exies regarding the preservation and continuation of traditions, amenities and community support previously observed or provided by Exies. This obligation will apply irrespective of whether or not Leagues enters into a lease for Exies' Former Premises.

The Amalgamated Club will trade the Exies venue under a name different to that used in the past which will be determined based on the Leagues' business model and marketing strategy for the Exies venue. Again, this is subject to Leagues entering into a lease (on terms acceptable to Leagues) for Exies' Former Premises.

6. Intentions regarding the future direction of the Amalgamated Club

- (a) Subject to entering into a lease with the owner of Exies' Former Premises on terms satisfactory to the Amalgamated Club, the Amalgamated Club will be looking to continue but improve the former registered club operation at Exies' Former Premises.

- (b) Subject to the Amalgamated Club entering into a lease with the owner of Exies' Former Premises on terms satisfactory to the Amalgamated Club, Leagues intends that the Amalgamated Club will undertake capital investment in respect of the Exies Venue with a view to bringing the offering up to a standard that would enable it to compete with other hospitality offerings in the local area.
- (c) Accordingly, subject to the Amalgamated Club entering into a lease with the owner of Exies' Former Premises on terms satisfactory to the Amalgamated Club, the Amalgamated Club proposes to commit to capital investment of up to \$1.4 million in respect of the Exies' Venue in the first three years after Amalgamation Completion.
- (d) In the interests of transparency, Leagues intends that the Amalgamated Club will treat the Exies Venue as a separate operation within the Amalgamated Club for management accounting purposes to allow separate financial reporting.

7. The extent to which the employees of the Amalgamated Club will be protected

- (a) Exies has no employees currently. If the Fund Contribution is received then it is anticipated that all former employees of Exies will be paid out their full entitlements from the Deed Fund according to their legal entitlement on the basis of what records are available to the Deed Administrator, including full severance pay (if any) according to law.
- (b) For the avoidance of doubt, Leagues will not offer employment to any person as part of this amalgamation.

8. Intentions regarding Exies' core property; cash or investments; and gaming machine entitlements

- (a) Exies does not have any "core property" within the meaning of the Act.
- (b) All pre-administration creditors of Exies will be dealt with under the DOCA or in the course of the winding up. All Exies' creditors known to the Deed Administrator and all of Exies' external administration costs, are proposed to be paid out of the Deed Fund and any remaining surplus will be returned to the Amalgamated Club.
- (c) Exies' gaming machine entitlements will become an asset of the Amalgamated Club. Leagues intends that the Amalgamated Club will retain some gaming machine entitlements at the Exies Venue for so long as the Exies Venue continues to operate and the Amalgamated Club at its discretion may decide to relocate some gaming machine entitlements to another venue of the Amalgamated Club. However, if the Amalgamated Club does not enter into a lease for Exies' Former Premises, the Amalgamated Club will transfer the gaming machine entitlements held in respect of Exies' Former Premises to the existing premises of Leagues (being Cessnock Rugby Leagues Supporters Club and Paxton Bowling Club Ltd).

9. Circumstances that would permit the Amalgamated Club to cease trading at the Exies venue or to substantially change the objects of Exies

- (a) One of Exies' leading objects under its Constitution is to promote and conduct sports, games, amusements and entertainments, pastimes and recreation, indoor and outdoor.
- (b) Leagues intends that the Amalgamated Club will use reasonable endeavours to continue to promote such sports and pastimes that align with the objects of the Amalgamated Club.
- (c) In recognition of Exies' history and objects pertaining to ex-service personnel, Leagues will meet with Cessnock RSL Sub-Branch to determine its ongoing preferences and Leagues will use its reasonable endeavours to assist Cessnock RSL Sub-Branch to achieve those preferences. This obligation will apply irrespective whether or not the Leagues Club enters into a lease for Exies' Former Premises.
- (d) Where reasonably possible, Leagues will continue to support community interest groups that have traditionally been supported by Exies. This obligation will apply irrespective of whether or not the Leagues Club enters into a lease for Exies' Former Premises.
- (e) If the Amalgamated Club enters into a lease agreement with the owner of Exies' Former Premises, Leagues (as the Amalgamated Club) will trade from the Exies Venue after Amalgamation Completion for as long as it is financially viable but for at least a minimum period of three (3) years. The provisions of section 4 above will apply.

10. An agreed period of time before any action can be taken by the Amalgamated Club to cease trading or substantially change objects

Exies ceased to trade on 8 November 2017 and so is not trading at present.

The previous section states the intentions of the Amalgamated Club in relation to when any action might be taken to cease trading at the Exies venue or to substantially change the objects of Exies. There is no other agreement in that regard.

11. Limitations and exclusions

- (a) The provisions of this section 11 are legally binding.
- (b) The Deed Administrator (which where the context permits in this section also includes any liquidator of Exies and this document operates as Leagues' deed poll for the benefit of any such person), is acting solely as the agent of Exies and not in any personal capacity. In the event that Exies is in liquidation then in this section 11 references to the Deed Administrator or the DOCA include with the minimum necessary changes to allow for the different circumstances, references to the liquidator and the liquidation.
- (c) Leagues acknowledges that:
 - (i) Leagues when entering into this document has not relied on any statement, inducement or representation made by or on behalf of Exies or the Deed Administrator, in relation to anything material to Exies or the proposed Amalgamation

- (ii) if the Amalgamation proceeds, then as between the Deed Administrator and Leagues, Leagues accepts the Assets and Exies' liabilities on an "as is, where is, how is" basis in every case and whether more or less (but this does not limit Leagues' rights to rely on any condition precedent or any provision or right entitling it to terminate the Amalgamation Deed or not to proceed with the proposed Amalgamation)
 - (iii) the materials that have been provided by or on behalf of Exies or the Deed Administrator to Leagues in connection with the Assets, Exies' liabilities or otherwise in relation to Exies, have been provided to facilitate due diligence action by Leagues, however Leagues as between itself and the Deed Administrator relies and will continue to rely exclusively on its own investigations and not on any description in this document or any other document provided by or on behalf of Exies or the Deed Administrator
 - (iv) any condition or warranty that might otherwise be implied by law into this document is excluded to the fullest extent permitted by law; and
 - (v) without limiting the generality of the previous provisions, Leagues acknowledges that the Deed Administrator has not made any representation or warranty (in either case, express or implied) on which Leagues has relied or is relying in any way in connection with this document or in relation to the existence, quantity, quality, nature or otherwise of any of the Assets, any of Exies' liabilities, or Exies, or in relation to Exies' title to any of the Assets or the existence or otherwise of security or encumbrance over any of the Assets or the condition of the Assets; or the existence, nature or extent of any of Exies' liabilities.
- (d) Leagues acknowledges and agrees that:
- (i) the Deed Administrator is acting only as the agent of Exies in his capacity as the administrator of the DOCA
 - (ii) the Deed Administrator is not a party to this document, however Leagues also enters into this document as its deed poll for the benefit of the Deed Administrator.
- (e) Leagues agrees that it will not commence any proceeding against the Deed Administrator of any nature whatsoever in connection with this document, including if there is any breach of any express or implied provision of this document by Exies, the intention being that any claim by Leagues, if any, will rest solely against Exies.
- (f) Leagues releases and discharges the Deed Administrator from any and all Claims relating in any way to this document including if the Deed Administrator resigns or otherwise ceases to be the administrator of the DOCA.
- (g) All references in this section 11 to the Deed Administrator include to the extent the context permits each of the Deed Administrator's officers, partners, employees, contractors and agents.
- (h) The provisions of this section 11 do not release or excuse the Deed Administrator or any of his officers, partners, employees, contractors or agents from any liability to the extent caused or contributed to by fraud or wilful

misconduct or breach of the *Corporations Act 2001 Cth* on the part of any of them.

12. Records

- (a) Despite anything to the contrary elsewhere in this document Exies will retain its Statutory Records.
- (b) Exies agrees to give the Amalgamated Club any assistance as and when reasonably required by the Amalgamated Club with respect to any legal proceedings instigated by or against Leagues in connection with any right, title, interest or power accruing to the Amalgamated Club as a consequence of Amalgamation including to the extent reasonably necessary providing access (at the cost of the Amalgamated Club) to Exies' Statutory Records and for so long as those Statutory Records remain in existence, Exies will authorise any liquidator of Exies to honour this commitment.
- (c) The Amalgamated Club will give Exies and the Deed Administrator and any liquidator of Exies any assistance as and when reasonably required by any of them with respect to any enquiry, threat or actual or potential legal proceedings by or against Exies, including access to review and copy any directly relevant records in the possession or control of Leagues from time to time.
- (d) The Amalgamated Club agrees to retain all of the Records for at least five (5) years after the date of the de-registration of Exies subject to section 262A of the Income tax Assessment Act 1936 Cth.

13. Resolution of disputes

Leagues and Exies intend that the Amalgamation Deed will include a provision for mandatory mediation of any dispute in accordance with the mediation rules of the Law Society of New South Wales before any litigation can be commenced in relation to the particular dispute (except urgent injunction applications).

14. General

14.1 Amendments

This document may only be amended, supplemented, replaced or novated by another document signed by each of the parties, whether in one or more counterparts.

14.2 Assignment

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.

14.3 Blanks and errors

Leagues may complete any blanks, and correct any obvious errors, in this document or any counterpart of this document that remain after signing by Exies, including dating all counterparts with a date not earlier than the date on which a signed counterpart from Exies is delivered to Leagues.

14.4 Costs and stamp duty

Each party must bear its own costs including legal costs in connection with the preparation and signing of this document.

14.5 Counterparts

This document may be signed in any number of counterparts and each of those counterparts taken together constitute one and the same document. A party may rely on an electronically produced copy of this document or a counterpart, and the signatures and other marks in it, as though it is an original. This document is binding on each signatory despite any other signatory not having signed it.

14.6 Entire agreement

This document and any related Amalgamation Deed between the parties, contain the entire agreement between the parties about its subject matter and supersedes all prior discussions, representations, agreements and understandings between the parties in connection with the subject matter.

14.7 Force Majeure

If a party by reason of Force Majeure is unable to perform or carry out any obligation under this document, then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure. This clause does not apply to any obligation to make a payment. In that case, the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be unable to perform or carry out or will be delayed in performing or carrying out its obligations. A party is not liable for any failure or delay in the performance of any of its obligations under this document to the extent that the failure or delay is attributable to Force Majeure, regardless of the length of time for which the Force Majeure continues. For the avoidance of doubt, it is noted that a party to this document may still suffer damage which that party may seek to recover from a third party, due to a failure or delay in the performance of an obligation under this document by a party to this document, attributable to circumstances amounting to Force Majeure which involve the third party.

14.8 Further steps

Each party agrees to do all things and sign all agreements, instruments, transfers and other documents necessary or desirable to give full effect to the provisions of this document and any transactions contemplated by it, but only to the extent already expressed to be legally binding.

14.9 Governing law

This document is governed by and is to be interpreted according to the laws in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts operating in New South Wales.

14.10 Negative promises

Where a party has promised in this document that it will not do a particular thing, then that party also promises that neither it nor any of its officers or employees will procure or assist in the doing of that thing by anyone else nor have any direct or indirect interest in any other business which involves doing that thing.

14.11 Notices

Any notice given under this document:

- (a) must be in writing, addressed to the intended recipient at the address shown in this document, or if the intended recipient has previously given the sender notice of a change of address for the purpose of notices then the notice must be addressed to the intended recipient at the address last duly notified by the intended recipient to the sender
- (b) must be signed by a person duly authorised by the sender (or in the case of a body corporate, by any of its directors or solicitors), and
- (c) is taken to be received:
 - (i) in the case of a delivery in person, when delivered
 - (ii) in the case of a posted letter, on the third Business Day after posting (if posted to an address in the same country) or seventh Business Day (if posted to an address in another country), and
 - (iii) in the case of a facsimile, and subject to the sender holding a transmission report by the machine from which the facsimile was sent which indicates that all pages of the facsimile were successfully sent to the facsimile number of the recipient, on the day of transmission, or if not sent during Business Hours, then on the next Business Day after the day of transmission.

14.12 Waiver

No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with this document, operates as a waiver of that right, power, privilege or remedy nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy. A waiver is not valid or binding on the party granting that waiver unless in writing and duly signed on behalf of that party.

14.13 Warranty of authority

Each person signing this document on behalf of a party, warrants to the other parties that on the date of signing, that person has full authority to sign this document on behalf of that party.

15. Termination

- (a) This Memorandum of Understanding is terminated immediately on the termination of the Amalgamation Deed and/or the DOCA.
- (b) Leagues may terminate this Memorandum of Understanding at any time, without penalty, by giving written notice to Exies if the amount of the Fund Contribution exceeds \$1.5 million and Leagues, in its absolute discretion, is unwilling to pay that amount.

16. 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.

- (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 agree within seven (7) days of the receipt of the notice referred to in clause 17(b) or any extended period agreed in writing between the parties as to:
 - (i) the dispute resolution technique or procedures to be adopted;
 - (iv) the timetable for steps in those procedures; and
 - (v) 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 17(b), the party which has given notice 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 19 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.

17. Notes

This Memorandum is to be:


- (a) Made available to the ordinary members of Exies and Leagues at least 21 days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.
- (b) Made available for inspection on the premises of each club (if the club has premises) and on the website of each club (if the club has a website) for at least 21 days before the relevant meeting of the members of the club referred to in clause 2(a) is held.
- (c) Lodged with any application under section 60 of the *Liquor Act 2007* to transfer the club licence held by the Exies to Leagues.

Signing page

Signed as a deed


**Cessnock Rugby League
Supporters Club Ltd**
ABN 25 001 559 548

pursuant to section 127(1) of the Corporations Act 2001 (Cth)



~~Director / Secretary~~
BRUCE WILSON

Full Name



~~Director / Secretary~~
PAUL COUSINS.

Full Name

**Cessnock Ex-Services'
Club Ltd (Subject to
Deed of Company
Arrangement)**

ABN 43 000 938 796

Gregory Alexander Russell, Deed Administrator

Witness

Address of Witness

Signing page

Signed as a deed

**Cessnock Rugby League
Supporters Club Ltd**
ABN 25 001 559 548

pursuant to section 127(1) of the Corporations Act 2001 (Cth)

Director / Secretary

Director / Secretary

Full Name


Full Name

**Cessnock Ex-Services'
Club Ltd (Subject to
Deed of Company
Arrangement)**

ABN 43 000 938 796



Gregory Alexander Russell, Deed Administrator

 Deanne Furlong
Witness
Suite 302, 53 Walker Street
North Sydney NSW 2060
Address of Witness