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LAWYERS

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MEMORANDUM OF UNDERSTANDING

between

WESTERN SUBURBS LEAGUES CLUB LIMITED
ABN 69 000 154 736
(Wests)

and

BALMAIN LEAGUES' CLUB LTD (subject to Deed of Company Arrangement)
ACN 000 190 161
(Balmain)

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This deed is made on.....23 AUGUST.....2019

Between **Western Suburbs Leagues Club Limited** ABN 69 000 154 736 of 115 Liverpool Road, Ashfield NSW 2131 (**Wests**)

And **Balmain Leagues' Club Ltd** ACN 000 190 161 (Subject to Deed of Company Arrangement) of Sydney Markets Plaza, Sydney Markets Shop 16, 250 Parramatta Road, Homebush NSW 2140 (**Balmain**)

Recitals

- A The parties are both registered clubs.
- B Balmain called for expressions of interest for amalgamation from other registered clubs on 26 February 2019.
- C Wests submitted an expression of interest which has been accepted by Balmain.
- D The parties propose to amalgamate subject to the terms of this MOU and the Deed of Amalgamation.
- E This MOU is entered into in accordance with clause 7 of the Registered Clubs Regulation.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context otherwise requires:

Agreement for Lease for the Rozelle Premises has the meaning contained in the Deed of Amalgamation;

Amalgamation means an amalgamation of Wests and Balmain pursuant to the Registered Clubs Act and the Liquor Act;

Amalgamated Club means Wests as the continuing club after Amalgamation Completion;

Amalgamation Completion has the meaning specified in the Deed of Amalgamation;

Asset includes chattels, contract rights, motor vehicles, stock in trade, plant, fixtures and fittings, real property (including the Sydney Markets Club Premises Lease), the Agreement for Lease for the Rozelle Premises (if it is entered into by Balmain rather than by Wests), Balmain Club Licences including gaming machines and gaming machine entitlements, debtors, intellectual property rights, goodwill and all other property, tangible or intangible belonging to Balmain at the time of Amalgamation Completion but excluding cash at bank and cash on hand at the time of Amalgamation Completion;

Authority means the Independent Liquor and Gaming Authority;

Balmain Club Licences means the club licences held by Balmain under the Liquor Act, being the Sydney Markets Club Licence, the Rozelle Club Licence and the Five Dock Club Licence;

Balmain Junior Rugby League Club means Balmain Junior Rugby League Club Incorporated, incorporated under the Associations *Incorporations Act 2009* (NSW) and having registration number INC9894732;

Balmain Tigers Rugby League Football Club means Balmain Tigers Rugby League Football Club Limited ABN 75 002 592 949;

Board means the board of directors of Wests, or, the Amalgamated Club after Amalgamation Completion (as the case may be);

Business Day means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Sydney;

CEO means Chief Executive Officer;

Club Licence means a club licence held under section 10 of the Liquor Act;

Balmain Members means those Members of Balmain who:

- (a) are identified as Members of Balmain for the purposes of section 17AC of the Registered Clubs Act and who join the Amalgamated Club designated as "Balmain Members" under the Constitution in accordance with clause 4 of the Deed of Amalgamation; or
- (b) join the Amalgamated Club after Amalgamation Completion and fall within the definition of "members of the dissolved club" under section 17AJ of the Registered Clubs Act and includes Members of sub-clubs of Balmain;

Constitution means the memorandum and articles of association of Wests as amended from time to time, or if replaced by a new constitution, the replacement new constitution as amended from time to time;

Deed Administrators means Gregory Jay Parker and Christopher John MacDonnell;

Deed of Amalgamation means the deed of amalgamation between the parties dated on or about the date of this MOU;

DOCA means the Deed of Company Arrangement dated 7 March 2019 between Wests and the Deed Administrators.

Employee Entitlements means all entitlements to salary or wages, annual leave, long service leave and other entitlements under any industrial instrument or agreement between Balmain and any of its employees;

Financial Year means a financial year of the Amalgamated Club;

Five Dock Club Licence means the club licence held by Balmain in respect of the non-trading premises located at Barnstaple Road, Five Dock NSW2046, being liquor licence numbered LIQC300227308;

Five Dock Club Premises means the premises located at Barnstaple Road, Five Dock NSW2046 LIQC300227308

Gaming Machines Act means the *Gaming Machines Act 2001* (NSW);

Gaming Machines Regulation means the *Gaming Machines Regulation 2010* (NSW);

Government Agency means a government or any governmental, semi-governmental or judicial entity or authority, including but not limited to a self-regulating organisation established under statute and includes the Authority;

Liquor Act means the *Liquor Act 2007* (NSW);

Major Assets of Balmain means the Sydney Markets Club Premises;

Member means a member of either Balmain, Wests or the Amalgamated Club as the case may be, as shown on the relevant club's register of members at the relevant time;

MOU means this memorandum of understanding for amalgamation;

NRL means National Rugby League Limited (ACN 082 088 962);

NRL Loan means a loan by the NRL to Balmain Tigers Rugby League Football Club under loan agreements entered into by them;

Registered Clubs Act means the *Registered Clubs Act 1976* (NSW);

Registered Clubs Regulation means the *Registered Clubs Regulation 2015* (NSW);

Rozelle Club Licence means the club licence held by Balmain in respect of the non-trading premises located at 138-152 Victoria Rd Rozelle NSW 2038, being liquor licence numbered LIQC300225488);

Rozelle Premises has the meaning specified in the Deed of Amalgamation.

Sydney Markets Club Licence means the club licence held by Balmain in respect of the Sydney Markets Club Premises, being liquor licence numbered LIQC300231712);

Sydney Markets Club Premises means that part of the Premises which is located within shop 16/suite B20, and Store Room B20A, being part of the Market Plaza Building (Office Tower), Sydney Markets, Flemington, and which is subject to the Sydney Markets Club Licence as amended from time to time;

Sydney Markets Club Premises Lease means the lease of the Sydney Markets Club Premises between Balmain as tenant and Sydney Markets Limited ACN 077 119 290 as landlord and expiring 31 March 2023 (with 5 options of renewal of 5 years each);

Sydney Markets Office Premises means the office space of approximately 32 square metres and known as Suite B4 located at Sydney Markets Plaza, Sydney/Flemington Markets, Flemington, being an office space of approximately 32 square metres; and

Sydney Markets Office Premises Lease means a new lease of the Sydney Markets Office Premises, which may be entered into by Wests as tenant with the registered proprietor as landlord of those premises under clause 7.1(c) of the Deed of Amalgamation;

Wests Members are those members of the Amalgamated Club excluding the Balmain Members;

Wests Magpies means Wests Magpies Pty Ltd ACN 089 921 166 being an Associated Entity of Wests (and for avoidance of doubt, NOT being the entity known as "Western Suburbs District Rugby League Football Club Football Club Ltd" ACN 003 390 467, which is a distinct and separate entity); and

Wests Tigers means Wests Tigers Rugby League Football Pty Ltd ACN 090 076 403..

1.2 Interpretation

In this MOU, unless the context otherwise requires:

- (a) capitalised words which are not defined in this MOU have the same meaning as defined in the Deed of Amalgamation; and
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and conversely;
- (d) a gender includes any gender;
- (e) if a word or phrase is defined, then its other grammatical forms have a corresponding meaning;
- (f) a reference to **person** includes:
 - (i) a body corporate, an unincorporated or other entity and conversely; and

- (ii) a reference to that person's executors, administrators, successors, permitted assigns and substitutes including but not limited to a person to whom this memorandum of understanding is novated;
- (g) a reference to **clause** or **schedule** is to a clause or schedule to this MOU;
- (h) a reference to a specific document is to that document as amended, novated, supplemented, varied or replaced;
- (i) a reference to a thing including but not limited to a right, includes a reference to a part of that thing;
- (j) a reference to law or legislation includes but is not limited to a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument under it;
- (k) a reference to conduct includes but is not limited to, an omission, statement or undertaking whether or not in writing; and
- (l) a provision of this MOU must not be construed adversely to a party on the grounds that the party is responsible for the preparation of it.

2 Amalgamation

2.1 Amalgamation

The parties agree to Amalgamate:

- (a) in accordance with the Registered Clubs Act and the Liquor Act; and
- (b) on the terms of this MOU and the Deed of Amalgamation.

2.2 Condition

This MOU is collateral to, and conditional upon execution of, the Deed of Amalgamation.

3 Future management of the Sydney Markets Club Premises

Clause 7(2)(a) of the Registered Clubs Regulation

3.1 General

- (a) The Sydney Markets Club Premises will become additional trading premises of the Amalgamated Club.
- (b) The Sydney Markets Club Premises will be available for the use of all Members of the Amalgamated Club (subject to its Constitution and by-laws).
- (c) The Sydney Markets Club Premises will be named and trade under the name Tigers Sydney Markets subject to the Amalgamated Club obtaining any required authorisation or consent from any Government Agency. If the Amalgamated Club is unable to obtain the necessary authorisation or consent then the Sydney Markets Club Premises will be named and trade under such name as determined by the Board.
- (d) The Five Dock Club Premises have ceased to trade prior to the date of this MOU and the Amalgamated Club will not be trading those premises. The gaming machine entitlements for the Five Dock Club Licence will be utilised at the discretion of the Board.

- (e) The Rozelle Premises have ceased to trade. The Amalgamated Club will seek to enter into a lease with Grand Rozelle Pty Ltd to re-open premises at Victoria Road Rozelle on acceptable terms.

3.2 Supporting Rugby League

The Amalgamated Club will:

- (a) Maintain the charter/objects of Balmain, namely to continue to foster and propagate Rugby League by way of funding to the Balmain Tigers Rugby League Football Club and Balmain Junior Rugby League Club.
- (b) Provide annual funding to the Balmain Tigers Rugby League Football Club for a minimum period of 5 years from the date of the Amalgamation Completion for a total amount of up to \$350,000 for each year making a total of up to \$1,750,000 over 5 years. In each year, the Board of Balmain Tigers Rugby League Football Club and Committee of Balmain District Junior Rugby League Club shall consult with the Board regarding their respective funding requirements and the Board shall determine the funding to be allocated Balmain Tigers Rugby League Football Club which shall then be responsible for distribution of the funding between itself and Balmain District Junior Rugby League Club for the relevant year, taking into account the consultation undertaken under this clause.
- (c) Provide funds to satisfy the liabilities of Balmain Tigers Rugby League Football Club under the NRL Loan as at the date of this MOU on expiry of the NRL Loan (plus any accumulated interest to the date of expiry of the NRL Loan), subject to Wests, Wests Magpies and Balmain Tigers Rugby League Football Club entering into a written agreement recording the terms for the provision of funds and for the purposes of clause 16 of the Deed of Amalgamation (each on terms satisfactory to all parties).

3.3 Management structure, Secretary/CEO of the Amalgamated Club and Manager of the Sydney Markets Club Premises

- (a) The management structure of the Amalgamated Club will be the management structure of Wests at the date of Amalgamation Completion, amended according to the operational requirements of the Amalgamated Club as determined by the Board from time to time.
- (b) For the purposes of the Registered Clubs Act and Liquor Act Wests' CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- (c) The Amalgamated Club will appoint a manager of the Sydney Markets Club Premises for the purposes of section 66 of the Liquor Act, and subject to clause 6.1(a)(ii), will appoint the current CEO and Secretary of Balmain as such manager.

4 Continuing traditions, amenities and community support

Clause 7(2)(b) of the Registered Clubs Regulation

4.1 Traditions and Amenities

The Amalgamated Club will maintain Balmain honour rolls and memorabilia in a suitable location at the main premises of Wests located at 115 Liverpool Road, Ashfield, and following construction and trading of the Rozelle Premises, will instead maintain such honour rolls and memorabilia at the Rozelle Premises. In either case the Board of the Amalgamated Club will have the option to store the information on the honour rolls electronically provided the information can be viewed by members.

4.2 Life members of Balmain

Any person who, at Amalgamation Completion, is a life member of Balmain and who becomes a Member of the Amalgamated Club:

- (a) will continue to be recognised as a life member in respect of the Sydney Markets Club Premises and, following construction and trading of the Rozelle Premises, will instead be recognised as a life member at the Rozelle Premises; and
- (b) will not be required to pay an annual subscription to the Amalgamated Club unless an annual subscription is required under the Registered Clubs Act or if the Amalgamated Club is directed by the Authority to charge an annual subscription, in which case such person will only be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act.

4.3 Perpetual members of Balmain

Any person who, at Amalgamation Completion, is a perpetual member of Balmain and who becomes a Member of the Amalgamated Club will not be required to pay an annual subscription to the Amalgamated Club unless an annual subscription is required under the Registered Clubs Act or if the Amalgamated Club is directed by the Authority to charge an annual subscription, in which case such person will only be required to pay the Amalgamated Club the minimum annual subscription required by the Registered Clubs Act.

4.4 Community support

Subject to overall financial viability of the Amalgamated Club and the Amalgamated Club's policies for community support, the Amalgamated Club will continue to support the communities and organisations that were supported by Balmain at the date of this memorandum of understanding.

4.5 Member rewards

Balmain Members will have the opportunity to participate in the Amalgamated Club's Member loyalty program, subject to the terms of the loyalty program.

5 Future direction of the Amalgamated Club

Clause 7(2) (c) of the Registered Clubs Regulation

5.1 General

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

5.2 Specific

The Amalgamated Club will:

- (a) promote the game of rugby league;
- (b) maintain and promote the Sydney Markets Club Premises;
- (c) promote the Sydney Markets Club Premises as a community focused venue;
- (d) develop a dedicated marketing plan for improving community engagement and membership growth at the Sydney Markets Club Premises; and
- (e) seek to maintain and improve the trading of the Sydney Markets Club Premises so that the Sydney Markets Club Premises remain financially viable without subsidy or financial support from the other premises of the Amalgamated Club.

6 Employees

Clause 7(2) (d) of the Registered Clubs Regulation

6.1 Balmain employees

- (a) Wests will give each current employee of Balmain, a written offer of employment:
- (i) on terms no less favourable than those provided by an applicable industrial instrument; and
 - (ii) otherwise on those terms generally applicable to an employee in a similar role at Wests (provided that the Secretary and CEO of Balmain will be offered employment as the manager of the Sydney Markets Club Premises in accordance with clause 3.3(c) and pursuant to a written agreement between the CEO of Balmain and the Amalgamated Club),
- at least 10 Business Days prior to the anticipated date of Amalgamation Completion.
- (b) Balmain will terminate the employment of all its employees in writing, or accept their written resignation, on Amalgamation Completion.
- (c) Any employee who accepts in writing an offer from Wests made under clause 6.1(a) will be employed by the Amalgamated Club on Amalgamation Completion on the terms of that offer, and that person's Employee Entitlements accrued with Balmain up to and including Amalgamation Completion will be recognised by the Amalgamated Club.
- (d) If any employee of Balmain does not accept an offer of employment from Wests in accordance with clause 6.1(c), then:
- (i) that employee will be paid all accrued Employee Entitlements by Balmain as at Amalgamation Completion, which will be the end date of that employee's employment by Balmain;
 - (ii) Balmain must make all superannuation contributions it is obliged to make for that employee up to the date of Amalgamation Completion; and
 - (iii) Balmain will obtain written acknowledgment of receipt of such payments from that employee as at Amalgamation Completion.

6.2 Wests employees

Each employee of Wests will continue to be employed by the Amalgamated Club after Amalgamation Completion, subject to the terms and conditions of employment between each such employee and Wests.

7 Intentions for Balmain Assets

Clause 7(2) (e) of the Registered Clubs Regulation

7.1 Core property/Major Assets of Balmain and gaming machines and gaming machine entitlements

- (a) The Sydney Markets Club Premises are core property of Balmain for the purposes of section 41E of the Registered Clubs Act and are major assets of Balmain for the purposes of section 17AI(3) of the Registered Clubs Act and clause 8 of the Registered Clubs Regulation.

- (b) As at the date of this MOU, the number of gaming machine entitlements held for the Sydney Markets Club Licence and for the Sydney Markets Club Premises is eighty eight (88) and Balmain must ensure that all of the eighty eight (88) gaming machine entitlements held in respect of the Sydney Markets Club Licence and all its other Assets are transferred to the Amalgamated Club as part of the amalgamation.
- (c) Wests must:
- (i) retain occupation of the Major Assets of Balmain (subject to the terms of the Sydney Markets Premises Lease);
 - (ii) operate not less than 59 gaming machines at the Sydney Markets Club Premises; and
 - (iii) operate the Sydney Markets Club Premises as a separate set of registered club premises of the Amalgamated Club,
- in the manner referred to in clause 5.2 but subject to clauses 10 and 11.
- (d) Subject to clauses 10 and 11 of this MOU, Balmain and Wests intend that the Amalgamated Club will continue to trade from the Sydney Markets Club Premises and for the core property of Balmain/Major Assets of Balmain and Sydney Markets Club Premises gaming machine entitlements to be retained for at least 5 years after Amalgamation Completion.

7.2 Other assets

- (a) Other Assets will form part of the assets of the Amalgamated Club on Amalgamation Completion and may be used, maintained or disposed of in the ordinary course of its business, but the Major Assets of Balmain and the gaming machine entitlements of the Sydney Markets Club Licence must be retained in accordance with clause 7 and subject to clauses 10 and 11.
- (b) In accordance with the DOCA, cash at bank and cash on hand at Amalgamation Completion will be retained by the Deed Administrators. However, any surplus cash at bank and cash on hand held by the Deed Administrators after payment of all Claims as defined in the DOCA must be transferred to Wests.

8 Risks of not meeting any specified intentions regarding preservation of the core property of Balmain

Clause 7(2)(e1) of the Registered Clubs Regulation

- (a) The risks of the Amalgamated Club not meeting the intentions to preserve the core property of Balmain include that:
- (i) the only core property of Balmain is the lease of the Sydney Markets Club Premises. Wests has no intention of terminating the lease and in any event will be bound by the lease as the Amalgamated Club;
 - (ii) if the core property/lease of the Sydney Markets Club Premises is disposed, then the ability to use the Sydney Markets Club Premises as a registered club will cease unless a new lease agreement is entered into between the then registered proprietor of the Sydney Markets Club Premises and the Amalgamated Club.
- (b) The likelihood that the risks outlined in clause 8(a) will be realised are mitigated because of the restrictions on disposal of the Major Assets of Balmain contained in the Registered Clubs Act and the additional restrictions set out in clauses 10 and 11 of this MOU.

9 Agreement under section 17A(1) of the Registered Clubs Act relating to the period during which the Major Assets of Balmain must not be disposed

Clause 7(2)(e2) of the Registered Clubs Regulation

The Amalgamated Club may not dispose of the Major Assets of Balmain except in accordance with clauses 10 and 11.

10 Ceasing to Trade from the Sydney Markets Club Premises or Changing Objects

Clause 7(2) (f) of the Registered Clubs Regulation

- (a) Wests does not intend to cease trading from the Sydney Markets Club Premises. However, with effect from Amalgamation Completion, the objects of the Amalgamated Club will be the objects of Wests.
- (b) Wests intends to operate the Amalgamated Club in the manner referred to in clause 5.
- (c) For the purposes of clause 7(2)(f) of the Registered Clubs Regulation, Wests and Balmain have agreed that the Amalgamated Club may cease trading at the Sydney Markets Premises in the following circumstances:
 - (i) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
 - (ii) upon the lawful order of any Government Agency;
 - (iii) if the Sydney Markets Club Premises were destroyed or partially destroyed by fire, flood, storm etc., except where appropriate insurance cover is available to reinstate the Sydney Markets Club Premises or where it is otherwise economically viable to do so;
 - (iv) if the lease for the Sydney Markets Club Premises expires or is terminated and the landlord does not grant a new lease of those premises on terms acceptable to the Amalgamated Club; or
 - (v) if it is not financially viable for the Amalgamated Club to continue to trade at the Sydney Markets Club Premises.

11 Minimum Period

Clause 7(2)(g) of the Registered Clubs Regulation

- (a) Wests does not intend to cease trading from the Sydney Markets Club Premises. Wests intends to operate the Sydney Markets Club Premises in the manner referred to in clause 5 for a minimum period of 5 years after Amalgamation Completion and would only cease to trade in the circumstances referred to in clause 10.
- (b) Wests also intends to enter into an agreement for lease and lease in order to trade from the Rozelle Premises as specified in clause 7.2 of the Deed of Amalgamation.

12 Other Commitments of Wests

12.1 Payments of Creditors of Balmain

Subject to the terms of the DOCA and the Deed of Amalgamation:

- (a) Wests will pay the sum of \$250,000 to the secured creditors of Balmain in full and final settlement of their debts and respective securities and charges over the assets of Balmain. Balmain must obtain a release of the secured creditors such that the secured creditors will not prove as unsecured creditors for any shortfall amount owing to them.
- (b) Wests will pay \$100,000 to Balmain as a contribution to extinguish the claims of unsecured creditors.
- (c) Wests will pay the reasonable costs and expenses of the Deed Administrators including Balmain's trading losses to the extent that the assets of Balmain are insufficient to do so.

13 General

13.1 Stamp duty

Wests must pay all stamp duty (including any penalties) payable or assessed in connection with this MOU and any document required by or contemplated under this MOU.

13.2 Legal costs

Wests will pay the legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this MOU and will pay the reasonable costs and expenses of Balmain in negotiating, preparing, executing and performing its obligations under this MOU .

13.3 Entire agreement

This MOU and the Deed of Amalgamation:

- (a) are the entire agreement between the parties in relation to the proposed amalgamation of the parties; and
- (b) supersede all previous agreements.

13.4 Counterparts

A party may execute this MOU by signing any counterpart. All counterparts constitute one document when taken together.

13.5 Variation

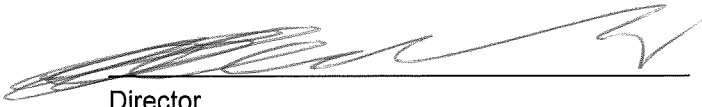
The parties can only vary a term of this MOU if the variation is in writing and both parties sign, and approval is given by the Members of both parties in general meeting.

13.6 Termination

This MOU is terminated immediately on termination of the Deed of Amalgamation and clause 16 of the Deed of Amalgamation will apply to termination of this MOU.

Executed as a deed by Wests

Executed as a deed by **Western Suburbs
Leagues Club Limited ABN 69 000 154 736** in
accordance with section 127 of the
Corporations Act 2001 (Cth):



Director

TONY ANDREACCHIO

Name of Director
BLOCK LETTERS



~~Director~~ *Company Secretary

SIMON COOK

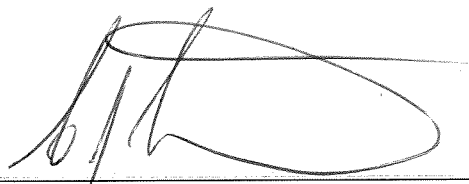
Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed as a deed by Balmain

Executed as a deed by **Balmain Leagues' Club Ltd (ACN 001 190 161)** subject to **Deed of Company Arrangement** in accordance with section 127 of the *Corporations Act 2001* (Cth):



Gregory Jay Parker, Deed Administrator



Christopher John MacDonnell, Deed Administrator