

MEMORANDUM OF UNDERSTANDING

DATED 19 October 2023

PARTIES

AUSTRALIAN 18-FOOTERS' LEAGUE LIMITED
ACN 001 071 558

AND

SYDNEY FLYING SQUADRON LIMITED
ACN 000 487 230

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ABN 82 680 297 642

Associated Firm - Melbourne McKean Park

This Memorandum of Understanding is made on

BETWEEN

AUSTRALIAN 18-FOOTERS' LEAGUE LIMITED (ACN 001 071 558) of 77 Bay Street Double Bay New South Wales 2028 (**18 Footers Club**).

SYDNEY FLYING SQUADRON LIMITED (ACN 000 487 230) of 76 McDougall Street Kirribilli NSW 2061 (**Flying Squadron Club**).

BACKGROUND

- (A) The 18 Footers Club and the Flying Squadron Club operate registered clubs in Sydney, New South Wales.
- (B) The Flying Squadron Club called for expressions of interest in amalgamation from clubs interested in amalgamating with the Flying Squadron Club.
- (C) The 18 Footers Club submitted an expression of interest to the Flying Squadron Club.
- (D) The Flying Squadron Club has accepted the expression of interest from the 18 Footers Club and, following further negotiation, the 18 Footers Club and the Flying Squadron Club have agreed to the terms set out in this Memorandum.
- (E) The 18 Footers Club and the Flying Squadron Club propose to amalgamate the two Clubs in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act and subject to the approval of the Authority.
- (F) For the purposes of the Amalgamation, the Lease is to be assigned from the 18 Footers Club to the Flying Squadron or alternatively, the Flying Squadron will enter into a fresh lease for the 18 Footers Club Premises.
- (G) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding.
- (H) The Regulations require the Memorandum of Understanding to deal with or include the matters contained in clauses 2 to 11.1 inclusive below. However, there are other matters of importance to the Clubs that are included in this Memorandum.

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Memorandum unless the context otherwise requires:

- (a) "**18 Footers Club's CEO**" means the individual who fulfils the Secretary or Secretary Manager's role at the 18 Footers Club;
- (b) "**18 Footers Club Premises**" means the 18 Footers Club's premises located at 77 Bay Street Double Bay New South Wales 2028;
- (c) "**Advisory Committee**" means the Advisory Committee referred to in clause 6.6.

- (d) **"Amalgamated Club"** mean the amalgamated registered club of the 18 Footers Club and the Flying Squadron Club, the corporate vehicle of which will be the Flying Squadron Club;
- (e) **"Amalgamation"** means the amalgamation of the Clubs in accordance with this Memorandum;
- (f) **"Amalgamation Application"** means the provisional application for the transfer of the 18 Footers Club's Liquor Licence to the Flying Squadron Club pursuant to Section 60(6) and Section 60(7) of the Liquor Act by the 18 Footers Club and the Flying Squadron Club;
- (g) **"Assets"** means all of the goodwill, land, personal property, equipment, stock, intellectual property, shares, poker machine entitlements, poker machines and all other property, tangible or intangible belonging to the 18 Footers Club at the time of Completion of the Amalgamation;
- (h) **"Authority"** means the Independent Liquor and Gaming Authority;
- (i) **"CBA Mortgage"** means the mortgage held by the Commonwealth Bank of Australia in respect of the Pattons Slipways Land (registration number AD533225);
- (j) **"Claim"** means any claim at law or in equity, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature, whether known or unknown;
- (k) **"Clubs"** means both the 18 Footers Club and the Flying Squadron Club;
- (l) **"Completion of the Amalgamation"** means the day on which:
 - (i) the Final Order is granted and the 18 Footers Club's Liquor Licence is transferred to the Flying Squadron Club; and
 - (ii) the Lease, Assets, Debts and Liabilities of the 18 Footers Club are transferred to the Flying Squadron Club;
 - (iii) The 18 Footers Club's members become members of the Flying Squadron Club and all members of the Flying Squadron Club and the 18 Footers Club become members of the Amalgamated Club;
 - (iv) The Board of the 18 Footers Club and the 18 Footers Club CEO takes over responsibility for the governance, management and control of the Flying Squadron Club Premises and the Amalgamated Club;
 - (v) The Board of the 18 Footers appoints its nominees to the Board of Pattons in place of those of the Flying Squadron Club appointees.
- (m) **"Confidential Information"** means all information relating to a party, its business, employees or suppliers which is or might reasonably be considered by the other party to be confidential and which is not in the public domain, including all financial data and information relating to a party, business plans, unpublished financial accounts, data and reports, supply lists and information relating to the business of a party's suppliers;

- (n) **“Corporations Act”** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder;
- (o) **“Debts”** means the accumulated debts of the 18 Footers Club at the time of Completion of the Amalgamation;
- (p) **“Final Order”** means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby the 18 Footers Club’s Liquor Licence is transferred to the Flying Squadron Club;
- (q) **“Flying Squadron Club Premises”** means the Flying Squadron Club’s premises located at 76 McDougall Street Kirribilli NSW 2061 which is occupied by the Flying Squadron Club pursuant to a lease;
- (r) **“Flying Squadron Club’s CEO”** means the individual who fulfils the position of Secretary and Chief Executive Officer role at the Flying Squadron Club (including any person who fulfills that position on an honorary basis);
- (s) **“Force majeure event”** means an event which is beyond the reasonable control of a party and includes but is not limited to:
 - (i) an act of God;
 - (ii) a breakdown or destruction of plant and equipment;
 - (iii) a shortage of or inability to secure fuel, power, material or labour;
 - (iv) a flood, earthquake, rockfall or landslide;
 - (v) a government act or regulation including but not limited to, exchange control by government having jurisdiction over the parties effected;
 - (vi) a blockade, riot, civil insurgence, act of terrorism or war;
 - (vii) lightning, fire or explosion; or
 - (viii) epidemic or quarantine restriction;
- (t) **“Gaming Machines Act”** means the Gaming Machines 2001 (NSW) and the Regulations made thereunder;
- (u) **“GST”** means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (v) **“Lease”** means the lease between the Maritime Authority of New South Wales and the 18 Footers Club for the land located in Lot 1 in Deposited Plan 1189237 (which includes the 18 Footers Club Premises);
- (w) **“Leased Land”** means the land which the 18 Footers Club occupies and includes the 18 Footers Club Premises and the land which the Flying Squadron Club occupies and includes the Flying Squadron Club Premises;
- (x) **“Liabilities”** means all liabilities, losses, damages, outgoings, costs and expenses of the 18 Footers Club (whatever description) at the time of Completion of the Amalgamation;

- (y) **“Liquor Act”** means the Liquor Act 2007 (NSW) and the Regulations made thereunder;
- (z) **“Liquor Licence”** means the club licence issued to a registered club under the *Liquor Act*;
- (aa) **“Memorandum”** means this Memorandum of Understanding;
- (bb) **“Order”** means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (cc) **“Party”** means the Flying Squadron Club or the 18 Footers Club;
- (dd) **“Pattons”** means Pattons Slipways Pty Ltd ACN 000 070 271.
- (ee) **“Pattons Land”** means the land at Kirribilli owned by Pattons being Lot 1 DP 1095443 and Auto Consol 4455-107.
- (ff) **“Records”** means all original and copy records, sales brochures and catalogues, lists of clients, documents, books, files, accounts, plans and correspondence belonging to or used by a Party in the conduct of its business including but not limited to corporate, accounting and statutory records;
- (gg) **“Regulations”** mean the Regulations to the RCA;
- (hh) **“RCA”** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder;

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;
- (f) a reference to a Party to a document includes that Party's successors, permitted assigns, administrators and substitutes;
- (g) an agreement on the part of 2 or more persons binds them jointly and severally;
- (h) a reference to a notice from, consent or approval of a Party and agreement between the Parties for the purposes of this Deed means a written notice, consent, approval or agreement;

- (i) mentioning anything after 'include', 'includes' or 'including' does not limit what else might be included; and
- (j) a reference to "dollars" or "\$" is to Australian currency.

2. CONDITION PRECEDENT FOR AMALGAMATION

- 2.1 Completion of the Amalgamation is conditional upon the Maritime Authority of New South Wales:
- (a) consenting to the assignment of the Lease from the 18 Footers Club to the Flying Squadron Club on terms acceptable to the 18 Footers Club and the Flying Squadron Club; or
 - (b) entering into a fresh lease for the 18 Footers Club Premises with the Flying Squadron Club on terms acceptable to the 18 Footers Club and the Flying Squadron Club.

3. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION

- 3.1 The Clubs agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 3.2 The Amalgamation is intended to preserve and where possible enhance the existing facilities and amenities of both Clubs.
- 3.3 The amalgamation will be effected by the continuation of the Flying Squadron Club and the dissolution of the 18 Footers Club.
- 3.4 The parties propose that the name of the Amalgamated Club will be Australian Eighteen Footers Limited and, subject to the consent of the Australian Securities and Investments Commission to the new name, the Flying Squadron Club will change its name to this with effect from Completion of the Amalgamation.

Process for Amalgamation

- 3.5 The process for the amalgamation will be as follows:
- (a) The Clubs entering into this Memorandum; and
 - (b) The members of the Flying Squadron Club and the 18 Footers Club will be asked to approve the amalgamation at separate general meetings of the ordinary members of each club. These meetings will be called and held in the manner referred to in clause 14 below;
 - (c) The members of the Flying Squadron Club will be asked to approve (by special resolution) amendments to the Flying Squadron Club's Constitution in the manner provided for in clause 14.5 below.
 - (d) Once the approvals in paragraphs (b) and (c) have been obtained, the Amalgamation Application will then be made. The Amalgamation Application will be made in the manner referred to in clause 15 below;

- (e) After the Amalgamation Application is granted and on the date of the Final Order:
- (i) The Assets, Debts and Liabilities of the 18 Footers Club will be transferred to the Flying Squadron Club;
 - (ii) The Lease will be transferred or assigned to the Flying Squadron Club or a new lease over the 18 Footers Club Premises is granted to the Flying Squadron Club;
 - (iii) All members of the 18 Footers Club will, with their consent, be admitted as members of the Flying Squadron Club and will be identified as a separate class of ordinary membership called "18 Footers Club members". This will occur in accordance with the procedure set out in clause 14.5 below (that is, the category of membership will be inserted into the Flying Squadron Club's Constitution pursuant to the Special Resolution referred to in that clause);
 - (iv) Employees of the 18 Footers Club who are offered employment with the Amalgamated Club and accept those offers of employment will become employees of the Amalgamated Club.
 - (v) The Flying Squadron Club will continue as the body corporate of the Amalgamated Club;
 - (vi) The Directors of the 18 Footers Club will replace the Directors of the Flying Squadron Club being the corporate vehicle of the Amalgamated Club and the 18 Footers Club's CEO will be the CEO of the Amalgamated Club;
 - (vii) The Directors of the Flying Squadron Club will remove from office the Flying Squadron Club appointed directors of Pattons one by one and the Directors of the 18 Footers Club will appoint their own nominees as directors of Pattons one by one;
 - (viii) The Flying Squadron Club will hold the club licence for the 18 Footers Club Premises as well as that for the Flying Squadron Club Premises.
- (f) From Completion of the Amalgamation, the 18 Footers Club Premises will become additional licensed premises of the Flying Squadron Club and will be available to all members of the Amalgamated Club. The 18 Footers Club Premises will be operated in the manner set out in clauses 4, 5 and 6 below;
- (g) After Completion of the Amalgamation, the 18 Footers Club will be dissolved in the manner referred to in clause 17 below.

Due Diligence

- 3.6 The Flying Squadron Club may, at its own expense, undertake a due diligence review of the 18 Footers Club's financial position.
- 3.7 The 18 Footers Club may, at its own expense, undertake an ongoing due diligence review of the Flying Squadron Club and Pattons.

3.8 The 18 Footers Club and the Flying Squadron Club will, if required, provide to the other Party a list of information and access to its Records and it will also provide reasonable assistance to the other Party in order for that Party to properly carry out and complete the due diligence review.

4. **THE MANNER IN WHICH THE PREMISES AND OTHER FACILITIES OF THE 18 FOOTERS CLUB WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE 18 FOOTERS CLUB PREMISES AND FACILITIES**
[Regulations – Clause 7(2)(a)]

4.1 The 18 Footers Club Premises will become additional premises of Flying Squadron Club.

4.2 The Amalgamated Club will operate and trade from the 18 Footers Club Premises and the Flying Squadron Club Premises.

4.3 The Board of 18 Footers Club will be the initial governing body of the Amalgamated Club.

4.4 The Board of the 18 Footers Club will become the governing body of the Flying Squadron Club Premises and the 18 Footers Club Premises and will be responsible for the governance of the Amalgamated Club with effect from Completion of the Amalgamation.

4.5 For the purposes of the RCA, the 18 Footers Club's CEO will be the Secretary and Chief Executive Officer of the Amalgamated Club and will have overall responsibility for the management of the Flying Squadron Club Premises and the 18 Footers Club Premises.

4.6 The Amalgamated Club may, in its absolute discretion, appoint a venue manager for the Flying Squadron Club Premises who will be responsible for the day to day operations of those premises and he or she will report to the 18 Footers Club's CEO and Board (being respectively the CEO and Board of the Amalgamated Club).

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

5.1 The traditions, amenities, culture, sailing facilities, sailing activities and memorabilia of Flying Squadron Club and the 18 Footers Club will be maintained by the Amalgamated Club at the Flying Squadron Club Premises and the 18 Footers Club Premises respectively. For the avoidance of doubt, the parties acknowledge and agree that the memorabilia of the Flying Squadron Club and the 18 Footers Club may be displayed in its present form or in an electronic form or in any other form as determined by the governing body of the Amalgamated Club.

5.2 The Amalgamated Club will continue to support the respective communities that were supported by the Flying Squadron Club and the 18 Footers Club (as at the date of this Memorandum) and it will explore opportunities to expand community support.

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

- 6.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, the Board and Management of the Amalgamated Club will operate the Amalgamated Club in accordance with this clause 6.

Amalgamated Club Premises

- 6.2 The Amalgamated Club will operate and trade from both the 18 Footers Club Premises and the Flying Squadron Club Premises.

Flying Squadron Club Premises

- 6.3 The Flying Squadron Club Premises will continue to trade as and be promoted as "Sydney Flying Squadron".

18 Footers Club Premises

- 6.4 The 18 Footers Club Premises will continue to trade and be promoted as the "Australian 18 Footers League".
- 6.5 Subject to clauses 11 and 12, the Board and Management of the 18 Footers Club (as the Board and Management of the Amalgamated Club) intends to:
- (a) maintain the Flying Squadron Club Premises and the 18 Footers Club Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at the Flying Squadron Club Premises and the 18 Footers Club Premises with all the facilities and amenities of a registered club; and
 - (b) operate the Flying Squadron Club Premises and the 18 Footers Club Premises as successful and well supported sailing and social clubs;
 - (c) undertake necessary works at the Flying Squadron Club Premises and the 18 Footers Club Premises with the nature, budget and timeframe of the works to be determined by the Board of the Amalgamated Club in its absolute discretion;
 - (d) improve trading at the Flying Squadron Club Premises and the 18 Footers Club Premises;
 - (e) enhance the social and sailing facilities, services, amenities and activities at the Flying Squadron Club Premises and the 18 Footers Club Premises.

Advisory Committee

- 6.6 There will be an Advisory Committee in respect of the Flying Squadron Premises and separately in respect of the 18 Footers Club Premises and the following shall apply in respect of each Advisory Committee:
- (a) Each Advisory Committee will initially be made up of the 18 Footers Club's CEO (or his delegate) and respectively two of the directors of the Flying

Squadron Club as at Completion of the Amalgamation and two of the directors of the 18 Footers Club as at Completion of the Amalgamation to be members of the Advisory Committee.

- (b) Each Advisory Committee shall remain in place for at least the first five (5) years after Completion of the Amalgamation.
- (c) If a casual vacancy arises on an Advisory Committee at any time, the remaining members of the Advisory Committee may appoint another member of the Amalgamated Club to fill the vacancy provided that his or her appointment has been first approved by the Board of the Amalgamated Club.
- (d) Each Advisory Committee will have its own set of rules governing the roles, responsibilities and operations of the Advisory Committee;
- (e) Each Advisory Committee will meet at such intervals as may be determined by the Advisory Committee from time to time.
- (f) Each Advisory Committee may make recommendations to the Board and/or management of the Amalgamated Club regarding the following matters:
 - (i) the operations of the respective premises of each Club; and
 - (ii) ClubGRANTS to be made by the Amalgamated Club;
 - (iii) membership matters at the respective premises of each Club.
- (g) An Advisory Committee will not have any governance or management powers in the Amalgamated Club (except if specifically delegated to it by resolution of the Board) and it shall be subject to the overall control and direction of the Board and management of the Amalgamated Club.
- (h) An Advisory Committee may be required to provide reports to the Board of the Amalgamated Club.
- (i) The Board of the Amalgamated Club will adopt By-laws which give effect to the matters set out in this clause.

7. THE EXTENT TO WHICH THE EMPLOYEES OF THE AMALGAMATED CLUB WILL BE PROTECTED

[Regulations – Clause 7(2) (d)]

- 7.1 As part of the Amalgamation, the corporate structure of the 18 Footers Club will be wound up/liquidated and as part of the winding up/liquidation, the employment of the 18 Footers Club's employees by the 18 Footers Club will come to an end.
- 7.2 Prior to Completion of the Amalgamation, the Flying Squadron Club will offer employment to all employees of the 18 Footers Club. The offer of employment:
 - (a) will be made as soon as reasonably practicable after the Order; and
 - (b) will be conditional upon and be effective from the Completion of the Amalgamation;

- (c) will be conditional on the respective employee being an employee of the 18 Footers Club at the date that the offer of employment is to be made and at the Completion of the Amalgamation;
- (d) will be on the same terms and conditions as the employee's employment with the 18 Footers Club (as at the date of this Memorandum).

7.3 If an 18 Footers Club employee accepts the offer of employment with the Flying Squadron Club, they will receive continuity of employment and their accumulated entitlements will be honoured by the Amalgamated Club.

7.4 If an 18 Footers Club Employee does not accept the offer of employment with the Flying Squadron Club, they will be paid their full entitlements by the 18 Footers Club when their employment with the 18 Footers Club comes to an end.

8. INTENTIONS REGARDING THE FOLLOWING ASSETS OF THE FLYING SQUADRON CLUB:

- 1. ANY CORE PROPERTY;
- 2. ANY CASH OR INVESTMENTS;
- 3. ANY POKER MACHINE ENTITLEMENTS

[Regulations – Clause 7(2) (e)]

Core Property

8.1 For the purposes of the RCA, the Leased Land (which includes the 18 Footers Club Premises and the Flying Squadron Club Premises) is "core property" of the Amalgamated Club.

8.2 The Amalgamated Club will retain the core property of the Amalgamated Club and operate the Amalgamated Club in the manner referred to in clause 6.

Cash and Investments

8.3 The cash and investments (if any) of the 18 Footers Club will be transferred (in accordance with clause 3.5 to the general reserves of the Amalgamated Club.

Poker Machine Entitlements

8.4 The 18 Footers Club has 16 gaming machine entitlements and ownership of those gaming machine entitlements will be transferred to the Flying Squadron Club, with effect from the Completion of the Amalgamation.

9. RISKS OF NOT PRESERVING THE 18 FOOTERS CLUB'S CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED

[Regulations – Clause 7(2)(E1)]

9.1 Subject to clauses 10, 11 and 12, both the 18 Footers Club and The Flying Squadron Club do not have any current intention to dispose of the core property of the 18 Footers Club after Completion of the Amalgamation.

9.2 The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the core property of the 18 Footers Club are those set out in paragraphs (a) to (e) inclusive of clause 11.4.

- 9.3 If the risks (or any of them) in clause 11.4 are realised during the first three (3) years after the Completion of the Amalgamation, clauses 8.1 and 8.2 and section 17A1 of the RCA will prevent the Amalgamated Club from disposing the core property, except as permitted by subsection (2) of section 17A1.
- 9.4 If the risks (or any of them) in clause 11.4 are realised after the first three (3) years after Completion of the Amalgamation, the Amalgamated Club will use its best endeavours to find ways to address those risks so that the disposal of core property will be considered only after all other ways have been exhausted and provided the disposal is in accordance with the RCA.

**10. DISPOSAL OF THE AMALGAMATED CLUB'S MAJOR ASSETS
[Regulations – Clause 7(2)(E2)]**

- 10.1 For the purposes of the RCA, the Leased Land (being the Flying Squadron Club Premises and the 18 Footers Club Premises) is the "core property" and "major assets" of the Flying Squadron Club and the 18 Footers Club respectively.
- 10.2 Subject to clauses 9, 11 and 12 of this Memorandum, the Amalgamated Club will not dispose of the major assets of the 18 Footers Club or the Flying Squadron Club during the first three (3) years after Completion of the Amalgamation.

**11. THE CIRCUMSTANCES THAT WOULD PERMIT THE AMALGAMATED CLUB TO CEASE TRADING ON THE PREMISES OF THE 18 FOOTERS CLUB OR TO SUBSTANTIALLY CHANGE THE OBJECTS OF THE 18 FOOTERS CLUB
[Regulations – Clause 7(2) (F)]**

- 11.1 The Flying Squadron Club does not intend to:
- (a) cease trading from the 18 Footers Club Premises; or
 - (b) cease the sailing activities conducted at the 18 Footers Club Premises.
- However, the objects of the 18 Footers Club will, in effect from Completion of the Amalgamation, be subsumed by and will become objects of the Flying Squadron Club, but which are to be amended to reflect the principal objects of the 18 Footers Club.
- 11.2 The Flying Squadron Club intends to operate the Amalgamated Club in the manner referred to in clause 6.
- 11.3 However, for the purposes of clause 7(2)(f) of the Regulations, the 18 Footers Club and the Flying Squadron Club are required to agree to the matters set out in clause 11.4.
- 11.4 For the purposes of clause 7(2)(f) of the Regulations, the 18 Footers Club and the Flying Squadron Club have agreed that the Amalgamated Club would either cease trading from and/or cease the sailing activities at the 18 Footers Club Premises in the following circumstances:
- (a) if, after the first three (3) years after Completion of the Amalgamation, the Board of the Amalgamated Club determines that it is not financially viable to continue to trade from and/or continue the sailing activities at the 18 Footers Club Premises; or

- (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs;
- (c) upon the lawful order of any government authority;
- (d) if the 18 Footers Premises are destroyed or partially destroyed by fire, floods, storms and/or it is not possible to trade from the 18 Footers Club Premises due to any Force Majeure event;
- (e) if, at any time after the Completion of the Amalgamation, the Maritime Authority of New South Wales:
 - (i) terminates the Lease or any future lease; or
 - (ii) does not extend, renew or enter into a fresh lease for the 18 Footers Club Premises on terms acceptable to the Amalgamated Club Board.

12. AN AGREED PERIOD OF TIME BEFORE THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE 18 FOOTERS CLUB PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE 18 FOOTERS CLUB PREMISES
[Regulations – Clause 7(2) (G)]

- 12.1 The Flying Squadron Club does not intend to cease trading from the 18 Footers Club Premises and it intends to operate the Amalgamated Club in the manner referred to in clause 6 and would only cease to do so in the circumstances referred to in clause 11.4.
- 12.2 The objects of the Flying Squadron Club will become the objects of the 18 Footers Club with effect from Completion of the Amalgamation, but will be amended to reflect the principal objects of the 18 Footers Club.
- 12.3 However, for the purposes of clause 7(2) (g) of the Regulations, the 18 Footers Club and Flying Squadron Club are required to agree to the matters set out in clause 12.4.
- 12.4 For the purposes of clause 7(2)(g) of the Regulations, the 18 Footers Club and the Flying Squadron Club have agreed that the Amalgamated Club will continue:
- (a) to trade from the 18 Footers Club Premises;
 - (b) the sailing activities at the 18 Footers Club Premises,
- for as long as it remains financially viable but for at least three (3) years, (except in the circumstances referred to in clauses 11.4(a) to (e) inclusive).

13. BINDING EFFECT OF MEMORANDUM

- 13.1 The 18 Footers Club and the Flying Squadron Club agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

14. CALLING OF MEETINGS AND ADMISSION OF THE FLYING SQUADRON CLUB'S MEMBERS TO MEMBERSHIP OF 18 FOOTERS CLUB

- 14.1 The Flying Squadron Club will call a general meeting of the ordinary members of the Flying Squadron Club for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.
- 14.2 The meeting referred to in clause 14.1 must be held as soon as reasonably practicable after the date of this Memorandum.
- 14.3 The 18 Footers Club will call a general meeting of the ordinary members of the 18 Footers Club for the purposes of considering and if thought fit passing a resolution approving in principle the amalgamation in accordance with section 17AEB (d) of the RCA.
- 14.4 The meeting referred to in clause 14.3 will be held as soon as reasonably practicable after the date of this Memorandum.
- 14.5 In addition to the resolution referred to in clause 14.1, the Flying Squadron Club will, at the meeting referred to in clause 14.1, submit to those members eligible to attend and vote, on a special resolution to amend the Constitution of the 18 Footers Club, a special resolution to give effect from Completion of the Amalgamation to the following:
- (a) that on Completion of the Amalgamation the Directors of the Flying Squadron Club will cease to hold office as Directors and the Directors of the 18 Footers Club will on that day become Directors of the Flying Squadron Club.
 - (b) Subject to clause 14.6 and clause 14.7, all members of the 18 Footers Club who apply to become members of the Flying Squadron Club will be admitted to membership of the Flying Squadron Club.
 - (c) Subject to clause 14.6, all members of the 18 Footers Club will be able to apply for membership of the Flying Squadron Club in the manner referred to in this clause 14.5.
 - (d) As soon as practicable after the Order, the Flying Squadron Club will forward to each member of the 18 Footers Club, who is not already a member of Flying Squadron Club, a written invitation to become a member of the Flying Squadron Club.
 - (e) Any member of the 18 Footers Club who accepts the invitation and agrees in writing to be bound by the Constitution of the Flying Squadron Club will (subject to the name of that person being displayed on the noticeboard of the Flying Squadron Club for not less than seven (7) days and a period of not less than fourteen (14) days elapsing after the receipt of the acceptance by the Flying Squadron Club) be elected by a resolution of the Board of the Flying Squadron Club to membership of the Flying Squadron Club with effect from the date of Completion of the Amalgamation.
 - (f) The 18 Footers Club's members who are admitted to membership of the Flying Squadron Club will be identified as a separate class of ordinary membership called the "18 Footers Club Members" but may transfer to any

other class of membership of the Flying Squadron Club for which they are eligible to join.

- (g) The 18 Footers Club Members will have the same rights under the Constitution of the Flying Squadron Club as they currently have as 18 Footers Club Members.

14.6 Any person who, at Completion of the Amalgamation, is a Life member of the 18 Footers Club will:

- (a) become a Life member of the Amalgamated Club; and
- (b) not be required to pay an annual subscription to the Amalgamated Club (unless such payment is required by the RCA).

14.7 Notwithstanding anything contained in this Memorandum, any member of the 18 Footers Club who, at Completion of the Amalgamation, is then expelled from 18 Footers Club pursuant to the 18 Footers Club's Constitution shall not be entitled to apply for and/or be admitted to membership of the Flying Squadron Club (as the Amalgamated Club).

15. AMALGAMATION APPLICATION

15.1 The 18 Footers Club and its lawyers will prepare and file the Amalgamation Application.

15.2 The Flying Squadron Club will co-operate with the 18 Footers Club and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application.

16. WARRANTIES AND OPERATIONAL ARRANGEMENTS

16.1 The Flying Squadron Club warrants to the 18 Footers Club that:

- (a) as at the date of this Memorandum, it is not the registered proprietor of any real property; and
- (b) except for its occupation of the Flying Squadron Club Premises pursuant to the Lease, it does not lease, licence or occupy any other real property;
- (c) as at the date of this Memorandum, Pattons is the sole registered proprietor of the Pattons Land;
- (d) as at the Completion of the Amalgamation, Pattons will be the sole registered proprietor of the Pattons Land;
- (e) as at the date of this Memorandum, the Flying Squadron Club is the sole shareholder of Pattons;
- (f) as at the Completion of the Amalgamation, the Flying Squadron Club will remain the sole shareholder of Pattons.
- (g) as at the date of the Memorandum, the Pattons Land is subject to the CBA mortgage but it is not subject to any other mortgages, charges, encumbrances or any other liabilities;

16.2 The Flying Squadron Club warrants to the 18 Footers Club that:

- (a) except through its ownership of all the shares in Pattons (which owns the Pattons Land), it does not own, lease, licence or occupy any other real property; and
- (b) as at the date of this Memorandum, Pattons holds full and beneficial title to the Pattons Land;
- (c) as the Completion of the Amalgamation, Pattons will hold full and beneficial title to the Pattons Land;
- (d) as at the date of this Memorandum, the Flying Squadron Club is the sole shareholder of Pattons;
- (e) as at Completion of the Amalgamation, the Flying Squadron Club will be the sole shareholder of Pattons;
- (f) as at the date of this Memorandum, Pattons has granted five (5) commercial leases in respect of buildings located on the Pattons Land, being leases to:
 - (i) Sydney Harbour Shipwrights;
 - (ii) Bowline Marine;
 - (iii) Bens Plumbers;
 - (iv) Ensemble Theatre;
 - (v) Sydney Harbour Boat Covers.
- (g) as at the Completion of this Amalgamation, Pattons will not have granted any leases, licences, equitable or contractual rights or interests in the Land to any party, except the five (5) commercial lease referred to in sub paragraph 16.2(f) above;
- (h) before Completion of the Amalgamation Pattons will not enter into any agreement to dispose of the Pattons Land or grant any option or rights to any third party over the Pattons Land;
- (i) before Completion of the Amalgamation it will not enter into any agreement to dispose of the shares in Pattons or grant any option or rights to a third party over the shares.

16.3 The Flying Squadron Club warrants to the 18 Footers Club that from the date of this Memorandum to the date of Completion of the Amalgamation as the owner of all shares in Pattons, it will ensure Pattons will:

- (a) carry on its business in the usual ordinary course and in a diligent manner (including the payment of debts and liabilities as and when they fall due) and will not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of five hundred dollars (\$500.00) plus GST without the prior approval of the 18 Footers Club's CEO or his delegate; and

- (b) attend to the payment of any existing debts and liabilities using its cash reserves (provided that it will not be in breach of this warranty if its cash reserves are insufficient to pay out all of its existing debts and liabilities);
- (c) maintain the Assets of Pattons in the same state of repair as they are at the date of the Memorandum subject to reasonable wear and tear and keep the Assets of Pattons insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
- (d) carry on its operations with normal and prudent practice using best endeavours to reduce losses and increase profitability and use best endeavours to maintain and increase the value of the Assets of Pattons;
- (e) provide the 18 Footers Club's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of Pattons;
- (f) not do anything which may damage the goodwill of its business or that of the 18 Footers Club or the Flying Squadron Club;
- (g) notify the 18 Footers Club of any of the circumstances referred to clause 16.6 within a reasonable time of becoming aware of the relevant circumstances;
- (h) not without the prior written consent of the 18 Footers Club:
 - (i) enter into, terminate or alter any term of any material contract, arrangement or understanding including any lease, licence or easement in relation to its operations or otherwise;
 - (ii) incur any actual or contingent liabilities whether in relation to Pattons' operations or otherwise;
 - (iii) dispose of, encumber or grant an option over, or grant any interest in any of the Assets of Pattons;
 - (iv) employ any employee;
 - (v) terminate the employment of any employee;
 - (vi) alter the terms of employment (including the terms of remuneration and or superannuation or any other benefit) of any employee;
 - (vii) borrow or seek to borrow money from any third party;
 - (viii) increase the level of debt of Pattons beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of Pattons;
 - (ix) engage in discussions or negotiations with anyone other than the 18 Footers Club concerning the sale or disposal of all or any part of the Flying Squadron Club's Assets or the Pattons Land and Pattons must advise the 18 Footers Club of any solicitation by any third party to participate in any such discussion or negotiation.

- 16.4 Each of the Flying Squadron Club's warranties for itself and as the owner of all shares in Pattons contained in this clause 16 will remain in full force and effect notwithstanding Completion of the Amalgamation.
- 16.5 The 18 Footers Club's CEO and the Flying Squadron Club's CEO will have regular discussions about the management and operations of the Flying Squadron Club with the object of:
- (a) providing for an orderly transfer of the management and operations of the Flying Squadron Club to the 18 Footers Club Management on the date of Completion of the Amalgamation;
 - (b) achieving efficiencies and cost savings in the Flying Squadron Club;
 - (c) implementing operational changes in preparation for the Completion of the Amalgamation.
- 16.6 If, before Completion of the Amalgamation, in relation to one of the Parties (the subject Party):
- (a) anything is identified by the Subject Party (including without limitation, undisclosed Liabilities or undisclosed agreements with third parties) or anything arises in respect of the Subject Party which has or may have a material adverse effect on the Amalgamated Club;
 - (b) an event occurs which has or may have a material effect on the profitability of the premises or value of any of the Assets of the subject Party;
 - (c) an event occurs which makes any warranty, or any of the subject Party's representations or other warranties made or given to the other Club untrue or misleading;
 - (d) any Claim of any nature is threatened or asserted by or against the subject Party; or
 - (e) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Party, its premises, land ownership or of its operations,
- then the subject Party must within a reasonable time on becoming aware of the circumstances, give notice to the other Parties fully describing the circumstances.
- 16.7 Title to, property in and risk of the Flying Squadron Club's Assets and the Pattons Slipways Land remain solely with the Flying Squadron Club and Pattons respectively until such time as they are passed to the Amalgamated Club in accordance with clause 17.
- 16.8 For the avoidance of doubt it is acknowledged that no liability is accepted or will exist for any breach of a warranty in the absence of actual knowledge by the Flying Squadron Club or Pattons.

17. DISSOLUTION OF THE 18 FOOTERS CLUB AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO THE FLYING SQUADRON CLUB

- 17.1 As soon as practicable after the Order, but subject to the Final Order the 18 Footers Club must:
- (a) transfer the Assets, Debts and Liabilities of the 18 Footers Club to the Flying Squadron Club; and
 - (b) assign the Lease of the 18 Footers Club Premises to the Flying Squadron or have a new lease of the 18 Footers Club Premises granted to the Flying Squadron Club.

The parties acknowledge that it is proposed for the transfer of the Lease of the 18 Footers Club Premises (or the grant of a new lease of the 18 Footers Club Premises to the Flying Squadron Club) and the transfer of the 18 Footers Club's Assets, Debts and Liabilities to occur on the date of the Final Order wherever possible.

- 17.2 For the purposes of clause 17.1, the 18 Footers Club must do all things necessary and execute all documents to cause the Lease of the 18 Footers Club Premises (if required), and all of the 18 Footers Club's Assets, Debts, Liabilities and Pattons' Assets, and any contracts it may have with third-parties, to be transferred, novated, or assigned to the Flying Squadron Club with effect from the date of Final Order wherever possible. Such transfers, novations and assignments will without limitation be in respect of:
- (a) the Lease of the 18 Footers Club Premises; and
 - (b) all contract rights and obligations including without limitation hire purchase agreements;
 - (c) all intellectual property rights (including business names);
 - (d) all physical assets, furniture and fittings and stock in trade,
 - (e) Debts and Liabilities;
 - (f) all shareholdings in companies,

owned, held or entered into by the 18 Footers Club as the case may be.

- 17.3 The transfers, novations and assignments referred to in clause 17.2 must be executed by the 18 Footers Club and held in escrow by the 18 Footers Club pending Completion of the Amalgamation.

- 17.4 The Flying Squadron Club will be responsible for and pay when due all debt and liabilities of the 18 Footers Club which:
- (a) have not been paid or otherwise discharged in full by the 18 Footers Club as at the Completion of the Amalgamation;
 - (b) are reasonably incurred by the 18 Footers Club after Completion of the Amalgamation, including without limitation the costs of directors' and officers' liability insurance pending deregistration of the 18 Footers Club.

- 17.5 The Amalgamated Club will nominate a liquidator (with consent from the 18 Footers Club which shall not be unreasonably withheld) to deregister/liquidate the 18 Footers Club and the Amalgamated Club will be responsible for the costs of the deregistration or liquidation.
- 17.6 Each of the parties warrant to the other it will co-operate with the other and their respective advisors, and provide all documents and information reasonably required for the preparation, lodgement and finalisation of the matters referred to in this clause 17.

18. ACCESS TO RECORDS

- 18.1 From the date of this Memorandum:
- (a) the Flying Squadron Club will provide to the 18 Footers Club at all reasonable times access to the Flying Squadron Club Premises, Records and other information and material reasonably required by the 18 Footers Club (including for the purpose of any due diligence referred to in clause 2 of this Memorandum); and
 - (b) the 18 Footers Club will provide to the Flying Squadron Club at all reasonable times access to Records and other information and material reasonably required by the Flying Squadron Club for the purposes of the due diligence referred to in clause 2 of this Memorandum).

19. CONFIDENTIALITY

- 19.1 A party must not without the prior written approval of the other disclose the other party's Confidential Information.
- 19.2 Each party must take all reasonable steps to ensure its employees and agents, subcontractors and consultants do not disclose or make public the other parties Confidential Information.
- 19.3 A party must on demand return to the other any documents supplied by the other in connection with this Memorandum.
- 19.4 This clause 19 survives termination of this Memorandum.

20. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM

- 20.1 A Party must not commence any Court or arbitration proceedings relating to a dispute unless it complies with this clause.
- 20.2 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.
- 20.3 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.

- 20.4 If the Parties do not within seven (7) days of the receipt of the notice referred to in clause 20.2 or any extended period agreed in writing between the Parties as to:
- (a) the dispute resolution technique or procedures to be adopted;
 - (b) the timetable for steps in those procedures; and
 - (c) 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.

- 20.5 If the dispute is not resolved within twenty eight (28) days after notice is given under clause 20.2 a Party which has complied with the provisions of this clause 20 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.
- 20.6 The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 20 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.

21. COSTS

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

22. STAMP DUTY

- 22.1 The Parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty under Chapter 2 of that Act is chargeable on a transfer of dutiable property to give effect to an amalgamation of two registered clubs provided such information and documents as the Chief Commissioner of the Office of State Revenue requires are provided.
- 22.2 Despite the exemption from duty referred to in clause 22.1 the Parties agree that any duty payable by either Party to bring into effect the provisions of this Memorandum shall be paid by the Flying Squadron Club.

23. GENERAL

- 23.1 This Memorandum constitutes the whole and entire agreement between the Parties and any warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Memorandum is of no force or effect.
- 23.2 No provision of this Memorandum is in any way modified, discharged or prejudiced by reason of any investigation made, or information acquired, by or on behalf of either Club respectively, whether prior to or after the date of this Memorandum.

- 23.3 The rights, powers, remedies and privileges provided in this Memorandum are cumulative, and are not exhaustive of any other rights, powers, remedies and privileges provided by law, except as may be expressly stated otherwise in this Memorandum.
- 23.4 If any provision of this Memorandum is invalid and not enforceable in accordance with its terms, other provisions which are self-sustaining and capable of enforcement continue to be valid and enforceable in accordance with their terms.
- 23.5 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.
- 23.6 Each Party must do, sign and deliver all acts and documents reasonably required of it by notice from the other to effectively carry out and give full effect to this Memorandum.
- 23.7 This Memorandum is governed by and is to be construed in accordance with the law of New South Wales.

24. TERMINATION

- 24.1 The 18 Footers Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Flying Squadron Club if:
- (a) the due diligence review undertaken by it on the Flying Squadron Club and/or Pattons is not satisfactory to the Board of the 18 Footers Club. The Board of the 18 Footers Club can waive this requirement at any time.
 - (b) the Flying Squadron Club breaches any warranty contained in clause 16.
- 24.2 In addition to clause 24.1, the 18 Footers Club may terminate this Memorandum at any time, without penalty, by giving written notice to the Flying Squadron Club if the 18 Footers Club, acting reasonably, determines that:
- (a) the Maritime Authority of New South Wales is unwilling or unable to assign the Lease of the 18 Footers Club Premises to the Flying Squadron Club on terms acceptable to the 18 Footers Club; or
 - (b) the Maritime Authority of New South Wales is unwilling or unable to enter into a fresh lease for the 18 Footers Club Premises in favour of the Flying Squadron Club on terms acceptable to the 18 Footers Club.
- 24.3 The Flying Squadron Club may terminate this Memorandum within thirty (30) days of the date of this Memorandum, without penalty, by giving written notice to the 18 Footers Club if the due diligence review undertaken by it on the 18 Footers Club is not satisfactory to the Board of the Flying Squadron Club. The Board of the Flying Squadron Club can waive this requirement at any time.
- 24.4 If:
- (a) the members of the Flying Squadron Club have not passed the resolution referred to in clauses 14.1 and 14.5 within six (6) months of the date of this Memorandum; or

- (b) the members of the 18 Footers Club have not passed the resolution referred to in clauses 14.3 within six (6) months of the members of the Flying Squadron Club passing the resolutions referred to in clauses 14.1 and 14.5,

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

24.5 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within eighteen (18) months of the date of this Memorandum (or such later date agreed by the Parties), then either Party by giving written notice to the other may, without penalty, terminate this Memorandum.

24.6 Any delay or forbearance in giving or withdrawing a notice pursuant to this clause 24 by a Party shall not prejudice its rights to subsequently terminate this Memorandum pursuant to this clause 24.

24.7 If this Memorandum is terminated in accordance with this clause 24 the Amalgamation terminates.

25. NOTICES

25.1 A notice, approval, consent or other communication to a person relating to this Memorandum must be in writing and executed by duly authorised persons.

25.2 If the notice is to 18 Footers Club then it must be addressed as follows:

- (a) **Name:** Australian 18-Footers' League Limited
- (b) **Attention:** Warren Sare
- (c) **Address:** 77 Bay Street Double Bay NSW 2028
- (d) **Email:** warren@18footers.com

25.3 If the notice is to the Flying Squadron Club then it must be addressed as follows:

- (a) **Name:** Sydney Flying Squadron Limited
- (b) **Attention:** Alan Robertson
- (c) **Address:** 76 McDougall Street Kirribilli NSW 2061
- (d) **Email:** sfsenquiries@18footers.com

25.4 Notice is sent by the sender and received by the receiver:

- (a) if the notice is hand delivered, upon delivery to the receiving Party; or
- (b) if the notice is sent by email, upon the successful completion of the relevant transmission;
- (c) if the notice is sent by post, one (1) day after it was posted.

26. **PROCESS FOR THE VARIATION OF THIS MEMORANDUM**

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

27. **WAIVER AND THE EXISTENCE OF A POWER OR A RIGHT**

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

28. **NOTES**

28.1 This Memorandum is to be:

- (a) made available to the ordinary members of the Flying Squadron Club and the 18 Footers Club at least twenty one (21) days before any meeting of the members of each club for the purpose of voting on whether to approve the proposed amalgamation.
- (b) made available for inspection on the premises of each club and on the website of each club for at least twenty one (21) days before any meeting as referred to in paragraph (a) of these Notes is held.
- (c) lodged with any application under section 60 of the Liquor Act 2007 to transfer the club licence held by the 18 Footers Club to the Flying Squadron Club.

Executed by **AUSTRALIAN 18-)**
FOOTERS' LEAGUE LIMITED)
pursuant to Section 127 of the
Corporations Act 2001



Director / Secretary

Jordan Curdis

Name of Director/Secretary

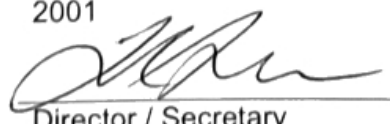


Director

SIMON NEARN

Name of Director


Executed by **SYDNEY FLYING)**
SQUADRON LIMITED) pursuant to
Section 127 of the Corporations Act)
2001



Director / Secretary

T.R. STEWART

Name of Director/Secretary



Director / Secretary

ALAN ROBERTSON

Name of Director/Secretary