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## MEMORANDUM OF UNDERSTANDING

DATED *29 May 2026*

### PARTIES

**KEMPSEY MACLEAY RSL CLUB LIMITED**  
ACN 001 031 876

AND

**SOUTH WEST ROCKS COUNTRY CLUB LTD**  
ACN 001 041 827

#### PIGOTT STINSON

**Tel** +61 2 8251 7777  
**Email** [partners@pigott.com.au](mailto:partners@pigott.com.au)  
**Web** [www.pigott.com.au](http://www.pigott.com.au)

Level 3, 10 Barrack St  
Sydney NSW 2000

GPO Box 3380  
Sydney NSW 2001

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Associated Firm - Melbourne McKean Park

This Memorandum of Understanding is made on

## **BETWEEN**

**KEMPSEY MACLEAY RSL CLUB LIMITED (ACN 001 031 876)** of 1 York Lane, Kempsey NSW 2440 (**KMRSL**)

and

**SOUTH WEST ROCKS COUNTRY CLUB LTD (ACN 001 041 827)** of 2 Sportmans Way, South West Rocks NSW 2431 (**SWRCC**)

## **BACKGROUND**

- (A) KMRSL and SWRCC both operate registered clubs respectively in Kempsey and South West Rocks, New South Wales.
- (B) On 13 January 2026, KMRSL called for expressions of interest in amalgamation from other registered clubs by way of ClubsNSW Circular (Number: 26-002).
- (C) SWRCC submitted an expression of interest to KMRSL.
- (D) KMRSL has accepted the expression of interest from SWRCC and, following further negotiations, KMRSL and SWRCC have agreed to the terms set out in this Memorandum.
- (E) KMRSL and SWRCC propose to amalgamate the two clubs (subject to the approval of the Authority and subject to the terms of this Memorandum) in accordance with the provisions of this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- (F) The Regulations require clubs which are proposing to amalgamate to enter into a Memorandum of Understanding.

## **1. DEFINITIONS AND INTERPRETATIONS**

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1.1 In this Memorandum unless the context otherwise requires:

- (a) **"Amalgamated Club"** means the registered club following the amalgamation of KMRSL and SWRCC, the corporate vehicle of which will be KMRSL;
- (b) **"Amalgamation"** means the amalgamation of the Clubs in accordance with this Memorandum;
- (c) **"Amalgamation Application"** means the provisional application for the transfer of SWRCC' Liquor Licence to KMRSL pursuant to Sections 60(6) and (7) of the Liquor Act by KMRSL and SWRCC;
- (d) **"Assets"** means all of the goodwill, land (including the Land), personal property, equipment, stock, intellectual property, gaming machine entitlements, gaming machines and all other property, tangible or intangible belonging to SWRCC at the time of Completion of the Amalgamation;
- (e) **"Authority"** means the Independent Liquor and Gaming Authority;

- (f) **"Crown Land"** means the land in Lot 22 in DP 1311216.
- (g) **"Claim"** means any claim, notice, demand, debt, account, action, expense, cost, lien, liability proceeding, litigation, investigation or judgement of any nature, whether known or unknown;
- (h) **"ClubGRANTS"** means the ClubGRANTS scheme established under the Gaming Machine Tax Act 2001 for the granting of a rebate of gaming machine tax levied on registered clubs for expenditure on community development and support.
- (i) **"Clubs"** means both KMRSL and SWRCC;
- (j) **"Completion of the Amalgamation"** means the day on which:
  - (i) the Final Order is granted and SWRCC' Liquor Licence is transferred to KMRSL; and
  - (ii) the Assets (including the Land and Water Access Licence), Debts and Liabilities of SWRCC are transferred to KMRSL, as referred to in clause 17;
  - (iii) an application for the transfer or assignment of the Recreation Lease from SWRCC to KMRSL has been made to NSW Crown Lands;
  - (iv) SWRCC' members become members of KMRSL and all members of SWRCC and KMRSL become members of the Amalgamated Club;
  - (v) KMRSL takes over responsibility for the management and control of the SWRCC Premises.
- (k) **"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;
- (l) **"Core Property"** means, for the purposes of the RCA, the SWRCC Premises and adjacent carpark, Bowling Greens and Croquet Lawn.
- (m) **"Corporations Act"** means the Corporations Act 2001 (Commonwealth), and the Regulations made thereunder;
- (n) **"Debts"** means the accumulated debts of SWRCC at the time of Completion of the Amalgamation;
- (o) **"EBITDARD"** means earnings before interest, taxes, depreciation, amortisation, rent and depreciation;
- (a) **"Encumbrance"** means any:
  - (i) security granted for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any

"security interest" as defined in sections 12(1) or (2) of the *Personal Property Securities Act 2009* (Cth); or

- (ii) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (iii) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease or licence to use or occupy; or
- (iv) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

- (b) "**Final Order**" means the final order pursuant to Section 60(8) of the Liquor Act by the Authority whereby SWRCC' Liquor Licence will be transferred to KMRSL;
- (c) "**Golf Course**" means the 18 hole golf course comprising part of the Crown Land covered by the Recreation Lease;
- (d) "**GST**" means Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999;
- (e) "**KMRSL's CEO**" means the individual who is the Secretary or Chief Executive Officer at KMRSL;
- (f) "**KMRSL Premises**" means KMRSL's premises located at:
  - (i) 1 York Lane, Kempsey;
  - (ii) 13 Austral St, Kempsey; and
  - (iii) 14-16 Church Street, Smithtown NSW 2440.
- (g) "**Land**" means all the land owned by SWRCC at 2 Sportmans Way, South West Rocks NSW 2431 being the land comprised in:
  - (i) Lot 367 in DP 754396;
  - (ii) Lot 364 in DP 754396;
  - (iii) Lot 4 in DP 1032643;
  - (iv) Lot 5 in DP 1032643;
  - (v) Lot 6 in DP 1032643; and
  - (vi) Lot 7 in DP 1032643.
- (h) "**Liabilities**" means all liabilities, losses, damages, outgoings, costs and expenses of SWRCC (whatever description) at the time of Final Order;
- (i) "**Liquor Act**" means the Liquor Act 2007 (NSW) and the Regulations made

thereunder;

- (j) **“Liquor Licence”** means the club licence issued to a registered club under the *Liquor Act*;
- (k) **“Memorandum”** means this Memorandum of Understanding;
- (l) **“Minimum Period”** means ten (10) years from Completion of the Amalgamation;
- (m) **“Order”** means the conditional grant of the Amalgamation Application by the Authority pursuant to Section 60(7) of the Liquor Act;
- (n) **“Party”** means the respective management and Board of Directors of SWRCC and KMRSL;
- (o) **“Recreation Lease”** means the Lease dated 1 July 2025 between Kempsey Shire Council as Crown Land Manager and SWRCC of the Crown Land;
- (p) **“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 SWRCC in the conduct of SWRCC business including but not limited to corporate, accounting and statutory records;
- (q) **“Regulations”** mean the Regulations to the RCA;
- (r) **“RCA”** means the Registered Clubs Act 1976 (NSW) and the Regulations made thereunder;
- (s) **“Secretary”** in relation to either club means the person approved as the secretary of the club pursuant to section 33 of the RCA;
- (t) **“SWRCC Premises”** means SWRCC licensed premises located at 2 Sportmans Way, South West Rocks NSW 2431;
- (u) **“SWRCC Secretary”** means the individual who in accordance with the RCA is the Secretary of SWRCC;
- (v) **“Tennis Courts”** means the four (4) tennis courts comprising part of the Crown Land covered by the Recreation Lease;
- (w) **“Year”** means a period of twelve (12) months commencing on the anniversary of the date of the Final Order and concluding on the day immediately before the next anniversary date of the Final Order.

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. EACH CLUB'S POSITION REGARDING THE PROPOSED AMALGAMATION**

- 2.1 KMRSL and SWRCC agree to amalgamate in accordance with this Memorandum, the RCA, the Regulations, the Liquor Act and the Corporations Act.
- 2.2 The Amalgamation is intended to preserve the existing facilities and amenities of both Clubs on terms set out in this Memorandum.
- 2.3 The amalgamation will be effected by the continuation of KMRSL and the dissolution of SWRCC.

### **Process for Amalgamation**

- 2.4 The process for the amalgamation will be as follows:
  - (a) The Clubs will enter into this Memorandum.
  - (b) The members of SWRCC and KMRSL 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 13 below.
  - (c) Once the approvals in paragraph (b) have been obtained, the Amalgamation Application will then be made to the Authority. The Amalgamation Application will be made in the manner referred to in clause 15 below.
  - (d) After the Amalgamation Application is granted and on the date of the Final Order:
    - (i) the Assets (including the Land), Debts and Liabilities of SWRCC will be transferred to KMRSL in the manner referred to in clause 17 below;
    - (ii) all eligible members of SWRCC will, with their consent, be initially

admitted as Associate members KMRSL and will be identified in the Register of Members as also being "SWRCC Members." This will occur in accordance with the procedure set out in clause 14 below;

- (iii) employees of SWRCC who have accepted an offer of employment from KMRSL will become employees of the Amalgamated Club.
- (e) After Completion of the Amalgamation, KMRSL will continue as the body corporate of the Amalgamated Club.
- (f) From Completion of the Amalgamation, and subject to the transfer or assignment of the Recreation Lease, the SWRCC Premises will become additional licensed premises of KMRSL and will be available to all members of the Amalgamated Club. The SWRCC Premises will be operated in the manner set out in clause 3, clause 4 and clause 5 below.
- (g) After Completion of the Amalgamation, SWRCC will be wound up in the manner referred to in clause 17 below.

#### **Due Diligence**

- 2.5 Each Club will, if required by the other, provide a list of information (including, but not limited to, details of its Assets, Debts and Liabilities) and assistance to the other Club in order for the other Club to properly carry out and complete a due diligence review of the other Club.

#### **3. HOW THE PREMISES AND OTHER FACILITIES OF SWRCC WILL BE MANAGED AND THE DEGREE OF AUTONOMY THAT WILL BE PERMITTED IN THE MANAGEMENT OF THE SWRCC PREMISES AND FACILITIES**

##### **[Regulations – Clause 9(2)(a)]**

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- 3.1 The SWRCC Premises will become additional premises of KMRSL.
- 3.2 The Amalgamated Club will operate and trade from both the existing KMRSL Premises and the SWRCC Premises.
- 3.3 KMRSL will take over responsibility and control of the SWRCC Premises with effect from Completion of the Amalgamation.
- 3.4 The Board of KMRSL will be the Board of the Amalgamated Club.
- 3.5 KMRSL's Chief Executive Officer will be the Secretary and Chief Executive Officer of the Amalgamated Club.
- 3.6 The Amalgamated Club will appoint an approved manager for the SWRCC Premises following the Final Order.
- 3.7 SWRCC will not have any autonomy in the management of the SWRCC Premises.
- 4. **A LIST OF THE TRADITIONS, AMENITIES AND COMMUNITY SUPPORT OF EACH CLUB THAT WILL BE PRESERVED OR CONTINUED BY THE AMALGAMATED CLUB**

##### **[Regulations – Clause 9(2)(b)]**

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- 4.1 The traditions, amenities and the memorabilia of SWRCC will be maintained by the Amalgamated Club at the SWRCC Premises. The honour boards at the SWRCC Premises may be displayed in their present form or in electronic form as determined by the Amalgamated Club.
- 4.2 The Amalgamated Club will continue to support the community organisations that were supported by SWRCC and separately by KMRSL (as at the date of this Memorandum), and it will explore opportunities to expand community support.

5. **EACH CLUB'S INTENTIONS REGARDING THE FUTURE DIRECTION OF THE AMALGAMATED CLUB**

**[Regulations – Clause 9(2)(c)]**

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- 5.1 The future direction of the Amalgamated Club will be subject to the overall strategic plan of the Amalgamated Club and its finances. However, KMRSL will operate the Amalgamated Club and the SWRCC Premises in accordance with this clause 5.

**Appointment to the Board of SWRCC Directors**

- 5.2 KMRSL agrees that on and from the Completion of the Amalgamation KMRSL's board will, in accordance with Rule 25.2 of its Constitution, appoint two (2) directors elected by SWRCC's board to KMRSL's board until the Annual General Meeting of the KMRSL in 2028.
- 5.3 At the expiry of the appointments of the two (2) directors elected by SWRCC's board in accordance with clause 5.2, those directors will, together with any other eligible member of the Amalgamated Club, be entitled to stand for election to the board of KMRSL.

**Amalgamated Club Premises**

- 5.4 The Amalgamated Club will operate and trade from both the existing KMRSL Premises and the SWRCC Premises.

**SWRCC Premises**

- 5.5 SWRCC Premises will continue to trade as and be promoted as "South West Rocks Country Club". However, the Board of the Amalgamated Club may resolve to change the trading name of the SWRCC Premises after five (5) years from the date of this Memorandum.
- 5.6 Subject to clauses 5.12, 8, 9 and 10, KMRSL:
  - (a) will maintain the SWRCC Premises and the KMRSL Premises and carry on the business of a licensed registered club under the RCA and the Liquor Act at both Premises with the usual facilities and amenities of a registered club;
  - (b) operate SWRCC Premises as a successful and well supported local based community club;
  - (c) undertake planning to encapsulate marketing, social media and community engagement for SWRCC Premises;

- (d) will subject to the transfer or assignment of the Recreation Lease, maintain the golfing facilities, services, amenities and activities at the SWRCC Premises; and
- (e) subject to obtaining appropriate approvals, spend a minimum of two million dollars (\$2,000,000.00) within two (2) years of Completion of the Amalgamation on the following:
  - (i) painting the building;
  - (ii) furnishing and updating the main trading areas of the SWRCC Premises; and
  - (iii) such other matters as are identified in the Building Master Plan and Golf Course Master Plan.

### **Master Planning and Implementation**

5.7 KMRSL must, within a reasonable period following Completion of the Amalgamation, undertake comprehensive master planning in respect of:

- (a) the SWRCC Premises and associated business operations (**Building Master Plan**); and
- (b) the Golf Course and related facilities (**Golf Course Master Plan**),

with each to be considered and developed as separate and distinct master plans.

5.8 The Building Master Plan and the Golf Course Master Plan are to consider the long-term strategic, operational and financial sustainability of the relevant assets and operations, including (without limitation) potential redevelopment, refurbishment, reconfiguration, optimisation of use, and integration with KMRSL's broader business objectives within South West Rocks.

5.9 KMRSL will be responsible for determining whether, when and how to implement the Building Master Plan and/or Golf Master Plan (in whole or in part), having regard to:

- (a) the financial performance and viability of the SWRCC Premises and KMRSL as a whole;
- (b) the availability of funding and capital;
- (c) prevailing economic and market conditions; and
- (d) any regulatory or statutory requirements.

5.10 The parties acknowledge and agree that the implementation of either or both of the Building Master Plan and Golf Course Master Plan, and the timing, staging and extent of such implementation, is at the sole discretion of KMRSL, in what it considers to be the best interests of the Amalgamated Club as a whole.

### **Subscriptions**

5.11 KMRSL will treat any annual subscriptions which have been paid to SWRCC for the subscription period current as at the date of the Completion of the Amalgamation as being annual subscriptions which have been paid to the Amalgamated Club.

### **Bowling Greens – Acknowledgement and Future Use**

- 5.12 SWRCC and KMRSL each acknowledge and agree that, as at the date of this Memorandum of Understanding, and subject to clause 10.4, following Completion of the Amalgamation, the Amalgamated Club will maintain a minimum of the two (2) bowling greens (**Bowling Greens**) to the same standard as currently maintained.

### **Croquet Lawn – Acknowledgement and Future Use**

- 5.13 SWRCC and KMRSL each acknowledge and agree that subject to clause 10.4 following Completion of the Amalgamation, the Amalgamated Club will maintain a Croquet Lawn to the same standard as currently maintained.

### **Golf and Bowls Activities**

- 5.14 The Amalgamated Club intends to continue to support golf and bowls activities, and the Amalgamated Club will determine, in its absolute discretion, budgets and the extent to which funding will be provided to those activities, having regard to:
- (a) the financial performance and position of the Amalgamated Club; and
  - (b) the strategic priorities of the Amalgamated Club.
- 5.15 Nothing in clause 5.14 confers any entitlement to a specific level of funding or expenditure, and all financial support remains subject to the powers and duties of the Board of the Amalgamated Club.

## **6. STEPS TAKEN TO PROTECT AND PRESERVE THE LEAVE AND OTHER ENTITLEMENTS OF EMPLOYERS OF SWRCC**

### **[Regulations – Clause 9(2) (d)]**

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- 6.1 As part of the Amalgamation, SWRCC will be wound up/liquidated. As part of the winding up/liquidation of SWRCC, the employment of all of SWRCC' employees will in the normal course come to an end.
- 6.2 Prior to the Completion of the Amalgamation and subject to clause 6.6 below, KMRSL will make offers of employment to all employees of SWRCC to commence employment after Completion of the Amalgamation.
- 6.3 The offers of employment:
- (a) will be effective from the Completion of the Amalgamation; and
  - (b) will, subject to clause (c) below, be on the same terms and conditions presently offered by KMRSL to employees of KMRSL in similar roles;
  - (c) may result in some employees of SWRCC being offered different roles with the Amalgamated Club and/or having different titles, duties, responsibilities, hours of work and times of work with the Amalgamated Club.
- 6.4 Any employee of SWRCC who accepts an offer of employment with KMRSL will receive continuity of employment and their accrued entitlements will be honoured by KMRSL.

- 6.5 Any employee of SWRCC does not accept an offer of employment with KMRSL will be paid their full entitlements when their employment with SWRCC comes to an end.
- 6.6 KMRSL agrees to accept an assignment of the employment contracts of SWRCC's General Manager and Finance & Administration Manager on Completion of the Amalgamation subject to SWRCC's General Manager and Finance & Administration Manager agreeing to any amendments considered necessary by KMRSL.
7. **EACH CLUB'S INTENTIONS REGARDING THE FOLLOWING ASSETS OF SWRCC:**
1. **ANY CORE PROPERTY;**
  2. **ANY CASH OR INVESTMENTS;**
  3. **ANY GAMING MACHINE ENTITLEMENTS**

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**[Regulations – Clause 9(2)(e)]**

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**Core Property**

- 7.1 SWRCC will transfer the Core Property to KMRSL and KMRSL will retain the Core Property of SWRCC and operate the Amalgamated Club in the manner referred to in clause 5 5, but subject to clauses 8, 9 and 10.

**Cash and Investments**

- 7.2 The cash and investments (if any) of SWRCC will be transferred (in accordance with clause 17) to the general reserves of the Amalgamated Club.

**Gaming Machine Entitlements**

- 7.3 SWRCC has a gaming machine entitlement threshold of eighty six (86) gaming machine entitlements and operates seventy two (72) gaming machines at the SWRCC Premises.
- 7.4 Ownership of those gaming machine entitlements and gaming machines will be transferred to KMRSL with effect from the Completion of the Amalgamation.
- 7.5 After Completion of the Amalgamation, will ensure that it operates a minimum of seventy two (72) gaming machines at the SWRCC Premises.
- 7.6 KMRSL will assess the performance of the gaming machine installation of the SWRCC Premises. Following that assessment, KMRSL will consider and review the viability of maintaining or increasing the existing number of gaming machines, including by transferring gaming machine entitlements from or to its other premises.
- 7.7 KMRSL will:
- (a) maintain the gaming machine installation to a competitive standard; and
  - (b) ensure that it modernises and improves the gaming machine area at the SWRCC Premises.

8. **RISKS OF NOT MEETING INTENTIONS FOR SWRCC' CORE PROPERTY AND HOW THOSE RISKS ARE TO BE ADDRESSED**  
**[REGULATIONS – CLAUSE 9(2)(f)]**
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- 8.1 SWRCC agrees that the Land will be transferred to KMRSLS free from any Encumbrance.
- 8.2 Subject to clauses 9, 10 and 11, the Amalgamated Club will not dispose of the Core Property of SWRCC.
- 8.3 The risks of the Amalgamated Club not meeting the intentions of the parties in preserving the Core Property of SWRCC are those set out in clause 10.4.
- 8.4 If the risks (or any of them) in clause 10 are realised after the first three (3) years but before the expiration of the Minimum Period, 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.

9. **DISPOSAL OF SWRCC' MAJOR ASSETS  
[REGULATIONS – CLAUSE 9(2)(g)]**

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- 9.1 KMRSLS and SWRCC have agreed the in respect of the disposal of major assets of SWRCC (the Core Property) the period referred to in section 17A(1) of the RCA is amended to the Minimum Period subject to the clauses 10.5(b), 10.5(d) and 10.5(e).

10. **THE CIRCUMSTANCES THAT WOULD ALLOW THE AMALGAMATED CLUB TO  
CEASE TRADING ON THE PREMISES OF SWRCC OR TO SUBSTANTIALLY  
CHANGE THE OBJECTS OF SWRCC**

**[Regulations – Clause 9(2)(h)]**

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- 10.1 KMRSLS does not intend to cease trading from the SWRCC Premises.
- 10.2 The objects of SWRCC will, with effect from Completion of the Amalgamation, be subsumed by and will become objects of KMRSLS and there is no intention to change the objects of KMRSLS.
- 10.3 KMRSLS intends to operate the Amalgamated Club in the manner referred to in clause 5.
- 10.4 For the purposes of clause 9(2)(h) of the Regulations, KMRSLS and SWRCC have agreed that in respect of the cessation of trade:
  - (a) the SWRCC Premises will continue to trade for the Minimum Period;
  - (b) the Bowling Greens will continue to trade for the Minimum Period;
  - (c) a Croquet Lawn will continue to trade for the Minimum Period;
  - (d) the Golf Course will continue to trade for the period of the Recreation Lease, subject to the clauses 10.5(b), 10.5(d) and 10.5(e).
- 10.5 KMRSLS and SWRCC have agreed that the Amalgamated Club could cease trading from the SWRCC Premises, Golf Course, Bowling Greens or Croquet Lawn in the following circumstances:
  - (a) after the periods referred to in clause 10.4, if it is not financially viable for the

Amalgamated Club to continue to:

- (i) trade from the SWRCC Premises;
- (ii) operate and maintain Bowling Greens;
- (iii) operate and maintain a Croquet Lawn;
- (iv) operate and maintain the Golf Course,

which shall be determined in accordance with clause 10.6 and KMRSL in its absolute discretion elects to cease trading from part or all of those facilities; or

- (b) upon the order of any Court or body with jurisdiction to administer the laws in relation to liquor, gaming and registered clubs which orders the permanent closure of the SWRCC Premises;
  - (c) upon the termination or expiry of the Recreation Lease;
  - (d) upon the lawful order of any government authority to permanently cease trading from the SWRCC Premises, or revoking any licence, approval or consent necessary for the Amalgamated Club to continue trading from the SWRCC Premises and it is not reasonably possible for the relevant licences, approvals or consents to be re-instated or new/replacement licences, approvals or consents to be obtained; or
  - (e) if the SWRCC Premises, Golf Course, Bowling Greens or Croquet Lawn or any part of them were destroyed or partially destroyed by fire, floods, storms or Force Majeure event, except where appropriate insurance cover is available to reinstate them or where it is otherwise economically viable to do so.
- 10.6 For the purposes of clause 10.5(a), the SWRCC Premises will not be financially viable if the SWRCC Premises fails to achieve an EBITDARD percentage greater than 15% in any period of twelve (12) months following Completion of the Amalgamation.
- 10.7 For the purposes of clauses 10.5(a) and 10.6:
- (a) KMRSL must prepare separate financial reports for SWRCC Premises.
  - (b) KMRSL must not knowingly or wilfully do anything or omit doing anything which adversely impacts upon SWRCC Premises' ability to achieve the Minimum EBITDARD.
  - (c) If KMRSL wishes to cease trading from SWRCC Premises:
    - (i) KMRSL must engage an independent third party (and not KMRSL's auditor or accountant) to prepare a report on the EBITDARD of SWRCC Premises; and
    - (ii) KMRSL can only cease trading from SWRCC Premises if the report (which is to be made publicly available) declares that SWRCC Premises did not achieve the Minimum EBITDARD in that Year.
- 10.8 For the purposes of clause 10.5(e), the Amalgamated Club must take out and maintain appropriate building insurance for the SWRCC Premises which is sufficient to cover

reinstatement of the SWRCC Premises to the same or better standard that they were in as at Completion of the Amalgamation.

10.9 For the avoidance of doubt, the Amalgamated Club may immediately cease trading from the SWRCC Premises without reference to the requirements of clause 10.6 if any of the circumstances in clauses 10.5(b), 10.5(c), and 10.5(e) apply.

11. **AN AGREED PERIOD OF TIME AFTER WHICH THE AMALGAMATED CLUB WILL CEASE TRADING FROM THE SWRCC PREMISES OR SUBSTANTIALLY CHANGE THE OBJECTS OF THE SWRCC PREMISES**

**[Regulations – Clause 9(2)(h)]**

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11.1 KMRSL does not intend to cease trading from the SWRCC Premises, and intends to operate the Amalgamated Club in the manner referred to in clause 5 and would only cease to do so in the circumstances referred to in clause 10.

11.2 The objects of KMRSL will become the objects of SWRCC with effect from Completion of the Amalgamation and there is no intention to change the objects of KMRSL at any time in the future.

12. **BINDING EFFECT OF MEMORANDUM**

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12.1 KMRSL and SWRCC agree that this Memorandum is binding on them and for that purpose is executed as a Deed.

13. **CALLING OF MEETINGS AND ADMISSION OF SWRCC MEMBERS TO MEMBERSHIP OF KMRSL**

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13.1 SWRCC will call a general meeting of the ordinary members of SWRCC 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.

13.2 The meeting referred to in clause 13.1 must be held as soon as reasonably practicable after the date of this Memorandum but in any event within three (3) months of the date.

13.3 KMRSL will call a general meeting of the ordinary members of KMRSL 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.

13.4 The meeting referred to in clause 13.3 will be scheduled at KMRSL's discretion which may be after the date of SWRCC' meeting referred to in clause 13.1.

14. **ADMISSION OF SWRCC MEMBERS TO KMRSL**

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14.1 (a) Any member of SWRCC who, at Completion of the Amalgamation, has previously been:

(i) refused admission to or been turned out of SWRCC; or

(ii) expelled from or refused membership of KMRSL,

shall not be eligible to apply for and/or be admitted to membership of KMRSL.

(b) All eligible members of SWRCC who apply to become members of KMRSL will,

subject to the Constitution of KMRSL, be admitted to membership of KMRSL.

- (c) All eligible members of SWRCC will be able to apply for membership of KMRSL in the manner referred to in paragraphs (d) to (h) inclusive of this clause 14.1.
- (d) As soon as practicable after the Order, KMRSL will forward by electronic means to each member of SWRCC, who is not already a member of KMRSL, an invitation to become a member of KMRSL.
- (e) Any member of SWRCC who accepts the invitation and agrees in writing to be bound by the Constitution of KMRSL will, subject to the Amalgamated Club's Constitution and the requirements of the RCA being satisfied, be elected by a resolution of the Board of KMRSL to membership of KMRSL with effect from the date of Completion of the Amalgamation.
- (f) SWRCC' members who are admitted to membership of KMRSL will initially be admitted as Associate members under the Constitution of KMRSL but will also be identified in the Register of Members of KMRSL as "South West Rocks Country Club Members" and may transfer to any other class of membership of KMRSL for which they are eligible to join.
- (g) Any person who, at Completion of the Amalgamation, is a Life member of SWRCC will:
  - (i) not become a Life member of the Amalgamated Club; but
  - (ii) become a Country Club Life Member and continue to be recognised as a Life member of SWRCC but only in respect of the SWRCC Premises;
  - (iii) not be required to pay an annual subscription to the Amalgamated Club.

#### **14.2 Amendments to the Constitution of KMRSL**

At the meeting of KMRSL referred to in clause 13.3, the members of KMRSL will be asked to consider and, if thought fit, pass a Special Resolution to amend the Constitution of KMRSL to the following effect:

- (a) SWRCC members will be admitted to membership of KMRSL as Associate members but thereafter may transfer to another class of membership for which they are qualified and which has rights to nominate for, or be appointed to, the Board of the Amalgamated Club or vote on an amendment to the Constitution of the Amalgamated Club;
- (b) SWRCC members will always be identified in the register of members as "South West Rocks Country Club Members" as well as their substantive membership category.

#### **15. AMALGAMATION APPLICATION TO THE INDEPENDENT LIQUOR AND GAMING AUTHORITY**

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- 15.1 KMRSL and its lawyers will prepare and file the Amalgamation Application.
- 15.2 SWRCC will co-operate with KMRSL and its lawyers and will provide all documents and information reasonably required for the preparation, lodgement and finalisation of the Amalgamation Application, including the notices of meeting and the minutes of the

meetings referred to in clause 13.1.

## **16. WARRANTIES AND OPERATIONAL ARRANGEMENTS**

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- 16.1 SWRCC warrants to KMRSL that from the date of this Memorandum to the date of Completion of the Amalgamation, SWRCC will:
- (a) not admit any person to membership of SWRCC;
  - (b) carry on its operations with normal and prudent practice using best endeavours to reduce losses, increase profitability, and endeavour to maintain and increase the value of the Assets;
  - (c) not incur any single debt or liability (including, but not limited to, the purchase of any capital equipment) over the sum of twenty thousand dollars (\$20,000.00) plus GST without the prior approval of KMRSL's CEO or his delegate;
  - (d) 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);
  - (e) maintain the Assets 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 insured in amounts representing their full replacement or reinstatement value against fire and other risks normally insured;
  - (f) provide KMRSL's CEO each week (or at such other times as requested) any details or documents relating to the operation and financial position of SWRCC;
  - (g) not do anything which may damage the goodwill of its business or that of KMRSL;
  - (h) notify KMRSL of any of the circumstances referred to clause 16.4 within a reasonable time of becoming aware of the relevant circumstances;
  - (i) not without the prior written consent of KMRSL:
    - (i) enter into, terminate or alter any term of any contract, arrangement or understanding including any lease, licence or easement in relation to its premises operations or otherwise;
    - (ii) except in the usual and routine conduct of its trading operations in conformity with and in the manner of recent times, incur any actual or contingent liabilities whether in relation to those operations or otherwise;
    - (iii) dispose of, agree to dispose of, encumber or grant an option over, or grant any interest in any of the Assets (including without limitation any gaming machine entitlements);
    - (iv) employ any person;
    - (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) seek to borrow or borrow money from any third party;
  - (viii) increase the level of debt of SWRCC beyond that existing as at the date of this Memorandum other than any debt incurred in the normal day to day trading of SWRCC; or
  - (ix) engage in discussions or negotiations with anyone other than KMRS L concerning an amalgamation or the sale or disposal of all or any part of the Assets,
  - (j) must advise KMRS L of any solicitation by any third party to participate in any such discussion or negotiation concerning an amalgamation or the sale or disposal of all or any part of the Assets.
- 16.2 Each of SWRCC' warranties contained in clause 16.1 remains in full force and effect notwithstanding Completion of the Amalgamation.
- 16.3 KMRS L's CEO and SWRCC Secretary will have regular discussions about the management and operations of SWRCC with the object of:
- (a) providing for an orderly transfer of the management and operations of SWRCC to KMRS L on the date of Completion of the Amalgamation; and
  - (b) achieving efficiencies and cost savings in SWRCC;
  - (c) implementing operational changes in preparation for Completion of the Amalgamation.
- 16.4 If, before Completion of the Amalgamation, in relation to either of the Clubs (the subject Club):
- (a) 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 Club;
  - (b) an event occurs which makes any warranty, or any of the subject Club's representations or other warranties made or given to the other Club untrue or misleading;
  - (c) any Claim of any nature is threatened or asserted by or against the subject Club; or
  - (d) there is any material adverse change in the condition (financial or otherwise) or prospects of the subject Club or of its operations,
- then the subject Club must within a reasonable time on becoming aware of the circumstances, give notice to the other Club fully describing the circumstances.
- 16.5 Title to, property in and risk of SWRCC' Assets remain solely with SWRCC until such time as they are passed to the Amalgamated Club in accordance with clause 16.
- 16.6 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 SWRCC.
- 17. DISSOLUTION OF SWRCC AND TRANSFER OF ITS ASSETS, DEBTS AND LIABILITIES TO KMRS L**
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- 17.1 Prior to the Completion of the Amalgamation, SWRCC must do all things necessary to enable KMRSL to become:
- (a) the registered proprietor of the Land on Completion of Amalgamation; and
  - (b) the lessee under the Recreation Lease.
- 17.2 As soon as practicable after the Order, but subject to the Final Order, SWRCC must ensure the Assets, Debts and Liabilities of SWRCC are transferred to KMRSL (less an amount sufficient for the purposes of the winding up of SWRCC in the manner referred to in clause 17.5 and for directors' and officers' liability insurance pending deregistration). The parties acknowledge that it is proposed for the transfer of the Assets, Debts and Liabilities referred to in clause 17.1 to occur on the date of the Final Order wherever possible.
- 17.3 For the purposes of clause 17.2, SWRCC must do all things necessary and execute all documents to cause all of the Assets to be transferred to or assigned to KMRSL with effect from the date of Final Order wherever possible. Such transfers and assignments will without limitation be in respect of:
- (a) the Land and all other real property occupied by SWRCC; and
  - (b) all contract rights including without limitation hire purchase agreements and existing service agreements in respect of the SWRCC Premises;
  - (c) all intellectual property rights (including business names);
  - (d) all physical assets, furniture and fittings and stock in trade, owned or entered into by SWRCC.
- 17.4 The executed transfers and assignments referred to in clause 17.3 must be given by SWRCC on Completion of the Amalgamation.
- 17.5 SWRCC must ensure that the Assets are transferred to KMRSL free of charges, security interests and Encumbrances of any other nature (other than as approved by KMRSL in its absolute discretion) to enable KMRSL to become the absolute and beneficial owner of those Assets with effect from Completion of the Amalgamation. For the purposes of this clause, KMRSL will be deemed to have unencumbered title and ownership of an Asset if SWRCC has obtained a written undertaking from the relevant secured party on or before Completion of the Amalgamation which meets with the approval of KMRSL and states that the relevant secured party will release their interest in the Asset after Completion of the Amalgamation.
- 17.6 After KMRSL has advised SWRCC that it is satisfied that all matters related to the Amalgamation have been completed, SWRCC must, as soon as reasonably practicable, ensure SWRCC is voluntarily wound up and any surplus Assets (if any) are transferred to KMRSL.
- 17.7 Each of the parties warrants 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 at the cost of KMRSL.
18. **ACCESS TO RECORDS**
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- 18.1 From the date of this Memorandum, SWRCC will provide to KMRSL at all reasonable times access to the SWRCC Premises, Records and other information and material reasonably required by KMRSL (including for the purpose of clause 2.5).
- 18.2 From the date of this Memorandum, KMRSL will provide to SWRCC at all reasonable times access to Records and other information and material reasonably required by SWRCC for the purposes of clause 2.5.

## **19. CONFIDENTIALITY**

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- 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 completion of this Memorandum.

## **20. RESOLUTION OF DISPUTES ARISING UNDER THIS MEMORANDUM**

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- 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**

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- 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**

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- 22.1 The parties acknowledge that section 65(3) of the *Duties Act (NSW)* provides no duty 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 KMRSL.

## **23. GENERAL**

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- 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**

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- 24.1 KMRSL may, without penalty or liability, terminate this Memorandum at any time by giving written notice to SWRCC if:

- (a) SWRCC breaches any warranty contained in clause 16.1; or
  - (b) the members of SWRCC have not passed the resolution referred to in clause 13.1 within three (3) months of the date of this Memorandum or such other later date agreed by the parties in writing.
  - (c) the due diligence review undertaken by it on SWRCC (as referred to in clause 2.5) is not satisfactory to the Board of KMRSL.
- 24.2 SWRCC may terminate this Memorandum without penalty or liability by giving written notice to KMRSL if the members of KMRSL have not passed the resolutions referred to in clauses 13.3 and 14.2 within twelve (12) months of the members of SWRCC passing the resolution referred to in clause 13.1 or such other later date agreed by the parties.
- 24.3 Notwithstanding anything contained in this Memorandum, if Completion of the Amalgamation has not occurred within twenty four (24) 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.
- 24.4 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.
- 24.5 If this Memorandum is terminated in accordance with this clause 24 the Amalgamation terminates.

## 25. NOTICES

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- 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 KMRSL, then it must be addressed as follows:
- (a) **Name:** KEMPSEY MACLEAY RSL CLUB LIMITED
  - (b) **Attention:** Daniel Abela
  - (c) **Address:** 1 York Lane, Kempsey NSW 2440
  - (d) **Email:** [daniel@kmrsl.com.au](mailto:daniel@kmrsl.com.au)
- 25.3 If the notice is to SWRCC, then it must be addressed as follows:
- (a) **Name:** South West Rocks Country Club Ltd
  - (b) **Attention:** Peter Tyler  
Danielle Rushworth
  - (c) **Address:** 2 Sportmans Way, South West Rocks NSW 2431
  - (d) **Email:** [peter@rockscountryclub.com.au](mailto:peter@rockscountryclub.com.au)  
[danielle@rockscountryclub.com.au](mailto:danielle@rockscountryclub.com.au)

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 the notice is posted.

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

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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**

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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**

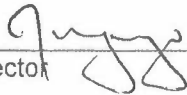
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28.1 Before this Memorandum was executed, the Clubs each displayed notices to members which are required under section 17AE of the RCA and clause 4(5) of the Regulations.

28.2 This Memorandum is to be:

- (a) made available to the ordinary members of SWRCC and KMRS� 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 SWRCC to KMRS�.

Executed by **KEMPSEY MACLEAY** )  
**RSL CLUB LIMITED ACN 001 031 876** )  
pursuant to Section 127 of the  
Corporations Act 2001

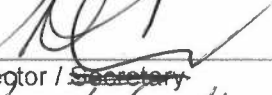
  
\_\_\_\_\_  
Director

PAUL MAURICE MCGREGOR  
Name of Director

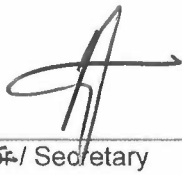
  
\_\_\_\_\_  
Director

Ronald James Kennedy  
Name of Director

Executed by **SOUTH WEST ROCKS** )  
**COUNTRY CLUB LTD ACN 001 041** )  
**827** pursuant to Section 127 of the )  
Corporations Act 2001

  
\_\_\_\_\_  
Director / ~~Secretary~~

Paul Sullivan  
Name of Director/~~Secretary~~

  
\_\_\_\_\_  
Director / Secretary

PETER TYLER  
Name of ~~Director~~/Secretary