

THE COUNCIL OF THE CITY OF WILLOUGHBY

(Settlor)

AND

(Trustee)

DEED ESTABLISHING CIVIC PLACE TRUST

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COPY

THIS DEED OF TRUST is made the *1st* day of *November*, Two thousand and four

**PARTIES:**

THE COUNCIL OF THE CITY OF WILLOUGHBY (the "Settlor")

AND

(the Mayor of the City of Willoughby), . (the  
General Manager of the Council of the City of Willoughby) and (a  
Solicitor of the Supreme Court of New South Wales) (the "Trustee").

**RECITALS:**

- A The Settlor is the owner in fee simple of land at Victoria Avenue, Chatswood known as Civic Place.
- B The Masterplan for Civic Place proposes construction and operation of a concert hall, performing arts theatre, multipurpose hall, rehearsal space and visual arts exhibition spaces.
- C The Settlor wishes to establish a Public Fund to receive donations and bequests to assist in the construction, maintenance and operation of the concert hall, performing arts theatre, multipurpose hall, rehearsal space and visual arts exhibition spaces, and the promotion of the arts and cultural facilities.
- D The Public Fund is to be held separately to other funds and is to be used exclusively for the purposes referred to in Recital B, such Public Fund to be known as the "Civic Place Trust".
- E For the purposes referred to in Recital C the Settlor has upon the execution hereof transferred to or is about to transfer to the Trustee the sum of one hundred dollars (\$100.00) ("the settled sum").
- F The Trustee has consented to become the trustee hereof upon the trusts and with and subject to the powers and provisions hereinafter expressed.

**OPERATIVE PARTS:****1. DEFINITIONS AND INTERPRETATION**

1.1. In this Deed the following expressions shall unless there is something repugnant to or inconsistent with the subject matter have the meanings set out hereunder:

1.1.1. "the Department" means the Commonwealth Department responsible for the Arts.

1.1.2. "person" shall include corporations partnerships and all juristic persons recognised by the law applicable to this Deed.

1.1.3. "the Trustee" means and includes the trustee or trustees for the time being of this Settlement;

1.1.4. "the Trust Fund" means and includes:

- a the settled sum; and
- b all donations and bequests which may hereafter be paid or transferred to or accepted by the Trustee as additions to the Trust Fund; and
- c all investments and property of every description for the time being representing such donations and bequests or any part or parts thereof;

1.1.5. "the Trust Period" shall mean the period from the date hereof until the Vesting Day;

1.1.6. "the Vesting Day" means the first to occur of the following dates:

- a the expiration of eighty years from the date hereof; or
- b such earlier date as the Trustee may declare pursuant to clause 6.17 hereof;

1.1.7. "year" means any financial year commencing on the 1<sup>st</sup> day of July in any year and ending on the 30<sup>th</sup> day of June the following year and in respect of

any broken period occurring at the commencement or termination of the trusts hereby created means that portion of the financial year running in the case of such commencement as aforesaid from the date thereof to the 30<sup>th</sup> day of June 2005 AND in the case of such termination as aforesaid from the 1<sup>st</sup> day of July last preceding such termination to the date of such termination.

- 1.2. References to any statutory enactments shall mean and be construed as reference to such enactment as amended modified and re-enacted from time to time.
- 1.3. The headings contained in this Deed do not form part of this Deed and shall not affect the interpretation hereof.
- 1.4. Words importing the singular number shall be deemed to import the plural number and vice versa, and reference to a gender shall be deemed to be references to all genders.

## **2. ESTABLISHMENT AND OBJECTS OF THE TRUST FUND**

In consideration of the premises the Settlor as settlor HEREBY DECLARES that the Trustee shall and the Trustee HEREBY DECLARES that the Trustee will henceforth stand possessed of the Trust Fund and of the income thereof upon the trusts and with and subject to the powers and provisions hereinafter expressed concerning the same exclusively for the purposes of promoting the arts and the provision of cultural facilities.

## **3. NAME OF TRUST**

The Trust hereby created shall be known as the "Civic Place Trust".

## **4. PUBLIC FUND**

- 4.1 The Public Fund shall at all times be open to subscription by all members of the public and shall at all times be controlled or administered by the Trustee exclusively for the purposes of promoting the arts and the provision of cultural facilities.
- 4.2 Donations will be deposited into the Public Fund which will be listed on the Register of Cultural Organisations. These monies will be kept separate from other funds of the Settlor and will only be used to further the objects of the Trust. Investment of

monies in this fund will be made in accordance with guidelines for public funds as specified by the Australian Taxation Office.

- 4.3 The Public Fund will be administered by the Trustees who, because of their tenure of public office or their professional standing, have an underlying community responsibility, as distinct from obligations solely in regard to the cultural objectives of the Settlor.
- 4.4 No monies/assets in this Public Fund will be distributed to members or office bearers of the Association, except as reimbursement of out-of-pocket expenses incurred on behalf of the fund or proper remuneration for administrative services.
- 4.5 To avoid any doubt, it is declared that the Public Fund forms part of the Trust Fund.

## 5. INVESTMENTS

The Trustee may invest any monies for the time being subject to the trusts hereby created in any one or more of the following investments as the Trustee in its absolute discretion thinks fit and desirable:

- 5.1. Any one or more of the investments from time to time sanctioned by law in any State or Territory of the Commonwealth of Australia for the investment of trust funds.
- 5.2. In the purchase and/or improvement of an estate or interest in land in any part of the Commonwealth of Australia provided:
  - 5.2.1. A properly qualified real estate valuer shall have given a written opinion confirming that the investment is one suitable for the investment of trust funds.

## 6. POWERS OF THE TRUSTEE

In addition to all powers vested in the Trustee by law or by Statute or by this Deed the Trustee shall have and may exercise at any time or times all or any of the following powers:

- 6.1. To seek to have the Public Fund listed on the register of Cultural Organisations;

- 6.2. To abide by any rules which apply generally to bodies listed on the register of Cultural Organisations or specifically to the Trust as a body so listed;
- 6.3. To allow all investments or assets at any time forming part of the Trust Funds to remain in the actual state of investment thereof so long as the Trustee may think fit.
- 6.4. To change or vary any investments or assets for the time being forming part of the Trust Fund for others hereby or by law authorised.
- 6.5. To apply any money for the time being forming part of the Trust Fund in improving or developing any land which or any interest in which or the proceeds of sale of the whole or part of which may for the time being be subject to the trusts hereof.
- 6.6. To apply any money for the time being forming part of the Trust Fund in furtherance of the objects of this Trust.
- 6.7. To sell lease demise let mortgage charge licence and generally manage and deal with any land or any tenure which or any interest in which or the proceeds of sale of the whole or part of which may at any time form part of the Trust Fund as if the Trustee was beneficial owner absolutely entitled.
- 6.8. To determine in its absolute discretion whether any receipt, profit or gain or payment, loss or outgoing or any sum of money or investment is or is not to be treated as being an income or capital account PROVIDED THAT if it shall fail to make a determination prior to the end of any financial year then the income of the Trust Fund for such financial year shall be calculated in the same manner as the net income of a Trust estate is to be calculated under the provisions of the Income Tax Assessment Act, 1936 as amended.
- 6.9. To exercise all the voting powers attaching to any shares stocks debentures notes bonds or other securities at any time forming part of the Trust Fund.
- 6.10. To appoint an attorney to execute any deed, agreement or document or to perform any act on behalf of the Trustee in any place including within the State of New South Wales.

- 6.11. To employ and pay for such professional or other assistance as the Trustee may deem requisite in the discharge of the duties of the Trustee.
- 6.12. To act upon the opinion or advice or information obtained from any financial advisor, solicitor, barrister, accountant, valuer, surveyor, broker, auctioneer or other expert or professional person and so that the Trustee shall not be responsible for any loss depreciation or damage occasioned by acting or not acting in accordance therewith.
- 6.13. To determine all questions and matters of doubt which may arise in the course of the management administration realisation liquidation partition or winding up of the Trust Fund.
- 6.14. To institute and defend proceedings at law and to proceed to the final end and determination thereof or compromise the same as the Trustee shall consider advisable.
- 6.15. To agree and settle accounts with all persons liable to account in relation to the Trust Fund notwithstanding any conflict of duty or interest or of duty and interest that may be involved.
- 6.16. To draw make accept endorse discount apply for execute and issue promissory notes, bills or exchange, bills of lading, documentary letters of credit and other negotiable or transferable interests.
- 6.17. At any time or times by instrument in writing revocable or irrevocable to declare that a date earlier than the date mentioned in clause 1.1 hereof shall be the Vesting Day.
- 6.18. To do all such other things as are or may seem to the Trustee in its absolute discretion to be incidental or conducive to the furthering of the objects of this Trust as provided for in clause 2 hereof or to the exercise by the Trustee of its powers hereunder or the performance of the trusts hereof.

## 7. RIGHTS AND LIABILITIES OF TRUSTEE

- 7.1. The Trustee shall have the right at any time or times during the Trust Period to accept such additional monies investments or other property as may be paid

assigned delivered or otherwise transferred to it by any person by gift, by Will or under the provision of any other Trust or Trusts or otherwise to be held upon the trust hereof.

7.2. The costs charges and expenses incurred in connection with and incidental to the administration of this Trust or otherwise in relation thereto and of the investment and reinvestment of any part of the Trust Fund and the collection of income and other sums derivable therefrom shall be charged against the income of the Trust Fund but if such income is insufficient for the purpose then the same shall be charged against capital or so much of the capital as may be required in addition to the income for that purpose and the Trustee shall be entitled to be reimbursed out of the Trust Fund for such costs, charges and expenses as it incurs and pays.

7.3. In the execution of the Trusts and powers hereof and in the execution of any power or authority no Trustee shall be liable for:

7.3.1. Any losses or liabilities except losses or liabilities arising from his her or its own dishonesty or the dishonesty or its officers or shareholders of the wilful commission or omission by him, her or it or its officers or shareholders of an act known to him, her, it or them to be a breach of trust.

7.3.2. The neglect or default of any solicitor, attorney, banker, accountant, auditor, stockbroker, investment adviser, or other agent employed in good faith by the Trustee;

7.3.3. Any losses or liabilities by reason of him, her, it or them having acted or failed to act upon advice received from any such agent or agents;

and in particular shall not be bound to take proceedings against a co-Trustee for any breach or alleged breach of trust committed by such co-Trustee.

7.4. Subject to clause 7.3.1 the Trustee shall be indemnified out of the Trust Fund against all liabilities incurred by them in the execution of their duties hereunder and shall have a lien on the Trust Fund for such indemnity.

7.5. Every Trustee who is a corporation or company may exercise or concur in exercising any discretion or power hereby conferred on the Trustee (which is not required to be exercised by an instrument in writing) by a resolution of such



corporation or company or by a resolution of its Board of Directors or governing body or may delegate the right and power to exercise or concur in exercising any such discretion or power to one or more members of its Board of Directors or governing body or one or more of its officers or employees duly authorised for that purpose.

## 8. DUTIES

- 8.1. Every decision resolution or exercise of a power or discretion or disclosure of interest required to be or capable of being made by the Trustee hereunder shall be recorded in a Minute Book kept by the Trustee for that purpose and any Deed or instruments executed in pursuance of any such decisions resolution or exercise shall also be kept in such minute book.
- 8.2. At the end of each and every year during the Trust Period the Trustee shall prepare or cause to be prepared in accordance with generally accepted accounting principles an audited balance sheet showing inter alia the assets and liabilities of the Trust Fund as at the end of that year and an audited Profit and Loss Account showing inter alia the profit or loss incurred during the preceding year and how that profit or loss was arrived at. The expense of having the accounts audited annually shall be an expense of the Trust Fund or the income thereof as the Trustee shall determine.
- 8.3. Subject to the Trust being listed on the register of Cultural Organisations:
  - 8.3.1. issue receipts (in the name of the Trust as included in the letter of approval for listing) in such form as the Department requires indicating the Trust as a tax-deductible fund so listed;
  - 8.3.2. within 21 days after the end of June and December in each year to provide to the Department details of tax deductible donations received in the prior six months in such form as the Department shall require; and
  - 8.3.3. when required by the Department, participate in a review to confirm the Trust's continued eligibility to be listed on the register of Cultural Organisations.

## 9. BANK ACCOUNTS

The Trustee shall open and maintain in its name an account or accounts entitled the "Civic Place Trust" or words to the effect at such Bank or Banks as the Trustee shall from time to time determine and the Trustee shall determine who shall be entitled to operate on such account or accounts.

## 10. ACCOUNTS AND AUDIT

The Trustee shall cause true accounts to be kept in accordance with generally accepted accounting principles of all receipts, payments, assets and liabilities relating to the Trust Fund and of all other matters necessary for showing a true and fair view of the income and expenditure and financial position of the Trust Fund in each year or part thereof ending on the 30<sup>th</sup> June and such accounts shall be audited at least once a year by a qualified Chartered Accountant appointed by the Trustee and in compliance with clause 8.2.

## 11. APPOINTMENT AND RESIGNATION OF TRUSTEE

11.1 The Trustee may resign at any time upon giving twenty one days prior written notice to the Settlor and subject to the provisions of clause 11.2, additional Trustees or new Trustees may be appointed in accordance with the provisions of the Trustee Act, 1925 as amended.

11.2 In the event that the Trustee comprises individuals then there shall be not less than three Trustees, all being persons of responsibility and standing in the community.

## 12. DISTRIBUTION

Subject to clauses 6 and 7 no part of the Trust Fund shall be used for a purpose other than the purposes set out in clause 2 and there shall not otherwise be any distribution of the Trust Fund.

## 13. VARIATION OF THE DEED

The Trustee may by deed alter vary or modify the provisions of this Deed provided:

- 13.1 No such alteration, variation or modification shall detract from the objects of this Settlement as provided for in clause 2;
- 13.2 No such alteration, variation or modification shall prejudice the status of the Trust Fund as a Deductible Gift Recipient in accordance with Subdivision 30-BA of the Income Tax Assessment Act 1997 or any legislation replacing that Subdivision;
- 13.3 If the Trust is listed on the register of Cultural Organisations, no such alteration, variation or modification shall be made without the prior written consent of the Department.
- 13.4 If the Trustee at the time of such alteration, variation or modification is not the Council of the City of Willoughby, no such alteration, variation or modification shall be made without the prior written consent of that Council.

#### 14. WINDING UP

- 14.1 If, upon the winding up or termination of the Public Fund or the Trust hereby created and listed on the register of Cultural Organisations, there remains after satisfaction of all its debts and liabilities, any property, the property shall be given or transferred to some other fund, authority or institution having objects similar to the objects of this Trust, and whose rules shall prohibit the distribution of its or their members, such fund, authority or institution to be eligible for tax deductibility or donations under Subdivision 30-B, section 30-100, of the Income Tax Assessment Act 1997 and listed on the register of Cultural Organisations maintained under that Act.
- 14.2 Any proposed amendments or alterations to provisions for the Public Fund or the Trust will be notified to the Department responsible for the administration of the Register of Cultural Organisations to assess the effect of any amendments on the Fund's continuing deductible gift recipient status.

#### 15. ADVISORY COMMITTEES

- 15.1 The Trust may establish Advisory Committees and appoint and remove, or make provision for the appointment or removal of members of Advisory Committees.

15.2 Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.

The Trustee may specify:

15.2.1 the manner in which proceedings of each Advisory Committee are to be conducted;

15.2.2 the matters which the Advisory Committee must have regard to in carrying out its functions; and

15.2.3 any other matters concerning the Advisory Committee or its functions that the Trustee decides.

**16. PATRONS**

The Trustee may appoint any person or persons they think fit as patron or Patrons of the Trust.

**17. GOVERNING LAW**

This Deed shall be governed by and construed pursuant to the law of the State of New South Wales.

EXECUTED by the parties as a deed:

THE COMMON SEAL of THE COUNCIL  
OF THE CITY OF WILLOUGHBY was  
affixed on the 1st day  
of November 2004 in pursuance of  
a resolution passed on the 1st day  
of November 2004

.....  
Deputy Mayor

.....  
General Manager

