

Deed of Variation

Deed Establishing The Civic Place Trust

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Trustee

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Contents

- 1. Interpretation and Variation of the Trust Deed2
- 2. Amendments to the Trust Deed.....2
- 3. Effect of Variation2
- 4. General2
- 5. No Re-declaration3
- Schedule 1 - Amendments to the Trust Deed4

Deed of Variation dated

2016

Parties [] (together the "**Trustee**")

Background

- A. By deed dated 1 November 2004 (**Trust Deed**), a trust, known as the Civic Place Trust was established by The Council of the City of Willoughby ABN 47 974 826 099 (as Settlor) and Patrick Thomas Reilly (former Mayor of the City of Willoughby), John Clyde Owen (former General Manager of the Council of the City of Willoughby), and David Patrick Baxter (a solicitor of the Supreme Court of New South Wales) (as Trustee).
- B. The Trust Deed was varied by deed dated 19 October 2006 to insert clause 11.3.
- C. A deed of Appointment and Resignation of Trustees was executed on [] 2016.
- D. In accordance with clause 13 of the Trust Deed, the Trustee proposes to vary the Trust Deed in the manner set out in this deed (**Deed of Variation**).

1. Interpretation and Variation of the Trust Deed

- (a) Except as varied under clause 2 and unless the context otherwise requires, words and expressions which are defined in the Trust Deed (whether specifically or by incorporation by reference) have the same meanings where used in this Deed of Variation.
- (b) The amendments to the Trust Deed made by this Deed of Variation take effect from the date of this Deed of Variation (**Effective Date**).

2. Amendments to the Trust Deed

With effect from the date of this Deed of Variation, the Trust Deed is varied in accordance with the amendments set out in Schedule 1.

3. Effect of Variation

- (a) The amendments to the Trust Deed effected by this Deed of Variation do not affect the validity and enforceability of the Trust Deed and each party is bound by the Trust Deed as amended by this Deed of Variation.
- (b) Other than to the extent amended by this Deed of Variation, all other provisions of the Trust Deed will remain in full force and effect.

4. General

- (a) This Deed of Variation is governed by and must be construed according to the laws of New South Wales.
- (b) Each party irrevocably:
- (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any

proceedings have been brought in an inconvenient forum, if that venue falls within clause 4(b)(i).

5. No Re-declaration

For the avoidance of doubt, the Trustee by clause 2 of this Deed of Variation is not:

- (a) re-declaring the Trust;
- (b) resettling the Trust; or
- (c) causing the transfer, vesting or accruing of property to or in any person.

Executed as a deed.

SIGNED, SEALED AND DELIVERED by the said [Insert name] in the presence of:

[Insert name]

Signature of Witness

Name of Witness in full (please print)

Address of Witness (please print)

SIGNED, SEALED AND DELIVERED by the said [Insert name] in the presence of:

[Insert name]

Signature of Witness

Name of Witness in full (please print)

Address of Witness (please print)

SIGNED, SEALED AND DELIVERED by the said [Insert name] in the presence of:

[Insert name]

Signature of Witness

Name of Witness in full (please print)

Address of Witness (please print)

Schedule 1 - Amendments to the Trust Deed

1. At the end of Recital C, insert the words "across the City of Willoughby to include, but not limited to, the Council owned Haven Amphitheatre".
2. At the end of Recital D, delete the words "Civic Place Trust" and insert the words "Civic Place Trust Public Fund."
3. Insert new clause 1.1.8:

"**Deductible Gift Recipient**" means an entity endorsed as a deductible gift recipient, or as a deductible gift recipient for the operation of a fund, authority or institution, under section 30-120 of the *Income Tax Assessment Act 1997* and includes a deductible gift recipient within the meaning of section 30-227 of Subdivision 30-CA of Part 2-5 of the *Income Tax Assessment Act 1997* and any equivalent or corresponding entities under any statutory provisions that succeed or replace those statutory provisions."
4. Insert new clause 1.1.9:

"**Responsible Person**" means a person who, because of their tenure of some public office or their professional standing, have a degree of responsibility to the general community as a whole. Such persons would include but would not be limited to: church authorities; school principals; judges; clergymen; solicitors; doctors; and other professional persons; mayors; councillors; general managers; members of parliament; persons who belong to a professional body (such as the Institute of Chartered Accountants, State Law Societies and Medical Registration Boards); appointees of a Chief Justice of the Supreme Court or a person awarded with an Order of Australia."
5. Delete clause 4.3 and insert new clause 4.3 as follows:

"4.3 The Public Fund will at all times be controlled or administered by the Trustees, the majority of which are Responsible Persons and who are located in Australia."
6. Delete clause 8.3.1 and insert new clause 8.3.1 as follows:

"8.3.1 issue receipts for gifts to the Public Fund and the receipts must include:

 - (a) the date the gift was received;
 - (b) the type of gift (money or other property) and its value;
 - (c) the name of the donor;
 - (d) the name of the cultural organisation, being The Civic Place Trust and its Australian Business Number;
 - (e) the name of the Public Fund;
 - (f) a statement that the receipt is for a gift made to the Public Fund; and
 - (g) a statement that the Public Fund is listed on the Register of Cultural Organisations maintained under Subdivision 30-F of the *Income Tax Assessment Act 1997* (Cth) as amended."
 7. Delete the word "and" at the end of clause 8.3.2.
 8. Delete "." and insert "; and" at the end of clause 8.3.3.

9. Insert new clause 8.3.4 as follows:

"8.3.4 notify the Department of any proposed amendments or alterations to provisions for the Public Fund, such that the Department may assess the effect of any amendments on the Public Fund's continuing Deductible Gift Recipient status."

10. Delete clause 11 and insert new clause 11 as follows:

"11. **APPOINTMENT, RESIGNATION AND REMOVAL OF TRUSTEE**

11.1 The Trustees covenant that they will act continuously as Trustee until the Trust is determined, or until they cease to be a Trustee in accordance with this Trust Deed.

11.2 A trustee may be appointed, resign, or be removed in accordance with the following procedure:

- (a) the power of appointment of a new trustee in addition to or in place of an existing trustee may be exercised by the Trustee for the time being of this Trust Deed;
- (b) any appointment of a new trustee pursuant to clause 11.2(a) shall be made by deed;
- (c) a Trustee may by deed retire as Trustee at any time upon giving twenty one (21) days prior written notice to the Settlor, provided that by the same instrument a new Trustee is appointed in the place of such Trustee;
- (d) a natural person or corporation may alone or with others hold office as Trustee of this Trust Deed;
- (e) in the event that and for so long as a natural person is a Trustee, the number of Trustees shall not be less than three, the majority of which are Responsible Persons and who are located in Australia; and
- (f) where a Trustee is a Responsible Person by virtue of holding, or being elected to public office as mayor, general manager, or a councillor (Public Office) and the Trustee no longer holds the position of Public Office, the Trustee may by deed be removed, provided that by the same instrument, a new Trustee is appointed in the place of such Trustee.

11.3 A Trustee must retire from office, in accordance with clause 11.2(c), no later than 4 years following that Trustee's appointment. For the avoidance of doubt, this clause 11.3 does not prevent a Trustee from retiring before this time.

11.4 Every new Trustee, on execution of a deed in accordance with clause 11.2, shall have all the powers, authorities, duties and discretions of the outgoing Trustee and may in all respects act as if the new Trustee had been originally named as a Trustee by this Trust Deed.

11.5 On the retirement or removal of a Trustee, the outgoing Trustee immediately ceases to be Trustee and all property, rights and benefits of any kind vested in the outgoing Trustee will vest in the continuing Trustee or the new Trustee when the new Trustee signs the deed."

11. Re-number existing clause 12 of the Trust Deed to clause 13.

12. Insert new clause 12 as follows:

"12. **TRUSTEE DECISIONS**

12.1 The Trustee may delegate to any person under any document the exercise of any powers conferred on the Trustee and execute any power of attorney or other instrument necessary to effectuate that purpose.

12.2 The Trustees must act jointly, if at any time there is more than one Trustee.

12.3 The Trustees must, despite any other provision of this Trust Deed, act and make a decision unanimously in relation to:

- (a) any amendment of this Trust Deed; and
- (b) any appointment of capital on or before the Vesting Day.

12.4 Any disagreement between the Trustees relating to any matter affecting the Trust requiring a decision by the Trustees or as to the exercise of, or omission from exercising, any power of the Trustees shall be referred to a vote of all Trustees, whether at a meeting or by circulation of documents, so that:

- (a) in the case of a majority for or against the proposal, the Trustees must give effect to the wish of the majority as though it were a decision by all Trustees; and
- (b) in the case of a deadlock, the matter must at the request of any Trustee be referred for decision to arbitration under the arbitration law currently in force under the proper law of this Trust Deed and the Trustees must give effect to the award of the arbitrator as though it were a decision by all Trustees.

12.5 Any power conferred on the Trustee may be exercised in any manner decided by the Trustee, including:

- (a) by means of any document signed by all or, where permitted, by a majority of the Trustees;
- (b) by resolution passed at a meeting of the Trustees;
- (c) by notation; or
- (d) orally, by conduct or by implication from any action of the Trustee, whether communicated to any person or otherwise.

12.6 For the purpose of this clause 12:

- (a) 2 or more separate documents containing identical statements, each being signed by one or more Trustees, may be treated as together constituting one document containing that statement signed by those Trustees as at the dates on which they signed the separate documents;
- (b) documents received by fax or email may be treated as receipt of the original document and any apparent signature on the fax or email document treated as an original signature; and
- (c) any meeting of Trustees may be conducted by telephone or any other form of instantaneous communication."

13. Re-number existing clause 13 of the Trust Deed to clause 14.

- 14. Re-number existing clause 14 of the Trust Deed to clause 15.
- 15. Re-number existing clause 15 of the Trust Deed to clause 16.
- 16. Re-number existing clause 16 of the Trust Deed to clause 17.
- 17. Re-number existing clause 17 of the Trust Deed to clause 18.