

ADDITIONAL ITEM

Item No: 1.4
Title: Mayoral Minute - Protection of the Environment Trust (POET) Committee
Department: Councillor



29 October 2018 Ordinary Council Meeting

Trim Reference: F2018/00020-05 - D13372148

Author: Jane Smith, Mayor

The Gosford City Council Protection of the Environment Trust (POET) was established “for the protection and enhancement of the natural environment or of a significant aspect of the natural environment and for the provision of information or education or the carrying on of research about the natural environment or a significant aspect of the natural environment”.

The Objectives of the Trust as contained in the Trust Deed are:

- a) To promote the protection and enhancement of the natural environment or a significant aspect of the natural environment and in particular the conservation of flora and fauna indigenous to the Local Government Area of Gosford City; and
- b) For the provision of information or education or the carrying on of research about the natural environment or a significant aspect of the natural environment in particular relating to flora and fauna of the area for the benefit of persons within the Local Government area of the City of Gosford.

Council is the Trustee of the Trust and has appointed a Management Committee under Clause 22 of the Trust Deed (as attached).

Under Clause, 19 of the Trust Deed, “The release of monies from the Public Fund account and the management of and sale of Public Fund assets must be authorised by the fund’s management committee.”

Funds for Bush Regeneration at MacMasters Beach

The MacMasters Beach Bushcare Group Inc. has raised funds over many years for its bush regeneration activities in the bushlands, lagoon and dunes of MacMasters Beach. These funds are held by the POET with the current balance being approximately \$48,000.

On the 15 April, 2016, the group requested that the POET Management Committee authorise the release of \$11,000 for the group “to employ bush regeneration contractors for regeneration maintenance along the foreshore of Cockrone Lagoon, MacMasters Beach”. This request was consistent with the objectives of the Trust and the POET Management Committee has authorised that release on a number of occasions since that initial request.

**1.4 Mayoral Minute - Protection of the Environment Trust (POET) Committee
(contd)**

To date, Council has not acted on that authorisation from the POET Management Committee.

I formally move:

That Council as Trustee of the Protection of the Environment Trust resolve to release POET funds of \$11,000 to the MacMasters Beach Bushcare Group within 7 days of this meeting as authorised by the POET Management Committee on 22 January 2017, 16 March 2017 and again on 5 June 2018.

Attachments

- 1 Trust Deed - The Gosford City Council Protection (redacted) D13372601**

Dated the 25th day of July 2006

Between

PATRICK JOSEPH DONNELLAN

and

THE COUNCIL OF THE CITY OF GOSFORD

Deed of Settlement

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Gosford NSW 2250
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THIS DEED OF SETTLEMENT is made the 25th day of

Office of State Revenue	2006
NSW Treasury	
Client No: 1406141	1112
Duty: \$200.00	Trans No: 376-1599
Asst details:	

PARTIES:

- PATRICK [REDACTED] DONNELLAN of [REDACTED] [REDACTED] in the State of New South Wales (the 'Settlor').
- THE COUNCIL OF THE CITY OF GOSFORD of 49 Mann Street, Gosford in the said State (the 'Trustee') of the other part.

RECITALS:

- The Settlor wishes to settle the sum of \$50.00 upon the Trustee to establish a trust for the protection and enhancement of the natural environment or of a significant aspect of the natural environment and for the provision of information or education or the carrying on of research about the natural environment or a significant aspect of the natural environment.
- The Trustee has agreed to act as first Trustee of the Trust and to hold the assets thereof as a perpetual charitable trust.
- The terms upon which this Trust is established are as set out in this deed.
- The Trustee desires to ensure that donations to the Trust hereby created are allowable deductions pursuant to the provisions of Sections 30-15 and 30-55 of the *Income Tax Assessment Act, 1997* ("the Act") and that the Trust satisfies the requirements of an "environmental organisation" under Sections 30-260, 30-265 and 30-270 of the said Act.
- The Settlor desires and the Trustee accepts that the funds of the Environmental Organisation must be dealt with in such a way that there is meticulous compliance with the Act so that tax deductibility for donations to those funds is ensured. For that reason, the Trustee must deal with donations by crediting them to two separately administered parts of the Environmental Organisation's funds – a Public Fund to which all deductible donations are credited and a Trust Fund to which all other non-deductible donations are credited. In this Deed when the expression "Trust Funds" is used, it means the Public Fund and the Trust Fund together. Otherwise reference in this Deed is specifically to the Public Fund or the Trust Fund.

THIS DEED WITNESSES:

Establishment of the Trust

- The Trustee acknowledges having received from the Settlor the sum of \$50.00 which the Trustee agrees to hold together with all other monies and property transferred to or vested in the Trustee as additions to the Trust Fund upon the trust and subject to the terms of this deed.



2. The Trust hereby created shall be known as the 'Gosford City Council Protection of the Environment Trust' ("the Environmental Organisation").
3. The purpose of establishing the Trust is:
 - (a) to promote the protection and enhancement of the natural environment or of a significant aspect of the natural environment and in particular the conservation of flora and fauna indigenous to the Local Government area of Gosford City; and
 - (b) for the provision of information or education or the carrying on of research about the natural environment or a significant aspect of the natural environment in particular relating to flora and fauna of that area for the benefit of persons within the Local Government Area of the City of Gosford.

Obligations of the Trustee under this Trust Deed

Establishment of Trust Funds

The Public Fund

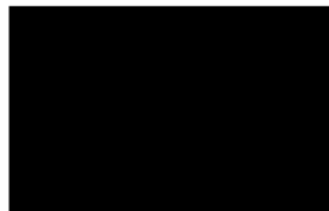
4.
 - (a) The Trustee must establish and maintain a public fund to be called the "Gosford City Protection of the Environment Public Fund" ("the Public Fund").
 - (b) The Public Fund is to be established for the specific purpose of supporting the environmental objectives and purposes of the Environmental Organisation.
 - (c) The Trustee must open a separate bank account for the public fund to be named "Gosford City Protection of the Environment Public Fund".
 - (d) The Public Fund is to be established to receive, subject to this deed, all gifts of money or property for this purpose and any money received because of such gifts must be credited to the Public Fund's bank account.
 - (e) The Public Fund must not receive any money or property on its account other than in compliance with subdivision 30E of the *Income Tax Assessment Act, 1997*.
 - (f) The Trustee shall require the Public Fund to be managed in compliance with the rules contained in Clauses 15-22 of this Deed.

The Trust Fund

- 5. (a) The Trustee must also establish and maintain a Trust Fund to be called the "Gosford City Protection of the Environment Trust Fund" ("the Trust Fund").
- (b) The Trust Fund is to be established for the purpose of supporting the environmental objectives and purposes of the Environmental Organisation.
- (c) The Trustee must open a bank account named "Gosford City Protection of the Environment Trust Account".
- (d) The Trust Fund is to be established to receive, subject to this deed, all gifts of money or property for this purpose which may not be received into the Public Fund, and any money received because of such gifts must be credited to the Trust Fund's bank account.

Application of Trust Funds

- 6. (a) In this deed "Trust Funds" means the funds in both the Public Fund and the Trust Fund.
- (b) The Trustee must hold the income derived in each accounting period and, subject to sub-clause (c) of this clause, pay or apply that income to or for the purpose of the Environmental Foundation.
- (c) The Trustee is not obliged to distribute the whole of the income of each accounting period but may, without obligation to do so, retain and capitalise:
 - (i) so much of the income of the Trust Fund as is necessary to maintain the capital of the Trust Fund at a level calculated by adjusting the capital at the beginning of each accounting period to reflect any positive movement in the Consumer Price Index Numbers All Groups weighted average of the eight (8) capital cities during the immediately preceding accounting period; or
 - (ii) a percentage or sum from time to time approved by the Commissioner of Taxation as being applicable for the purposes of the Environmental Foundation.
- (d) The Trustee may pay out of the income of the Trust Funds or its capital:
 - (i) all proper expenses of the Trustee; and
 - (ii) the proper expenses of the Trustee and each of them acting as trustees of the Trust Funds; and



- (ii) any other costs and expenses which the Trustee is directed, authorised or empowered to incur.

Investment

7. The Trustee must:

- (a) invest the Trust Funds only in a manner in which trustees are permitted to invest under the laws of Australia or any state or territory of Australia;
- (b) obtain and consider independent and impartial advice reasonably required for the investment of the Trust Funds and the management of the investments from an experienced and qualified Australian Financial Services Licensee or other person who is appropriately qualified to give accounting, financial, taxation, investment or other advice pertinent to the operation of the Trust Funds and its investments and, where appropriate, is also a member of the Institute of Chartered Accountants, CPA Australia or the Australian Stock Exchange; and
- (c) pay out of the Trust Funds the reasonable cost of obtaining the advice.

Management of the Trust

- 8. (a) The Trustee being the Council of a Local Government Area established pursuant to the *Local Government Act, 1919 (NSW)* and continuing pursuant to the *Local Government Act, 1993*, may appoint a Management Committee having responsibility for managing and administering the Trust created by and in accordance with this deed.
- (b) The Management Committee shall meet at least once in every year and shall report to the Trustee in such a way that the Trustee is enabled to exercise its powers and fulfil its obligations under this deed.
- (c) The Management Committee shall comprise persons who are either Councillors or employees of the Council and those persons may also be members of the management committee of the Public Fund created pursuant to Clause 22 of this Deed, and
 - (i) the Committee may act, in the event of a disagreement, according to a decision of a majority;
 - (ii) a quorum of the Committee shall be three members.

Requirements of the Public Fund

- 9. The Trustee must inform the department responsible for the environment as soon as possible if the Environmental Organisation:

- (i) the name of the Environmental Organisation or the name of the Public Fund are changed; or
- (ii) there is any change to the membership of the management committee of the Public Fund; or
- (iii) there has been any departure from the model rules for public funds located in the guidelines to the register of environmental organisations.

Ministerial Rules

- 10. The Trustee must comply with any rules that the Treasurer and the Minister with responsibility for the environment in the Federal Government may make to ensure that gifts made to the Public Fund are only used for its principal purpose.

Not for Profit

- 11. The Trustee shall use and apply the capital, income and property of the Environmental Organisation solely in promotion of the objects of the Environmental Organisation and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend bonus or by way of profit to the Trustee or members of the management committee of the Trustee (except by way of reimbursement of legitimate expenses incurred and authorised by this deed).

Conduit Policy

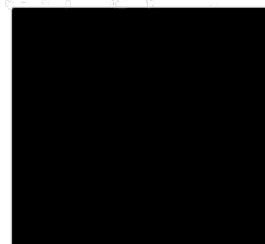
- 12. Any allocation of funds or property to other persons or organisations will be made by the Trustees in accordance with the established purposes of the Environmental Organisation and the Trustee will not be influenced by the preference of any donor of funds to the Environmental Organisation.

Winding Up

- 13. In the case of the winding up of the Public Fund established pursuant to Clause 4 above, any surplus assets shall be transferred to another fund of an Environmental Organisation with similar objects that is on the register of Environmental Organisations.

Statistical Information

- 14. (i) The Trustees shall provide statistical information requested by the Department on donations to the Public Fund established pursuant to this deed. The information will be provided within four months of the end of the current financial year.



- (ii) An audited financial statement for the Environmental Organisation and its Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of Public Fund monies and the management of Public Fund assets.

Specific Rules relating to the Management and Operation of the Gosford City Protection of the Environment Public Fund

15. The objective of the Public Fund is to support the Environmental Organisation's environmental purposes.
16. Members of the public are to be invited to make gifts of money or property to the Public Fund for the environmental purposes of the Environmental Organisation.
17. Money from interest on donations, income derived from donated property and money from the realisation of such property is to be deposited into the Public Fund.
18. Gifts to the Public Fund are to be kept separate from other funds of the Organisation, in particular, gifts made by will or property given in return for sponsorship.
19. The release of monies from the Public Fund account and the management of and sale of Public Fund assets must be authorised by the fund's management committee. Members of the Public Fund management committee permanently located in Australia must be the only signatories to the Public Fund account.
20. Receipts are to be issued in the name of the Public Fund and proper accounting records and procedures are to be kept and used for the fund. To ensure tax deductability of donations, receipts issued in the name of the Public Fund shall contain the following elements:
 - (i) the number of the receipt;
 - (ii) the date of receipt of the donation;
 - (iii) the name of the organisation;
 - (iv) the organisation's Australian Business Number (ABN);
 - (v) the name of the Public Fund;
 - (vi) the signature of a person authorised to act on behalf of the Public Fund;
 - (vii) the name of the donor;
 - (viii) an indication that the Public Fund is listed on the register;
 - (ix) that the amount is for a gift

and shall comply substantially with the form illustrated in Annexure 1 to this deed.

21. The Public Fund will be operated on a not for profit basis.

22. A management committee (which is a different committee to that appointed pursuant to Clause 8 of this Deed) though qualified persons may comprise the members of both committees, of no fewer than three persons will administer the Public Fund. The committee will be appointed by the Trustee. A majority of the members of this committee are required to be responsible persons defined as follows:

- people with honours (OBE, KCMG, AO etc)
- clergy and church authorities
- trustees or board members of a not-for-profit school or college
- justices of the peace
- judges/magistrates
- public servants with more than five years service
- barristers/solicitors
- doctors
- accountants (must be CPA, ASA, ICA or NIA registered)
- persons holding public or elected office:
 - mayors
 - town clerks/general managers
 - councillors
 - members of parliament
- directors of large public companies (with responsibilities under the companies code)
- academics or teachers with more than five years experience
- people who hold (or have held) other public positions (eg member of the Australia Council)
- past or present office holders of other community organisations (eg President of Parent and Citizens Association, Secretary of Lions, Treasurer of Rotary).

Powers of the Trustee

23. Subject to Clause 24, in addition to all the powers vested in the Trustee by law or by statute or by this deed, the Trustee shall have and may exercise at any time and from time to time any or all of the following powers:

- (a) to allow any investment or asset at any time forming part of the Trust Funds to remain in the original form in which it is received by the Trustee and at any time to sell call in or convert the same into money or other securities or property;
- (b) to accumulate the income of the Trust Funds by investing the same and/or the resulting income thereof from time to time in any of the modes of investments authorised by this deed;
- (c) to change, vary or transpose any investment or assets for the time being forming part of the Trust Funds for others hereby or otherwise by law authorised and to realise investments for the purposes of this deed and

- to transfer any investment in performance or satisfaction of those purposes;
- (d) to pay premiums on assurance policies which may from time to time form part of the Trust Funds;
- (e) to apply any money for the time being forming part of the Trust Funds in improving or developing property which or an interest in which or the proceeds of the sale of the whole or part of which may for the time being be subject to the trusts hereof or in erecting, enlarging, improving or rebuilding such property;
- (f) to pay all insurance premiums, rates, taxes and other outgoings in connection with any real or personal property subject to the trusts hereof and to manage the said property and effect such repairs as the Trustee may consider necessary or advisable to such property and where such expenditure is unable to be charged against income the Trustee shall be at liberty to resort to capital;
- (g) to pay interest or other loan expenses on or repay principal on any loan raised by the Trustee which has been applied in whole or in part in accordance with this deed;
- (h) to lease or licence all or any part of any real or personal property for the time being subject to the trusts hereof for any period upon such terms and conditions and for such rent as the Trustee shall determine and make allowances to and with tenants and others and accept surrenders and waive breaches of covenants and determine tenancies and licences and raise out of the capital or income any sum from time to time required and in the Trustee's opinion properly payable thereout for the exercise of any of the powers and discretions herein contained and generally to deal with the said real and personal property in a manner and in due course of management as if beneficially entitled hereto;
- (i) to determine whether any money shall for the purposes of these presents be considered as capital or income and out of what part of the Trust Funds whether out of income or capital any expenses outgoings or losses shall or ought to be paid or borne;
- (j) to pay application money and calls on securities and concur in any arrangement for the modification of the rights of holders of securities.
- (k) to surrender and deliver up any securities of a company forming part of the Trust Funds for such consideration and upon such terms and conditions as the Trustee shall think fit to any company reducing its capital and the Trustee may receive such consideration in the form of cash, securities or other assets as may be agreed upon between the Trustee and such company;

- (l) to consent to any re-organisation or re-construction of any company the securities of which form part of the Trust Funds and to consent to any reduction of capital or other dealing with such securities as the Trustee may consider advantageous or desirable;
- (m) to employ managers agents advisers solicitors accountants or other persons or companies in the execution of the trusts and powers herein contained and instead of acting personally from time to time to employ and pay out of the Trust Funds such fees salaries commissions emoluments and expenses as the Trustee shall consider reasonable to any such managers agents advisers solicitors accountants or other persons or companies to transact any business or to do any act required to be done in connection with the administration of the trusts hereby declared including the receipt and payment of money;
- (n) to institute and defend proceedings at law, to proceed to the final end and determination thereof or compromise the same;
- (o) to exercise or concur to exercise or concur in exercising in such manner as the Trustee shall determine the voting and other rights attaching to any securities for the time being forming part of the Trust Funds;
- (p) to compromise and settle all matters arising in relation to the Trust Funds or the trusts hereof;
- (q) to enter into possession and continue in possession of the whole or any part of the Trust Funds and manage and/or superintend the management of the same and without limiting the Trustee's powers generally may exercise all such powers and authorities and discretions as trustees are by law authorised to exercise;
- (r) to set aside out of the capital or income of the Trust Funds from time to time such sum of money as may in the opinion of the Trustee be sufficient to meet any debt or obligation due or accruing due;
- (s) to raise or borrow money either bearing or free of interest with or without security to secure the repayment of money so borrowed and any interest thereon by mortgage or charge over all or any of the investments or assets of the Trust Funds and to apply such money for the purposes for which either the income or the capital of the Trust Funds are for the time being applicable hereunder including the investment of money in any manner and no lender shall be concerned to enquire as to whether the necessity for any such borrowing has arisen or as to the purpose for which it is required or as to the application of the money borrowed;

- (t) to delegate to a committee of the members of the Trustee being a collegiate body the powers and functions of the Trustee contained in this Deed;
- (u) generally to do all such other lawful acts and things as are incidental or conducive to the attainment of the general purposes and conduct of the Trust.

Amendment of Trust

24. The Trustee may by deed revoke, add to or vary any of the provisions of this trust to facilitate the proper administration of the Trust Funds provided that:

- (a) no part of the Trust Funds or its income becomes subject to any trust other than the trust established by this deed;
- (b) no part of the Trust Funds or its income may be paid to or applied for any purpose other than those permitted by the provisions of the Trust Deed;
- (c) no amendment is made that permits the Trustee to invest the Trust Funds or any part of them other than in a manner in which trustees are permitted to invest under the laws of Australia or any state or territory of Australia;
- (d) no amendment is made affecting clauses 3, 4, 9 or 10 and unless such changes are authorised by the Department Clauses 15 to 22.
- (e) no amendment is made that does not comply with the ITAA 1997 to ensure that the Environmental Organisation maintains endorsement as an income tax exempt entity.

Trustee's Indemnity

25. The Trustee shall not be liable for any loss or damage occasioned by the exercise of or failure to exercise any discretion or power conferred on the Trustee or as a consequence of any error or default on their part or on the part of any of them or on the part of any person having dealings with or in respect of the Trust Funds unless that Trustee has committed a breach of duty or of trust knowingly or in bad faith.

Audit of Trust Fund

26. The Trustee must, at the expense of the Trust, cause the financial statements of the Trust Fund to be audited at least once in each accounting period by an approved auditor appointed by the Trustee.



Trustee's Undertaking

27. The Trustee may give legally binding undertakings to the Commissioner of Taxation in order to obtain or retain the endorsement of the Trust as exempt from income tax under Subdivision 50-B of the ITAA 1997.

Winding up of trust

Termination Date

28. The trust shall be wound-up and terminate 80 years from the date of this deed.

Procedure on termination

29. Subject to any provision of this deed which limits or restricts distributions of capital of the Trust Fund, the Trustee shall at the determination date:

- (a) pay out or otherwise discharge and satisfy all debts and liabilities in relation to the Trust;
- (b) distribute or otherwise deal with the income of the Trust in any manner expressly provided by this deed and any income not so dealt with shall form part of the capital of the Trust;
- (c) distribute or otherwise deal with the capital of the Trust in any manner expressly provided in this deed.

30. On the winding up of the Trust, the Trustee may distribute property comprised in the Trust Fund in specie.

31. On the winding up of the Trust, the Trustee shall have prepared financial statements as at the termination date which shall otherwise comply with the requirements of this deed.

Dictionary

In this deed the terms and words hereunder shall have the following meaning unless otherwise indicated by the context:

Words importing any one gender shall be deemed and taken to include all genders and the singular to include the plural and the plural the singular unless the contrary as to gender or number is expressly provided.

A reference to a statutory enactment shall be a reference to such enactment as amended from time to time.

Headings shall not be taken into account in the construction of this deed.

The Trust shall be governed by, and this deed shall be construed in accordance with, the laws of New South Wales.

'the Act' means the Income Tax Assessment Act, 1936 or any Act that replaces it.

'financial year' means the period from the date of this Deed to midnight 30 June next, and thereafter each period of 12 months ending at midnight on 30 June, and if the

termination date is not 30 June in any year the last financial year shall be the period commencing on 1 July prior to the termination date and ending on the termination date.

'income' of the Trust includes all profits or gains taken into account in calculating the net income of the Trust, and exempt income, as defined in s.95(1) of the Act, notwithstanding that the whole or any part thereof may otherwise constitute capital of the Trust.

'person' includes a company, legal entity or body of persons.

'the Public Fund' means the Gosford City Council Protection of the Environment Trust Fund established pursuant to Clause 6 of this deed.

'tax' means any income tax, capital gains tax, fringe benefits tax, consumption tax, value added tax, provisional tax, additional tax, penalty tax, stamp duty, fine for late payment, tax on deposit or withdrawal of funds from any account or other tax or imposition payable to any government or government instrumentality.

'termination date' means the date upon which the Trust is wound up in accordance with this deed.

'the Trust' means the settlement created by this deed.

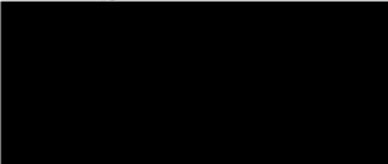
'the Trustee' means the Trustee or any subsequent Trustee for the time being of the Trust.

'the Trust Fund' means the Fund established pursuant to Clause 5 of this Deed.

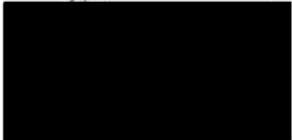
'the Trust Funds' means:

- (1) the money paid by the Settlor to the Trustee to establish the Trust; and
- (2) all other money and property which becomes subject to the rights and obligations of this deed and obligations of this deed including money and property credited to the Public Fund and money and property credited to the Trust Fund.

SIGNED SEALED AND DELIVERED)
By PATRICK JOSEPH DONNELLAN)
in the presence of)



SIGNED for and on behalf of THE COUNCIL OF THE CITY OF GOSFORD by:



Common Seal of the Council of the City of Gosford was hereunto affixed on the 21st day of August 192006 pursuant to a resolution of Council on the 25th day of July 2006

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31 July 2006

