

Deed

# Southern Highlands Foundation Amending Deed

The Southern Highlands Foundation (ACN 098 283  
213)

**Freehills**

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Southern Highlands Foundation  
Amending Deed

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Date ▶ 19<sup>th</sup> August 2011.

Between the parties	
Trustee	<b>The Southern Highlands Foundation</b> ACN 098 283 213 of Level 1, 24 Bendooley street, Bowral, NSW, 2576 (Trustee)
Recitals	<ol style="list-style-type: none"><li>1 The trust known as the Southern Highlands Foundation (Trust) was established by a trust deed dated 1 November 2001 (as amended) (Trust Deed).</li><li>2 Under clause 12 of the Trust Deed, the Trustee may, subject to certain restrictions and any approval required by law, by deed replace or amend the Trust Deed.</li><li>3 The Trustee wishes to amend the constitution of the Trust in the manner set out in this amending deed.</li><li>4 The Trustee considers that the amendments in this deed are consistent with the power to amend the Trust Deed.</li><li>5 The amendments to the constitution of the Trust set out in this amending deed will be effective on and from the Effective Date.</li></ol>
This deed witnesses as follows:	

## 1 Definitions and interpretation

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- (a) A word or phrase (except as otherwise provided) defined in the Trust Deed has the same meaning when used in this amending deed.
- (b) Clause 2.1 of the Trust Deed applies to this amending deed.

## 2 Effective Date

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Clause 3 of this amending deed shall take effect on and from the date of this deed (**Effective Date**).

## 3 Amendment of the Trust Deed

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### 3.1 Amendment

- (a) The Trust Deed as it applies to the Trust is amended (except for clause 3 (**Declaration of Trust**), clause 4.6 (**Trustee may accumulate income**) and clause 12 (**Amending this deed**), which are not amended or affected by this amending deed in any way) by:
  - (1) deleting all of the provisions of the Trust Deed except for clauses 3, 4.6 and 12; and
  - (2) substituting the provisions in Schedule A.
- (b) The Trust Deed as it applies to the Trust and as amended by this amending deed is the constitution of the Trust.

### 3.2 Binding conditions

This amending deed is binding on the Trustee, each member and any other person claiming through any of them as if each was a party to this amending deed.

## 4 Governing law and jurisdiction

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This amending deed is governed by the law of New South Wales.

Executed as a deed

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Signed for  
**The Southern Highlands Foundation**  
by its attorney

sign here ▶



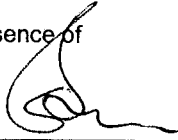
Director

print name

PETER JOHN EVANS

in the presence of

sign here ▶



Witness

print name

PHILIP LESLIE BOYCE

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Schedule A – Constitution of the Trust

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Deed

Trust Deed  
Southern Highlands  
Foundation Trust

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Paul Joseph Ramsay

The Southern Highlands Foundation (ACN 098 283  
213)

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Trust Deed *19-11 August 2011*

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Date ►

Between the parties

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Party 1                      **Paul Joseph Ramsay**  
of 'Yarrowin' Burradoo Road, Burradoo NSW 2576  
(Founder)

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Party 2                      **Wingecarribee Community Foundation**  
ACN 098 283 213 of Level 1, 24 Bendooley street, Bowral NSW 2576  
(Trustee)

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Recitals

- 1 The Founder wishes to establish a fund for certain public charitable purposes.
- 2 The Founder has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.
- 3 The Trustee has power, among other things, to act as the trustee of the Trust.
- 4 It is intended that the Trust will solicit and receive gifts from the public.

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This deed witnesses as follows:

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1 Name

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The Trust is to be known as Southern Highlands Foundation Trust.

2 Definitions and interpretation

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2.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Accounting Period	the period from the date of this deed to the following 30 June and then each period of 12 months ending on 30 June in each year, or an other period that the Trustee decides from time to time.
Advisory Committee	a committee established under clause 10.
Commissioner	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA97.
Eligible Charity	a fund, authority or institution: 1 which is charitable at law; and 2 gifts to which are deductible under item 1 of the table in section 30-15 of ITAA97.
Gift Fund	has the meaning given in clause 5.1.
ITAA97	the <i>Income Tax Assessment Act 1997</i> .
Specified Sum	\$100.
Specified Income	income of the Trust other than donations, gifts, government grants, and other voluntary transfers of property to the Trust.
Trust	the trust established under this deed.

<b>Term</b>	<b>Meaning</b>
<b>Trustee</b>	the person named in this deed as the Trustee and any other trustee for the time being of the Trust whether original, additional or substituted.
<b>Trust Fund</b>	<ol style="list-style-type: none"><li>1 the Settled Sum;</li><li>2 all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;</li><li>3 all accretions to the Trust Fund;</li><li>4 all accumulations of income; and</li><li>5 the money, investments and property from time to time representing the above or into which they are converted, and includes any part of the Trust Fund.</li></ol>

**2.2 Interpretation**

In this deed unless the context requires otherwise:

- (a) the singular (including defined terms) includes the plural and the plural includes the singular, and words of any gender include all genders;
- (b) a reference to this deed means this deed as originally executed and as from time to time lawfully amended, varied or added to; and
- (c) a reference to any legislation includes any amendment to that legislation, any consolidation or replacement of that legislation and any subordinate legislation made under it.

**2.3 Headings**

Headings are used for convenience only and do not affect the interpretation of this deed.

**3 Declaration of Trust**

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**NOT AMENDED OR AFFECTED IN ANY WAY.**

## 4 Purposes

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### 4.1 Application of income and capital

- (a) The Trustee must hold the Trust Fund and the income of the Trust Fund derived in each Accounting Period on trust to pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Trust Fund, for the purpose of providing money, property or benefits to or for Eligible Charities, or for the establishment of Eligible Charities, as the Trustee decides from time to time.
- (b) No part of the Trust Fund or the income or property may be paid, transferred or distributed, directly or indirectly, by way of bonus, fee or otherwise, to the Trustee or any of its members or directors. However, this clause 4.1(b) does not prohibit making a payment permitted by clause 0.
- (c) Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of ITAA 97 are satisfied, a payment or application of net income or capital must be made in accordance with those conditions.

### 4.2 Factors Trustee may consider

In exercising its discretions under clause 4.1, the Trustee may have regard to:

- (a) any recommendations of an Advisory Committee with authority to make the recommendations; and
- (b) the provisions and objects, so far as they are consistent with the purpose of the Trust, of any other trust (including a trust established by a testamentary instrument) where:
  - (1) the capital of that other trust has been transferred to or otherwise vested in the Trustee to hold on the trusts of this deed; and
  - (2) the trustee of the other trust has requested the Trustee to recognise the provisions or objects of the other trust in exercising the Trustee's discretions and powers under this deed.

### 4.3 Policies and rules

In carrying out its obligation to pay or apply the income or capital, the Trustee may:

- (a) formulate policies;
- (b) make rules in connection with a policy; and
- (c) revoke or amend a policy or rules and formulate others.

### 4.4 Sub-funds

- (a) The Trustee may maintain a management account in respect of gifts of money or property from a particular donor or group of donors.

- (b) The management account may be used to record receipts from a donor or group of donors, money received because of those gifts and payments or applications from the management account.
- (c) The donor or group of donors (or persons nominated by the donor or group of donors) may make requests or indicate preferences, as to the name of the management account, and as to the payments or applications from the account to or for one or more Eligible Charities or for the establishment of one or more Eligible Charities.
- (d) The Trustee is under no obligation to comply, and the Trustee may not agree or give an assurance that it will comply, with any request or preference.
- (e) The management account forms part of the Trust Fund and is not a separate fund.
- (f) The management account may not be separately invested or be separately accounted for in the statutory financial statements of the Trust.

#### **4.5 Cessation of sub-funds**

- (a) The Trustee may at any time cease to maintain the management account and account for the money and investments in the general accounts for the Trust Fund.
- (b) The Trustee may provide reports of the investments and application of the management account to the donor or group of donors but is not under an obligation to do so
- (c) The Trustee may formulate rules and policies relating to the maintenance of the management account provided they are not contrary to this Trust Deed or any requirements of the Commissioner.

#### **4.6 Trustee may accumulate income**

**NOT AMENDED OR AFFECTED IN ANY WAY.**

### **5 Establishment and operation of Gift Fund**

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#### **5.1 Maintaining Gift Fund**

The Trustee must maintain for the principal purpose of the Trust a fund (**Gift Fund**):

- (a) to which gifts of money or property for that purpose are to be made; and
- (b) to which any money received by the Trust because of such gifts is to be credited; and
- (c) that does not receive any other money or property.

## 5.2 Limits on use of Gift Fund

The Trustee must use the following only for the principal purpose of the Trust:

- (a) gifts made to the Gift Fund;
- (b) any money received because of such gifts.

## 5.3 Winding up

- (a) At the first occurrence of:
  - (1) the winding up of the Gift Fund; or
  - (2) the Trust ceasing to be endorsed as a deductible gift recipient under Division 30-BA of the ITAA 97,  
any surplus assets of the Gift Fund must be transferred to a fund, authority or institution:
    - (3) which is charitable at law; and
    - (4) gifts to which can be deducted under Division 30 of the ITAA 97.
- (b) The identity of the fund, authority or institution must be decided by the Trustee.
- (c) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a transfer under this clause to that fund, authority or institution must be made in accordance with or subject to those conditions.

## 6 Trustee's powers

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### 6.1 Investment

The Trustee must invest money of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any State or Territory of Australia.

### 6.2 Other powers

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money in any manner the Trustee thinks fit and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien,

encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;

- (d) take and act on the opinion of a barrister or solicitor of at least 5 years standing practising in Australia in relation to the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not prohibit or impede the Trustee from applying to a court of competent jurisdiction;
- (e) take any action the Trustee thinks fit for the adequate protection or insurance or any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this deed, generally:
  - (1) perform any administrative act; and
  - (2) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoing and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (i) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (l) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (m) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (n) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any Eligible Charity to occupy the property on the terms and conditions the Trustee thinks fit; and

- (o) do all other things incidental to the exercise of the Trustee's powers under this deed.

### **6.3 Powers are supplementary**

The powers and discretions in clause 6.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

## **7 Liability for breaches of trust**

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The Trustee, where purporting to act in the exercise of the trusts and powers of this deed, and any officer, agent or employee of the Trustee purporting to exercise powers under this deed, is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss or liability, unless the loss or liability is attributable to:
  - (c) the dishonesty of the Trustee (or of the relevant officer, agent or employee of the Trustee); or
  - (d) the wilful commission or omission of an act known by the Trustee (or by the relevant officer, agent or employee of the Trustee) to be a fraudulent breach of trust in bad faith.

## **8 Indemnity of Trustee from Trust Fund**

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The Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
  - (1) entering into this deed or any deed amending this deed;
  - (2) establishing, operating, administering, amending, terminating and winding up the Trust; or
  - (3) otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 8(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.



## 9 Books of account

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### 9.1 Trustee to keep accounts

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund.

### 9.2 Financial statements

As soon as practicable after the end of each Accounting Period the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Trust Fund at the end of that Accounting Period.

### 9.3 Receipts

Receipts issued for gifts must state:

- (a) the name of the Trust Fund;
- (b) the Australian Business Number applicable to the Trust Fund; and
- (c) the fact that the receipt is for a gift.

### 9.4 Audit

The financial statement must be audited by a person registered, or taken to be registered as an auditor under Part 9.2 of the Corporations Act 2001.

## 10 Advisory Committees

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- (a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees,
- (b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of each Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, will be to advise the Trustee on how payments or applications of income and capital should be made under clause 4.
- (d) The Trustee may specify:
  - (1) the manner in which proceedings of each Advisory Committee are to be conducted;
  - (2) the matters which the Advisory Committee must have regard to in carrying out its functions; and

- (3) any other matters concerning the Advisory Committee or its functions that the Trustee decides.
- (e) The Trustee may wind up an Advisory Committee at any time.
- (f) To avoid any doubt, it is declared that the Trustee may appoint a single individual to act as an Advisory Committee.

## 11 Patrons

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The Trustee may appoint any persons it thinks fit as patrons of the Trust.

## 12 Amending this deed

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**NOT AMENDED OR AFFECTED IN ANY WAY.**

## 13 Trustee's remuneration

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### 13.1 General remuneration

The Trustee may charge and be paid out of any part of the capital or income of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration chargeable by the Trustee in respect of any Accounting Period must not exceed an amount equal to the maximum commission chargeable by trustee companies under the Trustee Companies Act in respect of that Accounting Period.

### 13.2 Sub-Fund gifts of money or property

Despite clause 13.1, where:

- (a) gifts of money or property are transferred to or otherwise vested in the Trustee under clause 4.4; and
- (b) the donor, testator or other benefactor and the Trustee agree on the Trustee's remuneration in respect of the gifts of money or property or the income from it (whether before or after the establishment of a management account in respect of those gifts of money or property),

the Trustee's remuneration in respect of those gifts of money will be as so agreed.

## 14 General

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### 14.1 Receipts by others

The receipt of the person purporting to be the treasurer, secretary or other proper officer of any recipient of a payment or application of income or capital from the Trust Fund under this deed is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.

### 14.2 Trustee's discretion

Except where there is an express contrary provision in this deed, every discretion given to the Trustee is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.

### 14.3 Personal interest

The Trustee and any director or member of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law (including making any investment authorised under clause 6.1) even though the Trustee, or any person who is a director or member of the Trustee;

- (a) has or may have a direct or personal interest in the method or result of exercising the power or discretion; or
- (b) may benefit either directly or indirectly from the exercise of any power or discretion,

and even if the Trustee is a sole trustee.

### 14.4 Administrative support

The Trustee may provide secretarial, book-keeping, accounting or administrative assistance to the Trust or to an Advisory Committee and is entitled to be paid or reimbursed by the Trust for the reasonable costs and expenses of doing so.

### 14.5 Delegation of powers

The Trustee may by power of attorney or otherwise delegate to any person any of the discretionary or other powers given to it under this deed. The execution or exercise of any of the trusts or powers of this deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.

### 14.6 Trustee's receipts

The Trustee may receive capital and other money and give valid receipts for all purposes including:

- (a) those of any statute; and
- (b) the receipt of any capital money which may or may not be deemed to be capital money for the purposes of any law relating to settled land,

and even if the Trustee is a sole trustee.

**14.7 Trustee's decisions**

The Trustee may decide:

- (a) whether any money is to be considered as capital or income;
- (b) whether any expense, outgoing or other payment ought to be paid out of capital or income; and
- (c) all questions and matters of doubt arising in the execution of the trusts of this deed.

Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

**15 Winding up**

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- (a) If, on the winding up of the Trust, any property remains after the satisfaction of all its debts and liabilities, the Trustee must give and transfer the property to Eligible Charities, or to or for a fund which is charitable at law and which complies with the requirements of item 2 of the table in section 30-15 of the ITAA97, as the Trustee decides.
- (b) Where gifts to an Eligible Charity are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, the gift or transfer must be made in accordance with those conditions.

**16 Governing law**

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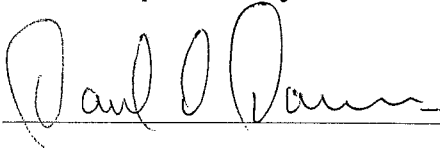
This deed is governed by the laws of New South Wales.

Executed as a deed

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**Party 1**

Signed sealed and delivered by  
**Paul Joseph Ramsay**

sign here ▶ 

print name PAUL J RAMSAY

in the presence of

sign here ▶   
Witness

print name PETER EVANS

---

**Party 2**

Signed sealed and delivered by  
**Southern Highlands Foundation**  
by

sign here ▶   
Company Secretary/Director

print name SHELLEY BOYCE

sign here ▶   
Director

print name STEVEN FOSTER

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