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## Charitable Trust Deed

Date: 2006

Parties: **The Council of Pittwater**, a local council constituted under the Local Government Act 1993 (New South Wales) (“**Settlor**”)

**Pittwater Environmental Foundation** of Level 60, 1 Farrer Place, Sydney NSW 2000 (“**Trustee**”)

Recitals:

- A. The Settlor desires to establish a trust to be called the “**Pittwater Environmental Trust**” (“**Trust**”) for public charitable purposes.
- B. The Trust will maintain a public fund called the “**Pittwater Environmental Foundation Fund**” (“**Fund**”) to receive gifts from the public to be applied for the same public charitable purposes as the Trust.
- C. The Settlor has agreed to pay to the Trustee as an original endowment the sum of \$100 to be held by the Trustee on the Trusts declared in this Deed.
- D. The Trustee has consented to act as Trustee of the Trust and will hold the settled sum together with such further sums of money, investments and other property paid, given or transferred to the Trustee by way of addition to the Trust, on the trusts contained in this deed.
- E. Nothing in this Deed will be construed as limiting in any way the Ongoing Settlor’s discretion under the *Environmental Planning and Assessment Act 1979 (NSW)* or the *Local Government Act 1997 (NSW)*, or any other relevant legislation.

Operative provisions:

### 1 Interpretation

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- 1.1 The following words have these meanings in this deed unless the contrary intention appears.

**Act** means the *Income Tax Assessment Act 1997 (Cth)*.

**Approved Institution** means a fund, authority or institution which at the time of gift falls within the description of an item in any of the tables in Subdivision 30-B of the Act, which has been established for charitable purposes.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Deductible Gift Recipient** has the meaning given by the Act.

**Department** means the Commonwealth Department of the Environment and Heritage.

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**Director** means a director of the Trustee or any other company for the time being trustee of the Trust Fund.

**Fund** means the Pittwater Environmental Foundation Fund established pursuant to this Deed.

**Objects** means the objects described in Clause 3 of this Deed.

**Ongoing Settlor** means the Council of Pittwater, a local council constituted under the *Local Government Act 1993 (NSW)* or any other local government body which succeeds the Council of Pittwater. In the event that the boundaries of the Council of Pittwater are modified, **Ongoing Settlor** means the local government body responsible for the majority of the land comprising the Council of Pittwater as at the date of this Deed.

**Qualified Person** means a person who at the time of the first appointment as a director of the Trust is a person who due to the tenure of some public office or position or activity in the community may be expected to have a high degree of responsibility to the public and including, but without limiting the generality of the foregoing, a person who is:

- (a) a member of the Commonwealth or a State parliament;
- (b) a judge of a superior court in Australia;
- (c) a member of the council or governing body of an Australian university;
- (e) a senior academic or professor of an Australian University;
- (f) a barrister or solicitor of the Supreme Court of an Australian State or Territory;
- (g) a member of a professional body having a code of ethics or rules of conduct;
- (i) a person who is officially charged with spiritual functions by a religious institution
- (j) a Justice of the Peace
- (k) a councillor of a local government authority
- (l) a general manager of a local government authority
- (m) a recipient of the Order of Australia or Governmental award for services to the public or community.

**Responsible Person** means a person who is assessed by the Department to be a “responsible person”, and includes:

- (a) a Qualified Person;
- (b) a public servant with more than five years service;

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- (c) a director of a large public companies (with responsibilities under the companies code);
  - (d) an academic or teacher with more than five years experience;
  - (e) a trustee or board member of a not-for-profit school or college;
  - (f) a person who holds (or has held) a public position; or
  - (g) a past or present office holder of a community organisation (eg P&C association, Lions, Rotary).

**this Deed** means this deed including all amendments, additions, deletions or replacements lawfully made to this Deed.

**Trust** means the Pittwater Environmental Trust established pursuant to this Deed and includes the Fund.

**Trustee** means Pittwater Environmental Foundation or any other trustee for the time being of the Trust.

**Trust Property** includes the original endowment paid by the Settlor under clause 2.1 of this Deed and the moneys, investments and property for the time being subject to the trusts of this Deed.

1.2 In this Deed unless the contrary intention appears:

- (a) a reference to a clause or schedule is a reference to a clause of or schedule to this Deed and references to this Deed include any recital or schedule;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word person includes a firm, a body corporate, an unincorporated association or an authority; and
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and assigns.

1.3 Headings are inserted for convenience and do not affect the interpretation of this Deed.

## 2 Establishment of the Trust

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2.1 The Settlor has upon the execution of this Deed transferred to the Trustee the sum of \$100 (the "**Initial Endowment**") and directs that the Trustee is to, and the Trustee hereby declares that it will:

- (a) act as Trustee of the Trust; and

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- (b) hold the Initial Endowment on trust for the purpose of attaining the Objects set out in clause 3 of this Deed.

To achieve the Objects, it is intended that money will be raised from members of the public, which, together with any additional property, and all investments and property representing that money and property and any accretions or additions to it from time to time shall be held by the Trustee and applied in all accordance with the terms of this Deed.

- 2.2 The Trust will be known as the **Pittwater Environmental Trust**.
- 2.3 In managing and conducting the affairs of the Trust, the Trustee shall direct its efforts towards furthering the Objects.

### 3 Objects

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- 3.1 The Trust is established and must be maintained exclusively for public charitable purposes in Australia, being the purposes of providing money, property or benefits for:
- (a) the conservation, protection, restoration, creation, expansion and enhancement of the natural environment, or a significant aspect of these, within the Pittwater local government area;
  - (b) the provision of access and associated infrastructure to ensure the enjoyment and use of the natural environment by the community;
  - (c) the carrying on of research about the natural environment or a significant aspect of the natural environment;
  - (d) promoting and encouraging knowledge, understanding and enjoyment of the natural environment, and public participation and interest in sustainability action which, without limiting the foregoing, includes:
    - (i) the provision of information or education about the natural environment or a significant aspect of the natural environment;
    - (ii) facilitating the conduct of schools, lectures, courses, seminars or other forms of education regarding the natural environment and/or education for sustainability;
    - (iii) facilitating the teaching, training and instruction of persons and the promotion of education and research in respect of the natural environment and/or education for sustainability;
    - (iv) providing or assisting in providing premises, equipment and expertise for the presentation of information or research relating to any aspect of the natural environment and/or education for sustainability

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and/or research into any aspect of the natural environment; and

- (v) the development, construction, use, operation, maintenance and promotion of land or premises used to further education, information provision and/or research in respect of education for sustainability and conservation of the natural environment; and
  - (e) the acquisition and restoration of environmentally sensitive land.
- 3.2 The Trustee may apply capital as well as income of the Trust for the objects referred to in this clause.

## 4 Control of the Trust

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- 4.1 To ensure that the Trust is controlled and administered by persons who because of their tenure of some public office or position or some activity in the community may be expected to have a high degree of responsibility to the public in exercising that control or administration, the Trustee must be a company in relation to which the following provisions apply:
- (a) the majority of its Directors must be Qualified Persons;
  - (b) the number of Directors for the time being in office must not be less than three; and
  - (c) if the number of Directors in office falls below three the Trustee may not act in the affairs of the Trust until that number is filled by the election or appointment of further Directors.
- 4.2 The elected council of the Ongoing Settlor has the sole power to determine, appoint and remove the Directors of the Trustee.
- 4.3 Pittwater Environmental Foundation is the first Trustee of the Trust.

## 5 Trustee

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- 5.1 The Trustee may retire on not less than one month's written notice to the Ongoing Settlor.
- 5.2 If the Trustee defaults in the observance or performance of any of its obligations or duties under this Deed, the Ongoing Settlor may by a written notice to the Trustee remove the Trustee from office.
- 5.3 The Ongoing Settlor must use its reasonable endeavours to ensure that if the Trustee retires or is removed, a successor Trustee agrees to become Trustee with effect from such retirement or removal becoming effective.
- 5.4 Any successor Trustee must execute a deed by which it covenants to be bound by this Deed as if it had been originally party to it.

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- 5.5 When it retires or is removed, the outgoing Trustee is released from all obligations in relation to the Trust arising after the time it retires or is removed. The outgoing Trustee must execute and deliver any documents and do every other thing, which is necessary or desirable to effect the appointment of the successor Trustee.
- 5.6 The Ongoing Settlor and its delegates and the Trustee are bound by the Pittwater Council Code of Conduct and must act honestly and exercise a reasonable degree of care and diligence.

## 6 Investments

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- 6.1 The Trust Property may be invested solely in or on any investments or securities authorised by the law for the time being of the Commonwealth of Australia or any Australian State or Territory for the investment of trust money with power to vary or transpose those investments or securities from time to time and at any time.
- 6.2 Except for any investment or security in accordance with clause 6.1 no part of the capital or income of the Trust may be lent to or deposited with any person.

## 7 Powers of the Trustee

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- 7.1 In addition to the powers conferred on the Trustee by law or which are otherwise conferred on it by this Deed, the Trustee has, subject always to clause 6 and 8, the following powers and discretions:
- (a) to solicit donations, gifts, bequests and other forms of financial assistance to, or for the benefit of, the objects described in clause 3.1, including by conducting fundraising initiatives and participating in workplace giving without derogating from the generality of the objects described in clause 3.1;
  - (b) to accumulate any unpaid or unapplied income of the Trust by investing it and the resulting income and by holding the accumulations in augmentation of and on the same trusts and conditions as are applicable to capital;
  - (c) to exercise all rights and privileges and perform all duties pertaining to any bonds, shares, stock or debentures for the time being forming part of the Trust with liberty to assent to any arrangements modifying those rights, privileges or duties;
  - (d) to agree to any scheme or arrangement for the reconstruction of or the increase or reduction of the capital of any company and for any such purpose to deposit, surrender and exchange any such shares or stock or the title to them and to pay any calls or contributions or other necessary expenses in connection with any shares, stock or the title to them;
  - (e) if at any time the Trust Property comprises real property or any interest in real property:

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- (i) to manage, use and let it or any part of it;
  - (ii) to erect, pull down, rebuild and repair buildings and erections;
  - (iii) to carry out improvements of any nature;
  - (iv) to make allowances to and arrangement with tenants;
  - (v) to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it; or
  - (vi) generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss;
- (f) to retain any property donated to the Trust without considering the question of sale, calling in or conversion for as long as the Trustee thinks fit;
  - (g) to commence and carry out legal proceedings of any kind and in any court to enforce a contract entered into by the Trustee and to recover damages for breach of such a contract;
  - (h) to cancel, terminate or accept surrenders of leases, to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of a property, to sue for and recover rent and damages for breach of a lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release any such actions or suits when expedient;
  - (i) to repair, renovate, decorate and maintain chattels personal or land including fittings, fixtures, furnishings, furniture and equipment and grounds;
  - (j) to employ, engage or appoint any secretary, manager, solicitor, accountant or agent or any other person, to transact any business required to be done under the trusts established by this Deed, including the receipt or payment of money and the acquisition of property of any kind on behalf of the Trustee, and the Trustee may decide the amount of the remuneration and expenses to be paid to any such person;
  - (k) to acquire any investment on terms that require the investment to be paid for by more than one instalment or that the instalments or the residue of purchase money bear interest as the Trustee thinks fit;
  - (l) to raise money which the Trustee thinks expedient for any purpose in relation to the execution of the trusts and powers conferred on the Trustee by this Deed with or without security or by mortgaging or charging with or without power of sale any part of the Trust;

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- (m) to pay out of the capital or income of the Trust the costs of and incidental to the establishment of the Trust and all expenses and outgoings that may be incurred in relation to the trusts of this Deed including all administration expenses;
  - (n) to invite persons to make gifts to the Trust and to refuse any gift of property where the Trustee reasonably considers that any expenses associated with or likely to arise in relation to the gift of property would cause the gift of property to be onerous or uneconomic to maintain;
  - (o) to make a gift to an Approved Institution for a specific purpose as identified in the relevant provisions of Subdivision 30-B of the Act, and to provide the money, property or benefit to or for the Approved Institution only for the specified purpose;
  - (p) to conduct activities for the raising of funds from the public, pay reasonable expenses relating to the conducting of those activities, and to apply the net proceeds pursuant to the Objects;
  - (q) to take and act on the opinion of any counsel or solicitor practising in the Supreme Court of any Australian State or Territory whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts of this Deed without being liable to any one in respect of any act done or not done by it in accordance with that opinion, but this clause does not oblige the Trustee to act in accordance with any such opinion nor prohibit the Trustee from applying to any court as it thinks fit;
  - (r) to do any act or thing which in the opinion of the Trustee is necessary for the proper and efficient management and development of any property forming part of the Trust; and
  - (s) to carry out any of the foregoing powers by or through an agent and to appoint and authorise the agent to carry out all or any of the foregoing powers.
  - (t) to establish and maintain commercial contracts, fund raising schemes, appropriate sponsorships and other arrangements for the purpose of the above objects.

## 8 Public Fund

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- 8.1 All other provisions of this Deed are subject to this clause 8.
- 8.2 The Trustee must establish and maintain a public fund to be called “**The Pittwater Environmental Foundation Fund**” (“**the Fund**”) for the specific purpose of supporting the Objects set out in clause 3 of this Deed. The Public Fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the Act.



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- 8.3 The Fund must operate in accordance with the following rules:
- (a) The purpose of the Fund is to support the Objects;
  - (b) Members of the public are to be invited to make gifts of money or property to the Fund for the attainment of the Objects;
  - (c) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Fund;
  - (d) A separate bank account is to be opened to deposit money donated to the Fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the Trust;
  - (e) Receipts are to be issued in the name of the Fund and proper accounting records and procedures are to be kept and used for the Fund;
  - (f) The Fund will be operated on a not-for-profit basis; and
  - (g) A committee of management of no fewer than three persons will administer the Fund. The committee will be appointed by the Trustees. A majority of the members of the committee are required to be “Responsible Persons” as defined by the Guidelines to the Register of Environmental Organisations.
- 8.4 The Trustee agrees to comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the Fund are only used for its principal purpose.
- 8.5 The Trustee must inform the Commonwealth Department of the Environment and Heritage as soon as possible if:
- (a) there is any change to the name of the Trust or the Fund; or
  - (b) there is any change to the membership of the management committee of the Fund; or
  - (c) there has been any departure from the model rules for public funds located in the Guidelines to the Register of Environmental Organisations.
- 8.6 Notwithstanding any other provision in this Deed, in the case of the winding-up of the Fund, any surplus assets are to be transferred to another fund with similar objectives that is on the Register of Environmental Organisations.

## 9 Non-profit

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- 9.1 The income and property of the Trust shall be used and applied solely in promotion of its Objects and no portion shall be distributed, paid or transferred directly or indirectly to the Trustee except as bona fide compensation for services rendered or expenses incurred on behalf of the Trust.

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- 9.2 Any allocation of funds or property by the Trust to other persons or organisations will be made in accordance with the Objects and will not be influenced by the preference of the donor of those funds or property.

## 10 Expenses

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- 10.1 The Trustee is entitled to reimbursement of all expenses in connection with the administration of the Trust, and those expenses may be charged against the income of the Trust. If the income of the Trust is insufficient for that purpose, then to the extent of such insufficiency such expenses will be charged against the capital of the Trust or so much of it as may be required to meet the shortfall.

## 11 Indemnity of Trustee

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- 11.1 The Trustee is indemnified against all liabilities incurred by it through any act or omission in the exercise or bona fide intended or purported exercise of the powers, duties and discretions under this Deed and has a lien on the Trust for that indemnity.
- 11.2 Except where due to the Trustee's own dishonesty or wilfully or reckless failure or knowingly being a party to a breach of trust, the Trustee is not liable for any:
- (a) act or default done or omitted to be done in the exercise or bona fide intended or purported exercise of those powers, duties and discretions; or
  - (b) loss or expenses incurred by the Trust through the insufficiency of any security in or on which any of the money of the Trust are invested; or
  - (c) loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom money or securities are deposited; or
  - (d) other loss, damage or misfortune whatsoever.
- 11.3 References in this clause to the Trustee include a Director and delegates appointed by it under this Deed.

## 12 Accounts and audit

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- 12.1 The Trustee must:
- (a) cause proper accounts to be kept by the person appointed by the Trustee for the purpose with respect to all sums of money received and expended by the Trust, the matters in respect of which the receipt and expenditure takes place and the assets and liabilities of the Trust; and
  - (b) cause a balance sheet and statement of income and expenditure to be drawn up as at 30 June each year and make available to

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the person appointed by the Trustee for that purpose such documents and information as that person requires to fulfil this task.

- 12.2 The accounts must be kept at the place which the Trustee determines and be open to inspection by any Director.
- 12.3 Statistical information requested by the Department on donations to the Fund will be provided within four months of the end of the financial year or as required from time to time by the Department or under the Act.
- 12.4 An audited financial statement for the Trust (separately showing details of the Fund) will be supplied with the annual statistical return. The statement will provide information on the expenditure of monies from the Trust and the management of assets of the Trust, in all cases separately identifying these details for the Fund.

## 13 Power of alteration

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- 13.1 The Trustee may by deed alter, amend, add to, delete or replace any of the trusts, powers and provisions of this Deed, including this clause, in any manner provided that:
- (a) no part of the Trust becomes subject to any trusts other than trusts for public charitable purposes; and
  - (b) counsel or solicitor referred to in clause 7(q) certifies that in counsel's opinion the alterations, amendments, additions, deletions or replacements are within this power.

## 14 Winding up of Trust

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- 14.1 If on the winding up or dissolution of the Trust there remains after satisfaction of all its debts and liabilities any property, the property must be given or transferred to an Approved Institution which:
- (a) is maintained exclusively for or covenants to use the property exclusively for charitable purposes; and
  - (b) prohibits the distribution of its income and property among its beneficiaries or members to an extent at least as great as is imposed on the Trust.

The Approved Institution is to be determined by the Trustee at or before the time of dissolution or, failing such a determination, by a court of law.

- 14.2 An Approved Institution referred to in clause 14.1 includes any fund, authority or institution of which the Settlor, Ongoing Settlor or a Director is the settlor or a trustee or director or in respect of which the Settlor, Ongoing Settlor or a Director is a director of its trustee.

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## 15 Endorsement of the Trust as a Deductible Gift Recipient

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- 15.1 If the Trust is endorsed by the Commissioner of Taxation as a Deductible Gift Recipient:
- (a) the Trustee must not act or fail to act in such a way as to cause the Commissioner of Taxation to revoke the endorsement of the Trustee as a Deductible Gift Recipient under Division 30-BA of the Act;
  - (b) the Trustee must advise the Commissioner of Taxation in writing before, or as soon as practicable after, the Trust ceases to be entitled to be endorsed as a Deductible Gift Recipient; and
  - (c) in the event that the Commissioner of Taxation revokes that endorsement all moneys, properties and benefits held by the Trustee as Trustee of the Trust must be transferred to an Approved Institution.

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## 16 Advisory Committees

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- 16.1 The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of Advisory Committees.
- 16.2 Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- 16.3 The Trustee may specify:
- (a) the manner in which proceedings of each Advisory Committee are to be conducted;
  - (b) the matters which the Advisory Committee must have regard to in carrying out its functions; and
  - (c) any other matters concerning the Advisory Committee or its functions that the Trustee decides.

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## 17 Patrons

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

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## 18 Governing law

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This Deed is governed by the law in force in New South Wales.

**EXECUTED as a deed**

Execution Page

**SIGNED SEALED AND DELIVERED** )  
 for and on behalf of **THE COUNCIL OF** )  
**PITTWATER** by its duly authorised )  
 representative in the presence of: )  
 )  
 ..... )  
 Signature of witness )  
 )  
 ..... )  
 Name of witness (block letters) )  
 )  
 ..... )  
 Occupation of witness (block letters)

.....  
 Signature of Mark Ferguson  
 GENERAL MANAGER

**EXECUTED by PITTWATER** )  
**ENVIRONMENTAL FOUNDATION** in )  
 accordance with section 127(1) of the )  
 Corporations Act 2001 (Cth) by authority )  
 of its directors )  
 )  
 ..... )  
 Signature of director )  
 )  
 ..... )  
 Name of Director (block letters) )  
 )

.....  
 Signature of director/secretary\*  
 .....  
 Name of director/secretary \* (block letters)

\*delete whichever is inapplicable

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**Dated**

**2006**

Charitable Trust Deed  
Pittwater Environmental  
Trust

**The Council of Pittwater  
("Settlor")**

**Pittwater Environmental  
Foundation  
("Trustee")**