



**FOUNDATION
FOR
NATIONAL PARKS AND WILDLIFE**

- . CONSTITUTION**
- . DEED OF SETTLEMENT**

2ND FEBRUARY 2000

FOUNDATION FOR NATIONAL PARKS AND WILDLIFE LIMITED

ACN 000 744 516

CORPORATIONS LAW

CONSTITUTION

FOUNDATION FOR NATIONAL PARKS AND WILDLIFE
ACN 000 744 516

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CONSTITUTION

FOUNDATION FOR NATIONAL PARKS AND WILDLIFE LIMITED ACN 000 744 516

1. PRELIMINARY

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

Act means the Income Tax Assessment Act 1997 (Cth) as amended from time to time

Annual Subscription means the amount determined by the Board from time to time;

Board means the Board of Directors of the Foundation from time to time;

Chairman means the chairman of the Board from time to time and shall be known and called the President of the Foundation;

Constitution means this constitution;

Corporate Representative means a natural person appointed by a Governor which is a body corporate to be that body's representative at specified meetings of Governors of the Foundation;

Corporate Representative Certificate means a certificate evidencing the appointment of a Corporate Representative, that certificate complying with this Constitution;

Directors means the Directors of the Foundation in office for the time being, or a quorum of the Directors present at a Board meeting;

DEST means the Commonwealth Department of the Environment, Sport and Territories or its successor in maintaining the Register of Environmental Organisations from time to time;

Eligible Alternate Directors means only those alternate Directors who an appointor has notified the Foundation in writing must receive, either generally or in particular circumstances, notification of the meetings of Directors and/or the Governors;

Entrance Fee means the amount (if any) determined by the Board from time to time which is payable by a Governor upon his election as such;

Foundation means Foundation for National Parks and Wildlife (ACN 000 744 516)

FNPW Gift Fund means the gift fund established under paragraph 2(b) of this Constitution;

FNPW Gift Fund Management Committee means the management committee appointed pursuant to clause 25;

Governor means any person entered in the Register as a member for the time being of the Foundation;

Governor Present means a Governor present at any Meeting of Governors, in person or in the case of a body corporate, by its Corporate Representative;

Governorship means membership of the Foundation;

Law means the Corporations Law as it applies to the Foundation for the time being;

Life Governor means any person appointed as a Life Governor by the Board under clause 8.4.

Managing Director means the managing Director appointed pursuant to clause 19.1;

Meeting of Governors means a Meeting of Governors duly called and constituted in accordance with the Constitution and any adjourned holding of it;

Officer is defined in section 82A of the Law;

Ordinary Resolution means a resolution of a Meeting of Governors where more than one half of the total votes cast on the resolution are in favour of the resolution;

Patron means a person appointed as patron pursuant to Clause 23;

Purposes of the Trusts is defined in the deed establishing the FNPW Gift Fund.

Register means the Register of members of the Foundation kept under the Law and includes any branch Register;

Register of Environmental Organisations means the register of environmental organisations maintained by the secretary of DEST pursuant to Subdivision 30-E of the Income Tax Assessment Act 1997 (Cth);

Registered Office means the Registered Office for the time being of the Foundation;

Seal means the common seal of the Foundation and includes any official seal of the Foundation;

Secretary means any person appointed to perform the duties of secretary of the Foundation and includes an assistant secretary or any person appointed to act as the secretary or assistant secretary temporarily;

Special Resolution means a resolution of a Meeting of Governors where at least 75% of the votes cast on the resolution are in favour of the resolution and which is passed in accordance with sections 249H and 249L of the Law.

1.2 Corporations Law definitions

In the construction of this Constitution:

- (a) headings are disregarded;
- (b) "natural environment" shall include without limitation all species of flora and fauna.
- (c) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (d) singular includes plural and vice versa and words importing any gender include all other genders;
- (e) except for the definitions in the preceding Clause, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law;
- (f) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

1.3 Listing Rules Definitions

The operation of each of the sub-sections of the Law which are defined as replaceable rules are displaced by this Constitution and do not apply to the Foundation.

2. OBJECTS

The objects for which the Foundation is established are:

- (a) to grow appreciation of and raise funds for the benefit of the natural and cultural environment and heritage of Australia by:
 - (i) co-operatively working with the NSW National Parks & Wildlife Service or other similar bodies to identify projects which benefit

the conservation of the natural and cultural heritage of Australia including, without limitation, plants and animals, national parks, state recreation areas, historic sites, nature reserves, private and other government land;

- (ii) disseminating information to the public;
 - (iii) encouraging private gifts of real and personal property including land for conservation;
 - (iv) providing funds or property to any person by grant, loan, gift or otherwise for the benefit of or in connection with the natural and cultural heritage of Australia.
- (b) to establish and maintain a public fund to be called the "FNPW Gift Fund". The public fund is established by Deed of Settlement made on 2 February 1999. The Foundation will act as trustee for the FNPW Gift Fund. The Foundation will ensure that the FNPW Gift Fund complies with the requirements of Subdivision 30-E of the Act; and
- (c) solely for the above purposes, to do anything allowed by the operation of Section 124 of the Law (whether or not in respect of any power contained in Clause 2(a)).

3. LIMITED LIABILITY

3.1 Governors' Liability

The liability of the Governors is limited.

3.2 Governors' Contributions

Every Governor of the Foundation undertakes to contribute to the assets of the Foundation if it is wound up while he is a Governor, or within one year after he ceases to be a Governor, for:

- (a) the payment of the debts and liabilities of the Foundation, contracted before he ceased to be a Governor;
- (b) the expenses of winding up the Foundation; and
- (c) the adjustment of the rights of the contributories among themselves.

3.3 Amount of Governors' Contributions

The amount of the contribution under Clause 3.2 must not exceed \$20.00 in any circumstances.

4. USE OF THE PROPERTY BY THE FOUNDATION

4.1 Conduit Policy

Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons will be made in accordance with the established objectives of the Foundation and not be influenced by the expressed preference or interest of a particular donor to the Foundation.

4.2 Application of Foundation Property

All income and property of the Foundation must be applied for the objects of the Foundation as set out in Clause 2. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to Governors of the Foundation.

4.3 Payments of Foundation Expenses

Nothing in Clause 4.2 prevents the payment in good faith of reasonable and proper:

- (a) remuneration to any of the officers or servants of the Foundation or to any Governor in return for any services actually rendered by them to the Foundation;
- (b) interest on money borrowed from any Governor of the Foundation for any of the purposes of the Foundation (provided the interest rate does not exceed the rate charged by the Foundation's bank on similar borrowings);
- (c) rent for premises let by any Governor to the Foundation; or
- (d) payment for any goods supplied to the Foundation by any Governor.

4.4 Remuneration Payments

No remuneration or other benefit (including, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes or profit sharing schemes) ("**remuneration**") may be paid or given by the Foundation to any Director except:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director where the amount does not exceed an amount previously approved by a resolution of the Directors;
- (b) for any service rendered to the Foundation in a professional or technical capacity, where the terms of service are on reasonable

commercial terms and have been previously approved by a resolution of the Directors; or

- (c) as an employee of the Foundation, where the terms of employment are on reasonable commercial terms and have been previously approved by a resolution of the Directors.

4.5 Conflict of Interest Resolution

At any meeting of the Directors at which a resolution is put for approval of a payment to be made pursuant to Clause 4.4 ("**conflict of interest resolution**") or at any general meeting considering a conflict of interest resolution, the Director who is the object of the conflict of interest resolution and any other Director or Governor who is related to that Director is not entitled to:

- (a) be heard in discussion on the conflict of interest resolution;
- (b) propose or second the conflict of interest resolution;
- (c) vote on the conflict of interest resolution;
- (d) be present at the meeting when the conflict of interest resolution is put to the vote.

4.6 Ratification of a Conflict of Interest Resolution

At the next general meeting of the Foundation after the passing by the Directors of a conflict of interest resolution, the resolution as passed by the Directors must be included on the agenda of the general meeting for the purpose of ratification.

4.7 Conflict of Interest Resolution Not Ratified

If a conflict of interest resolution is not ratified at the subsequent general meeting, the Foundation must immediately cease paying or giving to the Director the remuneration or benefit. The Director is not required to refund to the Foundation any payment or benefit received between the date the conflict of interest resolution was passed by the Directors and the date ratification by the general meeting is rejected.

5. USE OF PROPERTY ON WINDING UP

5.1 Surplus

If, on the winding up or dissolution of the Foundation, after the satisfaction of all its debts and liabilities, any property remains ("**surplus**"), the surplus must not be paid or distributed among the Governors of the Foundation.

5.2 Transfer of Surplus

The surplus must be given or transferred to some other institutions, bodies, entities, or organisations ("Transferee Entity"):

- (a) having objects similar to the objects of the Foundation and which is listed on the Register of Environmental Organisations; and
- (b) whose constitution prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Foundation under or by virtue of Clauses 4 and 5.

5.3 Choice of Transferee

The Transferee Entity under clause 5.2 will be chosen by the Directors (as the Directors were constituted at the commencement of the winding up). If the Directors do not choose a Transferee Entity within a reasonable time, any member at the commencement of the winding up or the liquidator may apply to the Supreme Court of New South Wales to choose the Transferee Entity.

6. FUNDRAISING AUTHORITY

If the Foundation holds an authority to fundraise from the Chief Secretary's Department of New South Wales, no addition, alteration or amendment may be made to or in Clauses 4 or 5 without the prior written approval of the Minister responsible for the administration of the Charitable Fundraising Act 1991.

7. REGISTRATION AS AN ENVIRONMENTAL ORGANISATION

7.1 If the Foundation is at any time Registered upon the Register of Environmental Organisations:

- (a) any changes to:
 - (i) the composition of the Board
 - (ii) the composition of the FNPW Gift Fund Management Committee; or
 - (iii) this Constitution,

must be notified to the Secretary of DEST within a reasonable time of such changes being made.

- 7.2 The Directors will give to the Secretary of DEST, within a reasonable period after the end of each income year, statistical information about gifts made to the Gift Fund in accordance with section 30-270(4) of the Act.
- 7.3 The Directors will comply with any rules that the Treasurer and the Minister for Environment, Sport and Territories make to ensure that gifts made to the FNPW Gift Fund are used only for the Purposes of the Trusts.

8. GOVERNORS

8.1 General

The number of Governors is declared to be a minimum of 50 and a maximum of ~~75~~ and will consist of:

- ¹⁵⁰ (Resolution passed by members on 18 May 2011 and adopted retrospectively as at 2 February 2000. Notice of resolution at end of document.)
- (a) members of the Foundation as at the date this Constitution is adopted as the Constitution of the Foundation; and
 - (b) all other persons admitted to membership in accordance with this Constitution.

8.2 Classes of Governors

Governors of the Foundation will be divided into 2 classes:

- (a) Governors; and
- (b) Life Governors.

8.3 Governors

Governors are those persons other than Life Governors who apply to become a Governor and are admitted to become Governors.

8.4 Life Governors

The only Life Governors will be persons admitted from time to time by the Directors as Life Governors of the Foundation.

8.5 Governorship qualifications

A person cannot become a Governor of the Foundation unless the person:

- (a) applies to become a Governor in the form and manner prescribed by the Board from time to time;
- (b) is proposed for Governorship by an existing Governor or a member of the Board who will vouch for the person's fitness; and
- (c) is over 18 years of age.

8.6 Admitting Governors

No applicant will be admitted to Governorship and have their name entered in the Register unless the applicant agrees in writing to be bound by this Constitution and has paid the Entrance Fee. No Entrance Fee is payable by the Governors that are members of the Foundation as at the date this Constitution is adopted as the Constitution of the Foundation.

8.7 Discretion to admit

The Board may refuse to admit any person as a Governor. If the Board refuses to admit a person as a Governor, the Board is not obliged to give reasons for so refusing.

8.8 Delegation

The Directors may at any time delegate, on such terms as they think fit, to such persons as they may determine, the power to:

- (a) admit persons as Governors;
- (b) re-admit such persons;
- (c) refuse applications for Governorship.

9. FEES TO BE PAID BY GOVERNORS

9.1 Entrance Fee

The Entrance Fee payable by;

- (a) a Governor is such amount including the first Annual Subscription as is determined by the Board from time to time; and
- (b) a Life Governor is nil.

9.2 Annual Subscription

The Annual Subscription payable by:

- (a) a Governor is such amount and subject to such conditions as is determined by the Board from time to time; and
- (b) a Life Governor is nil.

9.3 Waiver

The Board may at any time fix at different rates, suspend or waive payment of the Entrance Fee or Annual Subscription in favour of any Governor or Governors.

9.4 Annual Subscription in arrears

If any Governor fails to pay his or her Annual Subscription within 1 month of the date determined by the Directors, that Governor is not entitled, while the subscription remains due, to:

- (a) nominate a Governor as a candidate for election to the office of Director;
- (b) vote in any ballot;
- (c) receive notices of meetings of Governors;
- (d) attend, be counted in forming a quorum for, exercise any vote at, or be a proxy or Corporate Representative for any Governor, for any Meeting of Governors.

10. RIGHTS OF GOVERNORS

10.1 Governors

Governors are entitled to all the rights of Governors under this Constitution.

10.2 No joint Governors

Joint Governorships of the Foundation are not permitted.

11. CESSATION OF GOVERNORSHIP

11.1 Cessation

A person ceases to be a Governor of the Foundation if the person:

- (a) dies;
- (b) resigns that Governorship;
- (c) fails to pay that person's annual subscription within 1 month from notice in writing from the Board or the Secretary;
- (d) is expelled from the Foundation; or
- (e) is a person whose actions in the opinion of the Directors brings the Foundation into serious disrepute.

11.2 Appointment as Governor not transferable

A right, privilege or obligation which a person has by reason of being a Governor of the Foundation:

- (a) is not capable of being transferred or transmitted to another person;
and
- (b) terminates upon cessation of the person's Governorship;

11.3 Resignation

A Governor of the Foundation may not resign that Governorship except in accordance with this Clause. A Governor of the Foundation who has paid all amounts payable by the Governor to the Foundation in respect of the Governor's Governorship may resign that Governorship by first giving notice in writing to the Secretary of the Governor's intention to resign. Once the period of notice (if any) specified in the document expires, the Governor ceases to be a Governor.

12. DISCIPLINE OF GOVERNORS

12.1 Initial resolution of Directors

Where the Directors are of the opinion that a Governor of the Foundation:

- (a) has refused or neglected to comply with a provision or provisions of the Constitution; or
- (b) has acted in a manner prejudicial to the reputation or interests of the Foundation,

the Directors may, by Ordinary Resolution ("**Initial Resolution**"):

- (i) reprimand the Governor;
- (ii) suspend the Governor from governorship of the Foundation for a specified period; or
- (iii) expel the Governor from the Foundation.

12.2 Suspended operation

An initial resolution is of no effect unless it is confirmed at a meeting of the Directors in accordance with the following Clauses. For that purpose, the meeting of Directors must be held not earlier than 7 days and not later than 21 days after service on the Governor of a notice under the Clause 12.3.

12.3 Notice to Governor

The Secretary must, as soon as practicable following the passing of the Initial Resolution, cause a notice in writing to be served on the Governor. The notice must:

- (a) set out the Initial Resolution of the Directors and the grounds on which it is based;
- (b) state that the Governor may personally address the Directors in relation to the initial resolution at a meeting of the Directors to be held not earlier than 7 days and not later than 21 days after service of the notice;
- (c) state the date, place and time of that meeting of the Directors; and
- (d) inform the Governor that the Governor may submit to the Directors at or prior to the date of that meeting written representations relating to that resolution and speak to the representation.

12.4 Confirming resolution of Directors

At a meeting of the Directors held as referred to in the preceding Clause, the Directors must:

- (a) give to the Governor an opportunity to speak to the written representations;
- (b) give due consideration to any written representations submitted to the Directors by the Governor at or prior to the meeting; and
- (c) by Ordinary Resolution ("**Confirming Resolution**") confirm, vary or revoke the initial resolution.

12.5 Immediate or suspended effect

The Confirming Resolution may take effect immediately, after any period of time or only on conditions specified in the Confirming Resolution.

12.6 Right of appeal

There is no right of appeal against the Confirming Resolution of the Directors.

12.7 Notice to a Governor

The Secretary must, within 7 days of the passing of the Confirming Resolution, by notice in writing, inform the Governor of the fact and that there is no right of appeal under the Constitution.

13. REGISTER OF GOVERNORS

The Secretary will maintain at the Foundation's offices, a Register of Governors containing the following details of each Governor:

- (a) full name;

- (b) occupation;
- (c) residential and business address;
- (d) annual subscription (if any); and
- (e) date on which the entry of the Governor's name in the Register is made.

14. MEETINGS OF GOVERNORS

14.1 Calling of meetings

The Directors may call a Meeting of Governors.

14.2 Requisition of meetings

Except as provided in sections 249D, 249E and 249F of the Law, no Governor or Governors may call a Meeting of Governors.

14.3 Notice of meeting

Every notice of a Meeting of Governors must:

- (a) set out the place, date and time of meeting;
- (b) in the case of special business, state the general nature of the business;
- (c) if a Special Resolution is to be proposed, set out an intention to propose the Special Resolution and state the resolution;
- (d) in the case of an election of Directors, give the names of the candidates for election;
- (e) contain a statement setting out the following in relation to proxy voting:
 - (i) that the Governor has a right to appoint a proxy; and
 - (ii) whether or not a proxy needs to be a Governor of the Company.

14.4 Entitlement to notice

Notice of a Meeting of Governors must be given to;

- (a) each Governor, apart from any Governor who under this Constitution or by the terms of issue of any Governorship is not entitled to the notice;
- (b) the auditor; and

(c) each Director.

14.5 Notice period

Notice of a meeting of Governors must be given in accordance with section 249H of the Law.

14.6 Proxy Voting by Governors

A Governor may appoint a proxy to attend and vote at any meeting at which the Governor is entitled to attend and vote. To be valid, a proxy must be in writing and delivered to the place nominated by the Directors in the notice of meeting (or, if no place is nominated, the Registered Office) at least 48 hours before the scheduled commencement of the meeting. A proxy may be delivered by facsimile transmission.

14.7 Omission to give notice

The accidental omission to give notice of a Meeting of Governors to, or the non-receipt of any such notice by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

14.8 Consent to short notice

With the consent in writing of all the Governors of the Foundation for the time being entitled to vote at a Meeting of Governors, any Meeting of Governors may be called on short notice and in any manner they think fit and all provisions of this Constitution are modified accordingly.

14.9 Cancellation or postponement of meeting

The Directors may cancel or postpone the holding of any Meeting of Governors. If the meeting was called by requisitioning Governors or in response to a requisition by Governors, the Directors may only cancel or postpone the holding of it with the consent of a majority of the requisitioning Governors.

14.10 Notice of cancellation or postponement

The Directors may notify the Governors of a cancellation or postponement of a meeting by such means as they see fit. If any meeting is postponed for 28 days or more, then no less than 5 days' notice must be sent to the Governors of the postponed meeting. It is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

15. REPRESENTATION AT MEETINGS

15.1 Persons entitled to attend

The right to attend a Meeting of Governors is as follows:

- (a) each Governor may attend, apart from any Governor who under this Constitution or by the terms of issue of any governorship is not entitled to attend;
- (b) each Director, Secretary and auditor may attend;
- (c) each person, whether a Governor or not, who is a proxy, Corporate Representative or attorney of a Governor may attend;
- (d) other persons may attend only with leave of the meeting or its chairman and then only while the leave is on foot and in accordance with the terms of the leave.

The right of a person to attend is subject to the powers of the chairman of the meeting, both at Law and under the Constitution.

16. PROCEEDINGS AT MEETINGS OF GOVERNORS

16.1 Quorum

No business may be transacted at any Meeting of Governors unless a quorum of Governors is present at the time when the meeting proceeds to business. Except as provided in Clause 16.2, 10 Governors present are a quorum.

16.2 Failure of quorum

If a quorum is not present within 15 minutes from the time appointed for a Meeting of Governors:

- (a) where the meeting was called by, or in response to, the requisition of Governors made under the Law, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the Directors determine.

If no determination of an adjourned meeting is made by the Directors, the meeting stands adjourned to the same day in the second week following, at the same time and place. If at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, 3 Governors constitute a quorum, or where 3 Governors are not present, the meeting is dissolved.

16.3 Business of annual general meeting

The business of an annual general meeting is:

- (a) to receive the Foundation's financial statements, the Board's statement and report and the auditor's report on the financial statements;
- (b) to elect Directors in the place of those retiring; and
- (c) to transact any other business which under this Constitution or the Law ought to be transacted at an annual general meeting.

16.4 Report on Foundation's activities

The Board must at each general meeting in addition to the matters in Clause 16.3, submit to the Governors a report on the activities of the Foundation in the period since the previous general meeting.

16.5 Frequency of Annual General Meeting

The Board must convene a general meeting at least once every calendar year. At least one general meeting must be held in every period of 15 consecutive months within ~~eight weeks~~ of the conclusion of each financial year.

five months (Resolution passed by members on 21 May 2001. Notice of resolution at end of document.)

16.6 Special business

No special business may be transacted at any Meeting of Governors other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Law to be transacted at such meeting.

16.7 Chairman of meeting

The Chairman, or in the Chairman's absence the deputy chairman of the Directors (if any), is entitled to take the chair at each Meeting of Governors. If neither of those persons is present at any Meeting of Governors within 15 minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the Governors present must elect a person, whether a Governor or not, to be chairman of the meeting.

16.8 Passing the chair

If the chairman of a Meeting of Governors is unwilling or unable to be the chairman for any part of the business of the meeting:

- (a) that chairman may withdraw as chairman for that part of the business and may nominate any person who would be entitled under the preceding Clause to chair the meeting for that part of the business; and

- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairman. The prior chairman is then entitled to resume as the chairman of the meeting.

16.9 Responsibilities of chairman

The chairman of a Meeting of Governors is responsible for the general conduct of the meeting and to ascertain the sense of the meeting concerning any item of business which is properly before the meeting. For these purposes the chairman of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting;
- (b) make, vary or rescind rulings;
- (c) prescribe, vary or revoke procedures;
- (d) in addition to other powers to adjourn, adjourn the meeting, or any item of business of the meeting, without the consent of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

16.10 Admission to meetings

The chairman of a Meeting of Governors may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the chairman to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not entitled under the Constitution to attend the meeting.

16.11 Adjournment of meeting

The chairman of a Meeting of Governors at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chairman determines.

16.12 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting. However if any meeting is adjourned for 10 business days or more, notice of the adjourned meeting must be given.

17. VOTING AT MEETINGS OF GOVERNORS

17.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any Governorship, each natural person who is present at a Meeting of Governors may vote if he or she is a Governor or an attorney or Corporate Representative of a Governor. If any Governor's annual subscription is more than 1 month in arrears at the date of the meeting, that Governor is not entitled to vote at any meetings of Governors.

17.2 Number of votes

Each Governor who is, under the preceding Clause, entitled to vote has:

- (a) on a show of hands (or on the voices) only one vote; and
- (b) on a poll, one vote.

17.3 Voting restrictions

If permitted or contemplated by the Law or this Constitution, the Directors may direct that particular persons (whether specified by name or description) do not cast a vote on particular business of a meeting. In relation to that business, votes cast by the prohibited persons are to be disregarded.

17.4 Method of voting

Every resolution put to a vote at a Meeting of Governors (except where there is an election of Directors by ballot) must be determined by the voices or a show of hands (as determined by the chairman of the meeting) unless a poll is properly demanded either before or on the declaration of the result of the voices or the show of hands.

17.5 Demand for poll

A demand for a poll under the preceding Clause may be made by:

- (a) the chairman of the meeting; or
- (b) at least 5 persons present having the right to vote at the meeting.

17.6 Declaring result of vote on show of hands

In respect of any Meeting of Governors (unless a poll is so demanded):

- (a) a declaration by the chairman of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority; and
- (b) an entry made in the book containing the minutes of proceedings of the Foundation,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

17.7 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chairman of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on the election of a chairman or on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

17.8 Casting vote of chairman

If, on a show of hands or on a poll, the votes are equal the chairman of the meeting has a casting vote in addition to the deliberative vote, if any, of the chairman.

17.9 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered. Every vote allowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the Register held in the Registered Office must be adopted and acted on as the voting roll.

17.10 Ruling on votes

The chairman of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairman is final and conclusive.

18. APPOINTMENT AND REMOVAL OF BOARD OF DIRECTORS

18.1 Board of Directors

The Board comprises at least 5 and not more than 15 Directors or such other number as the Board shall determine from time to time. Subject to 18.6, all Directors other than casual appointees are appointed until the conclusion of the first annual general meeting following the expiration of 3 years from their appointment.

18.2 Directors qualification

A Director must be a Governor or be admitted as a Governor within 28 days of his or her election as a Director.

18.3 Initial Directors

The Directors holding office at the date of adoption of this Constitution continue in office subject to this Constitution, with their retirement determined under Clause 18.5 or Clause 18.6.

18.4 Casual appointment

The Directors may at any time appoint any person as a Director, either to fill a casual vacancy or as an addition to the Directors. Until that person is re-elected at a Meeting of Governors, that Director is a "casual appointee".

18.5 Retirement of casual appointee

A casual appointee, following his or her appointment by the Directors, holds office only until the conclusion of the next annual general Meeting of Governors and is then eligible for re-election. A casual appointee is not taken into account in determining the number of Directors, if any, who are to retire by rotation at such meeting.

18.6 Retirement by rotation

At the conclusion of every annual general meeting, one-third of the Directors (rounded up to the next integer) must retire from office. The Directors who have served longest since they were last elected must retire first. If there are equally serving Directors, those equally serving Directors may, among

themselves, agree who is to retire by rotation. If those Directors are unable to decide, the Directors to retire by rotation will be chosen by drawing lots.

18.7 Appointment at annual general meeting

Unless the Directors decide to reduce the number of Directors in office (such reduction to be effective from the conclusion of the next annual general meeting), the Foundation at any annual general meeting at which any Director retires may fill the vacated office by re-electing the same person or electing some other person. If there are fewer persons standing for election or re-election than vacancies, all persons are deemed to be elected without the need for an actual election.

18.8 Deemed re-appointment

If at any annual general meeting the vacated office is not filled, the retiring Director, if willing and not disqualified, is treated as having been re-elected. The retiring Director is not eligible for re-election if an Ordinary Resolution for the re-election of that Director is put and lost.

18.9 Candidates requiring nomination

No person is eligible for election to the office of Director at any Meeting of Governors unless duly nominated, except for:

- (a) a Director retiring by rotation;
- (b) a casual appointee; or
- (c) a Governor recommended by the Directors for election.

18.10 Valid nominations

Nominations must be made to the Secretary at the Registered Office. Nominations close at 5.00 p.m local time on the day which is 21 days before the date for the holding of the meeting. For a nomination to be valid:

- (a) the nomination must name the candidate and be signed by not less than 2 Governors;
- (b) the person nominated must consent to act if elected; and
- (c) the nomination and consent must be received before the close of nominations.

A consent is sufficient if the person signs a form of consent on the nomination paper. The Secretary may accept any other form of consent, whether or not accompanied by the nomination paper, that the Secretary deems satisfactory, and such acceptance is be final.

18.11 Resignation of Director

Any Director may retire from office by giving notice in writing to the Foundation of the Director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time. However the resignation must take effect within 3 months from the date of the giving of the notice.

18.12 Vacation of office

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Law or other provisions of this Constitution, the office of Director, is vacated automatically if the Director:

- (a) becomes mentally incapable or the Director's estate is liable to be dealt with in any way under the Law relating to mental health; or
- (b) is absent from more than 3 consecutive meetings of Directors without the prior leave of the Directors.

18.13 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:

- (a) to appoint Directors up to that minimum number;
- (b) to call a Meeting of Governors; or
- (c) in emergencies.

18.14 Power to appoint alternate Director

Each Director may at any time appoint any Governor approved for that purpose by a majority of his or her co-Directors to act as an alternate Director in the appointor's place.

18.15 Suspension of appointment

The appointor may vary, suspend, or terminate the appointment of any alternate.

18.16 Notice of appointment

Notice of each such appointment, suspension or termination must be made in writing to the alternate, signed by the appointor, and a copy served on the Foundation.

18.17 Termination of alternate's appointment

The appointment of an alternate Director is automatically terminated, if:

- (a) the alternate resigns such appointment;
- (b) the appointment of the alternate is terminated by the appointor;
- (c) a majority of the co-Directors of the appointor withdraw the approval of the person to act as an alternate;
- (d) the appointment is to act as alternate for 1 or more Directors and all of those named Directors have vacated office as Directors; or
- (e) on the happening of any event which, if the alternate were a Director, would cause the alternate to vacate the office of Director.

19. MANAGING DIRECTOR

19.1 Appointment of Managing Director

The Board may at any time:

- (a) appoint 1 or more of their body to be managing Director (or managing Directors) or to some other executive office of the Foundation;
- (b) define, limit and restrict that person's powers;
- (c) fix that person's remuneration, by the Foundation, and duties; and
- (d) subject to the provisions of any contract between that person and the Foundation, vary any of the powers so conferred.
- (e) remove that person from that office and appoint another (or others) in that person's place or places.

19.2 Acting Managing Director

If a Managing Director becomes at any time in any way through sickness, accident, infirmity or through extended leave incapable of acting as such, the Directors may appoint any other Director to act temporarily as Managing Director.

19.3 Remuneration of executive Directors

No Director (with the exception of the Managing Director) is entitled to any remuneration for services to the Foundation as a Director.

19.4 Expenses of Directors

Subject to the Memorandum, each Director is entitled to be paid expenses incurred by him in the course of his or her duties as a Director.

20. PROCEEDINGS OF DIRECTORS

20.1 Number of Board meetings

At least 6 Board meetings must be held in each financial year. At least 1 Board meeting must be held in every period of 3 consecutive months.

20.2 Mode of meeting

The Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The Directors may conduct their meetings by telephone or other form of communication without a Director being in the physical presence of another Director or Directors.

20.3 Quorum

A quorum of the Board comprises at least 5 Directors.

20.4 Chairman calling a meeting

The chairman of the Board may at any time call a meeting of the Directors to be held at such time and place as the chairman chooses. The meeting is not invalidated by reason only of lack of convenience if a quorum of Directors forms.

20.5 Secretary calling a meeting

The Secretary, upon the request of any other Director, must call a meeting of the Directors to be held at such time and place as is convenient to the Directors.

20.6 Notice of meeting

Notice of each meeting of the Directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all Eligible Directors.

20.7 Recipients of notice

For the purposes of the preceding Clause:

- (a) the “**Eligible Directors**” are all Directors and Eligible Alternate Directors for the time being and excluding those given leave of absence;
- (b) the accidental omission to give notice of any meeting of the Directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

20.8 Appointment of chairman

In the absence of the Chairman, the Directors may elect one of their number to be chairman of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title, “Chair” or “Chairman”. If:

- (a) no chairman is elected; or
- (b) at any meeting of the Directors the chairman is not present within 15 minutes of the time appointed for holding the meeting,

subject to the next Clause, the Directors present must choose one of their number to be chairman of such meeting.

20.9 Votes of Directors

Questions arising at any meeting of the Directors must be decided by a majority of votes cast. Each Director has one vote. A person who is an alternate Director is entitled (in addition to his or her own vote if a Director) to one vote on behalf of each Director whom the alternate Director represents (as an alternate Director at the meeting). The alternate Director may only vote if the Director is not personally present. If there is an equality of votes, provided more than three Directors present are competent to vote on the question at issue but not otherwise, the chairman has a second or casting vote.

20.10 Circular resolution of Directors

If a majority of Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms is treated as having been passed at a meeting of the Directors held on the day on which the document was signed. If the Directors sign the documents on different days, then a resolution is treated as having been passed on the day on which the document was last signed by a Director thereby constituting a majority in number of the Eligible Directors. A resolution is not treated as passed on that day if the document, by its terms, is said to take effect from an earlier date.

20.11 Signing of circular resolution

For the purposes of the preceding Clause:

- (a) the “**Eligible Directors**” are all Directors for the time being but excluding:
 - (i) all alternate Directors; and
 - (ii) those who, at a meeting of Directors, would not be entitled to vote on the resolution;
- (b) each Director, other than one not entitled to vote on the resolution, may sign the document;
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (d) each alternate Director may sign the document on behalf of each Director whom the alternate Director represents (appointor) if:
 - (i) the alternate Director reasonably believes that the appointor is unavailable to sign the document; and
 - (ii) the appointor has not suspended the appointment of the alternate Director.

An alternate Director may sign even if the available appointor could not have voted on the resolution. An alternate Director who represents more than 1 Director may sign as many times accordingly;

- (e) an electronic transmission purporting to be signed by a Director or alternate Director is treated as being in writing signed by such person; and
- (f) 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together treated as constituting one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

20.12 Deemed minute

The document or documents referred to in the two preceding Clauses are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

20.13 Validity of acts of Directors

All acts done in respect of any meeting of:

- (a) the Directors; or
- (b) a committee of Directors; or
- (c) other persons or by any person acting as a Director; or
- (d) any person purporting to act as an attorney under power of the Foundation,

are, despite the fact that later it is discovered that there was some defect in the appointment or continuance in office of such Director, person or attorney so acting or that they or any of them were disqualified or were not entitled to vote, as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

21. DIRECTOR'S CONTRACTS WITH COMPANY

21.1 Director's contracts and conflicts of interest

In relation to Director's contracts and conflicts of interest, but subject at all times to Clause 4:

- (a) despite any rule of Law or equity to the contrary, no Director is disqualified by that office from contracting with the Foundation;
- (b) no Director (other than the Managing Director) may be an employee of the Foundation;
- (c) any such contract, or any contract entered into by or on behalf of the Foundation in which any Director is in any way interested, is not avoided;
- (d) any Director so contracting or being so interested is not liable to account to the Foundation for any profit realised by any such contract by reason only of such Director holding that office or of the fiduciary relationship thereby established;
- (e) the nature of the Director's interests must be disclosed by that Director at the meeting of the Directors at which the contract is decided on if that interest then exists and has not previously been disclosed. In any other case at the first meeting of the Directors after the acquisition of those interests; and

- (f) a Director may not vote in that capacity in respect of any contract or arrangements in which the Director is interested. However, such Director:
 - (i) may be counted, for the purpose of any resolution regarding it, in the quorum present at the meeting; and
 - (ii) may, despite that interest, participate in the execution of any instrument by or on behalf of the Foundation, whether through signing or sealing it or otherwise.

21.2 Requirement to leave the meeting

Despite anything in the preceding Clause, a Director's entitlement to vote, or be present, at a meeting of the Directors of any Director who has a material personal interest in a matter that is being considered at the meeting is restricted in accordance with section 232A of the Law (and every other mandatory Law) as it may apply from time to time to the Foundation.

21.3 Notice of interest

A general notice given to the Directors by any Director to the effect that he or she:

- (a) is an officer or a Governor of, or interested in, any specified firm or body corporate; and
- (b) is to be regarded as interested in all transactions with such firm or body,

is sufficient disclosure as required by the Law as regards such Director and those transactions. After such general notice it is not necessary for such Director to give any special notice relating to any transaction with such firm or body.

21.4 Office in another company

A Director of the Foundation may be, or become, a Director or other officer of, or otherwise interested in, any body corporate promoted by the Foundation or in which the Foundation may be interested, or which holds any Governorship in the Foundation. No such Director is accountable to the Foundation for any remuneration or other benefits received by him or her as a Director or officer of, or from his or her interest in, such body corporate. The Directors may exercise the voting power conferred by the shares or owned by the Foundation, or exercisable by them as Directors of such other body corporate in such manner in all respects as they think fit. This includes the exercise of that voting power in favour of any resolution appointing themselves, or any of them as Directors or other officers of such body corporate. Any Director may vote in favour of the exercise of such voting power in that manner

despite the fact that he or she may be, or be about to be, appointed a Director or other officer of such corporation and as such is, or may become, interested in the exercise of such voting power in that manner.

22. POWERS AND DUTIES OF DIRECTORS

22.1 Powers generally

Subject to the Law and to any other provisions of this Constitution, the management and control of the Foundation and of the business and affairs of the Foundation is vested in the Directors who may exercise all such powers of the Foundation and do all such acts or things not expressly required by this Constitution or by the Law to be exercised or done by a Meeting of Governors. No Clause adopted or resolution passed by a Meeting of Governors invalidates any prior act of the Directors which would have been valid if that Clause or resolution had not been adopted or passed.

22.2 Borrowing

The Directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Foundation in such manner and on such terms as they think fit. This includes:

- (a) upon the security of any mortgage; or
- (b) by the issue of debentures or debenture stock of the Foundation charged upon all or any of the property of the Foundation (both present and future) including its goodwill and undertaking for the time being; or
- (c) upon bills of exchange, promissory notes or other obligations or otherwise.

22.3 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Foundation may be signed, drawn, accepted, endorsed or otherwise executed as the case may be, in such manner as the Directors at any time determine.

22.4 Official Seal

The Directors may exercise all the powers of the Foundation in relation to any official Seal for use outside the State where its common seal is kept and in relation to branch Registers.

22.5 Appointment of attorney

The Directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Foundation for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they may think fit. Any such powers of attorney may:

- (a) contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit; and
- (b) authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

22.6 Delegation

The Directors may at any time confer upon any Director, or such other person as they may select, such of the powers exercisable under the Constitution by the Directors for such time as they may think fit and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

22.7 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid.

23. PATRON

The Board may from time to time appoint a patron to represent the Foundation and promote its objects throughout the community.

24. COMMITTEES

24.1 Delegation to committee

The Directors may:

- (a) delegate any of their powers to committees consisting of such one or more persons, whether Directors or not, as they think fit; and

- (b) establish advisory committees (or other committees not having delegated power of Directors) consisting of such person or persons as they think fit.

24.2 Committee powers

Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any regulations that may at any time be imposed by the Directors.

24.3 Committee meetings

The meetings and proceedings of any committee consisting of 2 or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the Directors so far as those provisions are applicable and not affected by any resolution or regulation made by the Directors under the preceding Clause.

24.4 Committee Governors as officers

Each person appointed to a committee under paragraph (a) of Clause 24.1, if not otherwise an officer of the Foundation, is, when exercising the powers so delegated or functions entrusted, an officer of the Foundation.

25. MANAGEMENT COMMITTEE OF FNPW GIFT FUND

The Directors must appoint a committee of no fewer than three individuals to administer and manage the FNPW Gift Fund (the **FNPW Gift Fund Management Committee**). The individuals appointed must have a degree of responsibility to the general community, that is, be individuals who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole as distinct from obligations solely in regard to the objects described in Clause 2(a).

26. SECRETARY

26.1 Appointment of Secretary

The Secretary must be appointed by the Board and holds office until the Secretary's services are terminated by the Board.

26.2 Duties of Secretary

The Secretary must perform such duties as are required of that person by the Law and the Constitution. The Secretary must also perform such duties and exercise such powers as may at any time be directed by the Board.

26.3 Assistant Secretary

The Board may also appoint an assistant Secretary or assistant secretaries and temporary substitutes for the Secretary. Any such assistant Secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the Secretary subject to any limitation prescribed by the Board.

27. MINUTES

27.1 Minutes as evidence

If any minutes of a Meeting of Governors or of the Directors are signed by any person purporting to be either the chairman of such meeting, or the chairman of the next succeeding meeting, those minutes must be received in evidence without any further proof that the matters and things recorded by or appearing in such minutes actually took place or happened at a meeting duly called and held.

28. SEAL

28.1 Use of common seal

The Seal must not be affixed to any document unless it is done by the authority of Board or of a committee of them.

28.2 Mode of execution by common seal

Every document to which the Seal is affixed must be signed, to attest the affixing of the Seal, by 2 persons. One must be a Director. The other must be the Secretary, another Director, or such other person as the Directors may appoint for that purpose. No person may sign in more than 1 capacity.

28.3 NOTICES

28.4 Service of notices

Where the Constitution, the Law or other legislation require or permit a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this Clause referred to as "served"), the document may be served on the person:

- (a) by delivering it to the person personally;
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to:
 - (i) the address of the place of residence; or

- (ii) business of the person last known to the person serving the document; or
- (iii) in the case of a Governor, to the address of the Governor entered in the Register,

the document, by such dispatch, is regarded as left at that address; or

- (c) subject to the Law, by publication in a newspaper circulating generally in the State in which the Registered Office is located.

28.5 Date of deemed service

A document served under the preceding Clause is treated as having been duly served, regardless of whether it is actually received:

- (a) where paragraph (b) of that Clause applies - on the day following the day when dispatch occurred; and
- (b) where paragraph (c) of that Clause applies - on the day the newspaper is first published.

28.6 Counting of days

Subject to the Law, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are included in such number of days or other period.

28.7 Service on Foundation or its officers

Every document required to be served upon the Foundation or upon any officer of the Foundation may be served by leaving it at the Registered Office.

28.8 Signature

The signature to any document to be given by the Foundation may be written, printed or stamped.

29. INDEMNITY

29.1 Indemnity for officers

To the extent that the Law allows it, each Officer of the Foundation and each Officer of a related body corporate of the Foundation, must be indemnified by the Foundation against any liability incurred by that person in that capacity.

29.2 Insurance premiums

The Foundation may at any time pay premiums-in respect of a contract insuring a person (whether with others or not) who is an Officer of the Foundation against a liability incurred by the person as such an Officer, or as an officer of a related body corporate. The liability insured against may not include that which the Law prohibits. Any such premium in relation to a Director is in addition to, and not regarded as part of, the remuneration approved by Governors under this Constitution.

DEED OF SETTLEMENT

THE HON THOMAS LANCELOT LEWIS
of the one part

AND

FOUNDATION FOR NATIONAL PARKS AND WILDLIFE
(ACN 000 744 516)
of the other part

GADENS LAWYERS
Skygarden Building
77 Castlereagh Street
SYDNEY 2000

Telephone 9931-4999
Facsimile 9931-4888

Attention: Paul Groundwater

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DEED OF SETTLEMENT

DATED:

PARTIES

1. **THE HON THOMAS LANCELOT LEWIS** of 47 Valetta Street, Moss Vale in the state of New South Wales ("**the Settlor**") of the one part
2. **FOUNDATION FOR NATIONAL PARKS AND WILDLIFE** (ACN 000 744 516) of a company incorporated in New South Wales and having its registered office at Gap Bluff Centre, Sydney Harbour National Park, Watsons Bay, New South Wales 2030 ("**Trustee**") of the other part.

WHEREAS:

- A. The Settlor is desirous of and intends making provision to grow appreciation of and raise funds for the benefit of the natural and cultural environment and heritage of Australia.
- B. The Trusts shall be the public fund for the Foundation for National Parks and Wildlife and shall be known as the FNPW Gift Fund. The Trust shall comply with all the requirements of a public fund as described in the Income Tax Assessment Act 1997 (the "Act") and by the rulings of the Australian Taxation Office. The environmental purpose of the Trust is to support the environmental and other objects of the Foundation.
- C. For the purpose of giving effect to the Settlor's intention the Settlor has settled \$20.00 upon the Trustee.
- D. The Trustee has consented to become the Trustee of the Trusts and with the powers and subject to the provisions in this Deed.

NOW THIS DEED WITNESSES:

1. INTERPRETATION

- 1.1 The following terms unless the context otherwise indicates shall have the following meanings:

“Accounting Period” means each period of twelve (12) months ending on the 30th day of June in each year provided that:

- (a) the period commencing on the date hereof and ending on the 30th day of June next shall be an Accounting Period;
- (b) the period commencing on the first day of July prior to the Vesting Day and ending on the Vesting Day shall be an Accounting Period; and
- (c) the Trustee may at any time declare the then current Accounting Period to have ended. The next Accounting Period shall commence on the next day and shall end on the day the curtailed Accounting Period would have ended;

Act means the Income Tax Assessment Act 1997 (Cth);

Beneficiary means each and every Person who receives or derives a benefit from the FNPW Gift Fund.

Constitution means the constitution of the Trustee as amended from time to time.

DEST means the Commonwealth Department of the Environment, Sport and Territories or its successor in maintaining the Register of Environmental Organisations from time to time;

Law means the Corporations Law as it applies to the Foundation for the time being.

Person means any member of the public, corporation, trust or other entity, organisation, institution, or government department, body or authority.

Purposes of the Trust is defined at clause 2.2.

set aside in relation to a person or purpose includes placing sums to the credit of such person or purpose in the books of the Trust Fund;

Trust Assets means all monies, securities, investments and property forming part of the Trust Fund;

Trust Fund means:

- (a) all monies, securities, investments and property paid by the Settlor to the Trustee upon the execution of this Deed;
- (b) all monies, securities, investments and property paid, transferred, conveyed, assigned, given, granted, issued,

allotted, devised, bequeathed, settled, distributed or vested to or in and accepted by the Trustee as additions to the Trust Fund;

- (c) the accumulations of income in this Deed directed or empowered to be made as accretions to or settled on the Trust Fund;
- (d) all monies, securities, investments and property from time to time representing settled property, securities, investments, property, accumulations and accretions; and
- (e) any part or parts thereof respectively.

"Trustee" means the Trustee for the time being of the Trust Fund;

"Trusts" means the trusts established by this Deed; and

"Vesting Day" means the day which the Trustee may in its absolute discretion in writing appoint.

1.2 In the construction of this Deed:

- (a) headings are disregarded;
- (b) "natural environment" shall include without limitation all species of flora and fauna.
- (c) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals;
- (d) singular includes plural and vice versa and words importing any gender include all other genders;
- (e) except for the definitions in the preceding clause, an expression has, in a provision of this Deed that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law;
- (f) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

2. SETTLEMENT

2.1 The Settlor and the Trustee declare that the Trustee shall stand possessed of the Trust Fund and of the income thereof upon trust to grow appreciation of and raise funds for the benefit protection and/ or enhancement of the natural and cultural environment and heritage of Australia by any means considered by the Trustee appropriate including, without limitation, undertaking projects to benefit the natural and cultural environment and heritage of Australia and the promotion of public awareness, education and public discussion of such environment and heritage and associated issues including research in accordance with the powers, and subject to the provisions, contained in this Deed AND also including without limitation:

- (a) to provide funds or property to any Person by way of grant, loan, gift or otherwise to grow appreciation of the natural and cultural environment and heritage of Australia by undertaking projects to benefit, protect and/or enhance such environment and heritage and the promotion of public awareness, education and public discussion of such environment and heritage and associated issues including research;
- (b) to provide funds or property by way of grant, loan, gift or otherwise for the benefit of or in connection with the natural and cultural environment and heritage of Australia;
- (c) to purchase, lease, hire or otherwise acquire equipment and to give, sell, lease, hire or otherwise allow such equipment to be used by any person to grow appreciation of or for the benefit of or in connection with the natural and cultural environment and heritage of Australia by undertaking projects for those purposes and to encourage the promotion of public awareness, education and public discussion of such environment and heritage and associated issues;
- (d) to provide funds or property to any Beneficiary or any person on behalf of that Beneficiary by way of grant, loan, gift or otherwise to grow appreciation of or for the benefit of or in connection with the natural and cultural environment and heritage of Australia by undertaking projects for those purposes and to encourage the promotion of public awareness, education and public discussion of such environment and heritage and associated issues including research;
- (e) to otherwise promote and encourage the Purposes of the Trusts.

- 2.2 The general and the specific items referred to above collectively means "Purposes of the Trusts".

3. GIFTS TO THE TRUST FUND

- 3.1 The Trustee invites members of the public to make gifts of money or property to the Trust Fund for the purpose of promoting and supporting the Purposes of the Trust.
- 3.2 If in the opinion of the Trustee, acceptance of a gift would be consistent with the Purposes of the Trust, the Trustee will accept the gift and notify the donor of the gift of its acceptance.
- 3.3 Other than as provided for in clause 3.2, the Trustee should not accept any gifts of property or money, including any gift by way of corporate sponsorship of the Trustee.
- 3.4 Money from interest on donations, income derived from donated property, and money from the realisation of such property are to be deposited into the Trust Fund.

4. CAPITAL AND INCOME

- 4.1 The Trustee may at any time in each Accounting Period until the Vesting Day pay, apply or set aside the whole or part of the capital of the Trust Fund or income of the Trust Fund for the Accounting Period as it shall think fit, to or for any of the Purposes of the Trusts provided that the application or setting aside of the whole or any part of the capital or income of the Trust Fund to or for any of the Purposes of the Trusts may be effectively made by a resolution of the Trustee that a sum out of or proportion of the capital or income of the Trust Fund be allocated to such Purposes of the Trusts. Any income not paid or applied for any of the Purposes of the Trusts in any Accounting Period shall be accumulated and such accumulations will be added to and form part of the capital of the Trust Fund.
- 4.2 If on the Vesting Day after the satisfaction of all the debts and liabilities of the Trust Fund there remains any property whatsoever, the same shall be paid, given or transferred by the Trustee to some other fund, authority or institution chosen by the Trustee having objects similar to the Purposes of the Trusts and which is a fund, authority or institution listed on the Register of Environmental Organisations maintained by the secretary of DEST pursuant to Subdivision 30-E of the Act.

5. INVESTMENT AND POWERS

- 5.1 Notwithstanding that the Trust Fund consists of trust monies, the Trustee shall have the absolute power and discretion (which it may exercise either solely or jointly with any other person) to apply the same and to deal with and manage and transpose and realise all investments and all property constituting the Trust Fund entirely as it thinks fit and with such powers in all respects in any manner approved by law as a trustee investment.
- 5.2 The Trustee may appoint any person to act as a director on its behalf of any company in which any monies forming part of the Trust Fund are from time to time invested and may receive the remuneration attached to such office or permit its representative to receive such remuneration without being liable to account to the Trust Fund therefore. Any such representative may become qualified to act as a director (if the Articles so require) by the holding in its name of shares belonging to the Trustee provided that it executes a declaration of trust thereof in favour of the Trustee generally accompanied by the certificates of such shares and that it accounts to the Trustee for all dividends and bonuses payable in respect thereof.
- 5.3 The Trustee may exercise or concur in exercising all powers and discretions hereby or by law given notwithstanding that it or any person being a Trustee or any person being a director or shareholder of a Trustee hereof being a company has or may have a direct or personal interest in the mode or result of exercising such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee.
- 5.4 The Trustee shall not allocate funds or property to organisations or persons otherwise than in accordance with purposes of the Trusts.
- 5.5 The Trustee shall not be influenced by the expressed preference or interest of a particular donor.
- 5.6 The Trustee will comply with any rules that the Treasurer and the Minister for Environment, Sport and Territories make to ensure that gifts made to the Trust Fund are used only for the Purposes of the Trusts.

6. TRUSTEES

- 6.1 A Trustee shall not be bound in any case to act personally but it shall be at full liberty to employ any person to act as manager or to employ any contractors, managers, bankers, solicitors, accountants, clerks, workmen, employees, servants or agents to transact all or any

business of whatever nature required to be done pursuant to the Trusts including the receipt and payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.

- 6.2 If at any time there is more than one Trustee they shall act jointly and they may in writing delegate the exercise of all or any of the powers or discretionary authorities hereby conferred on them and execute any powers of attorney or other instruments necessary to effect such purpose.
- 6.3 Any Trustee may appoint any person to be an alternative Trustee in its place and any such appointment shall have effect during such period only as such Trustee may from time to time be absent from Australia or its Territories or be incapacitated, and each of the Trustees may by power under its hand alter such appointment as alternative Trustee.
- 6.4 Any Trustee may retire as a Trustee and if it so chooses appoint a substitute Trustee in its stead.
- 6.5 If at any time all Trustees have retired then the Chief Justice of the Supreme Court of New South Wales may appoint a Trustee.

7. LIABILITY OF BENEFICIARIES AND TRUSTEE'S INDEMNITY

- 7.1 It is expressly declared that notwithstanding:
- (a) anything contained or implied herein,
 - (b) that an obligation incurred by the Trustee has been incurred by or with the authority or at the request of any Beneficiary, or
 - (c) any obligation at law or in equity which might arise but for the provisions of this clause,

THAT no Beneficiary, by reason of any such matter or by reason of his relationship with the Trustee or otherwise, shall be under any obligation to indemnify the Trustee against any liability or obligation incurred by the Trustee in the course of exercising its duties, rights, powers and authorities in relation to the Trust Fund or arising therefrom or in the course of carrying on any business hereby authorised or in the event of there being any deficiency in the assets of the Trust Fund as compared with the liabilities of the Trust Fund or the Trustee in relation thereto howsoever caused and the Trustee shall not have any power or authority to enter into any contract that

binds any Beneficiaries personally either jointly or severally, or to call upon any Beneficiary for any payment whatsoever AND THAT all Persons extending credit to, contracting with, or having any claims against the Trustee shall only look to the property of the Trust Fund for the payment of any such contract or claim, or for the payment of any debt, damage, judgment or decree, or of any moneys that may otherwise become due or payable by the Trustee, so that in the event neither the Trustee nor any Beneficiaries present or future shall be personally liable.

- 7.2 Without affecting anything in the preceding clause the Trustee shall be entitled to be indemnified out of the assets for the time being comprising the Trust Fund against liabilities incurred by it in the execution or attempted execution or as a consequence of the failure to exercise any of the Trusts, authorities, powers and discretions hereof or by virtue of being the Trustee hereof, but shall not be entitled to indemnity, reimbursement or recompense from any Beneficiary.
- 7.3 The Trustee hereby covenants to exercise all due diligence and vigilance in protecting the Trust Fund and promoting the Purposes of the Trusts provided that no Trustee shall be responsible for:
- (a) any loss or damage occasioned by the exercise of any discretion or power hereby or by law conferred on the Trustee or by failure to exercise any such discretion or power or by any error or forgetfulness whether of law or fact;
 - (b) any breach of duty or trust whatsoever on the part of the Trustee or its legal or other advisor or generally unless it shall be proved to have been committed, made or omitted in personal, conscious or fraudulent, bad faith by the Trustee charged to be so liable. All persons claiming any beneficial interest in over or upon the property subject to the Trusts or the Trust Fund shall be deemed to take the same with notice of and subject to the protection hereby conferred on the Trustee.
- 7.4 Subject always to any express provision to the contrary herein contained every discretion vested in the Trustee shall be absolute and uncontrolled and every power vested in it shall be exercisable at its absolute discretion and the Trustee shall have the like discretion in deciding whether or not to exercise any such power. So far as taxation and revenue laws require such discretion they shall be capable of revocation by the Trustee in its absolute discretion to the degree necessary to retain the tax and revenue liability-free status of the Trust Fund. No Trustee shall be responsible for any loss or damage occasioned by the exercise of any discretion or power hereby or by law conferred on the Trustee or by failure to exercise any such

discretion or power for any loss or damage accruing as a result of concurring or refusing or failing to concur in any exercise of any power of discretion.

- 7.5 A sole Trustee hereof for the time being is hereby authorised notwithstanding that it is the Trustee to receive capital and other moneys and to give valid and effectual receipts therefor for all purposes and for the purpose of any statutory enactments including the receipt of capital monies or monies which may be deemed to be capital monies for the purpose of any statute.
- 7.6 Any Trustee hereunder being a company may from time to time charge and retain out of the Trust Fund reasonable Trustee's commission but not exceeding in any Accounting Period its costs and expenses incurred in such Accounting Period by reason of the obligations imposed upon by or under any legislation including but without limiting the foregoing the Corporations Law and the Act.
- 7.7 If the Chief Justice of the Supreme Court of New South Wales forms the view that the Trustee is not administering the Trust Fund in the best interests of the Purposes of the Trusts then he may at any time replace the Trustee with a new Trustee.

8. AMENDMENT AND OTHER TRUSTS

- 8.1 The Trustee for the time being may at any time by deed of appointment or other deed revoke, add to or vary any of the Trusts or the Trusts limited by any variation, alteration or addition made thereto from time to time and may by the same or any other deed or deeds declare any new or other trusts or powers concerning the Trust Fund or any part or parts thereof. Such new or other trusts, powers, discretions, alterations, or variations:
- (a) may relate to the administration, management or control of the Trust Fund or the application or investment thereof or the Trustee's powers or discretions herein contained;
 - (b) shall not be in favour of or the benefit of the Settlor or result in any benefit to the Settlor but shall otherwise be for the benefit of all or any one or more of the Beneficiaries of the Purposes of the Trusts; and
 - (c) shall not affect the public benevolence of the Trust Fund.
- 8.2 The Trustee may accept any real or personal property subject to any conditions to administer such property subject to any specific trusts of a public benevolent nature either similar or not to the purposes of the

Trust. The Trustee shall record such trusts in the manner the Trustee determines.

- 8.3 The Trustee must advise DEST of the details of any revocation, addition to or variation of any of the Trusts made pursuant to clause 8.1 within a reasonable time following the making of such changes.

9. USE OF ASSETS AND FUNDS

- 9.1 The Trust Fund, shall be applied solely towards the promotion of the Purposes of the Trusts and no portion thereof shall be paid or transferred directly or indirectly to the Governors or officers of the Trustee provided that nothing herein contained shall prevent the payment in good faith of remuneration to any member or officer of the Trustee in return for any services actually rendered to the Trustee, or for goods supplied in the ordinary and usual way of business to the Trustee, nor prevent the payment of interest (at a rate not exceeding the lowest rate paid for the time being by banks in the State of which the loan was made in respect of term deposits), on money borrowed from any member or officer of the Trustee or reasonable and property rent for premises demised or let by any Governor or officer to the Trustee.

10. TRUST FUND ADMINISTRATION

10.1 Trust Fund kept separate

The Trustee must ensure that all Trust Assets are clearly identified as property of the Trust Fund and are kept separate from all other assets of the Trustee that do not form part of the Trust Fund.

10.2 Receipts

The Trustee will issue receipts in the name of the FNPW Gift Fund for any gift of money or property accepted by the Trustee as additions to the Trust Fund.

10.3 Bank Account

- (a) The trustee will open a bank account (the **Account**) into which all monies received by the Trustee and forming part of the Trust Fund will be deposited.
- (b) The Account will bear the name "Foundation for the National Parks and Wildlife (ACN 000 744 516) as trustee for the FNPW Gift Fund".

10.4 Notification to DEST

- (a) The Trustee will give to the secretary of DEST, within a reasonable period after the end of each income year, statistical information about gifts made to the Trust Fund during that income year in accordance with section 30-275 of the Act.
- (b) The Trustee will inform DEST of any proposed changes to the management committee of the Trusts and of any proposed amendments to this Deed.

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Secretary/Director

Please print

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AMENDING DEED

**FOUNDATION FOR NATIONAL PARKS AND WILDLIFE
(ACN 000 744 516)**

GADENS LAWYERS
Skygarden Building
77 Castlereagh Street
SYDNEY 2000

Telephone 9931-4999
Facsimile 9931-4888

Attention: Paul Groundwater

AMENDING DEED

DATED: 19 SEPTEMBER 2000

PARTY

FOUNDATION FOR NATIONAL PARKS AND WILDLIFE

(ACN 000 744 516) of a company incorporated in New South Wales and having its registered office at Gap Bluff Centre, Sydney Harbour National Park, Watsons Bay, New South Wales 2030 ("Trustee").

BACKGROUND

- A. By Deed of Settlement made 2 February 2000 between The Hon Thomas Lancelot Lewis as Settlor and the Trustee ("the Deed of Settlement"), the trust known as the FNPW Gift Fund Trust ("the Trust") was established.
- B. Clause 8.1 of the Deed of Settlement provides as follows:
- "8.1 The Trustee for the time being may at any time by deed of appointment or other deed revoke, add to or vary any of the Trusts or the Trusts limited by any variation, alteration or addition made thereto from time to time and may by the same or any other deed or deeds declare any new or other trusts or powers concerning the Trust Fund or any part or parts thereof. Such new or other trusts, powers, discretions, alterations, or variations:
- (a) may relate to the administration, management or control of the Trust Fund or the application or investment thereof or the Trustee's powers or discretions herein contained;
 - (b) shall not be in favour of or the benefit of the Settlor or result in any benefit to the Settlor but shall otherwise be for the benefit of all or any one or more of the Beneficiaries of the Purposes of the Trusts; and
- shall not affect the public benevolence of the Trust Fund.
- C. Pursuant to and in accordance with Clause 8.1 of the Deed of Settlement the Trustee, by this Amending Deed, varies the Trusts as hereafter set forth.

OPERATIVE PROVISIONS

1. INTERPRETATION

Clause 1 of the Deed of Settlement is adopted as though repeated in this Amending Deed in full.

2. VARIATIONS

2.1 The Trustee does hereby vary the Trusts as follows:

- (a) By amending the definition of "Trusts" in Clause 1.1 so that it becomes as follows:

"Trusts" means the trusts established by this Deed and known as and called "the FNPW Gift Fund Trust".

- (b) By deleting Clause 2.1 of the Deed and replacing it with the following:

"The Settlor and the Trustee declare that the Trustee shall stand possessed of the Trust Fund and of the income thereof upon trust to grow appreciation of and raise funds for the benefit protection and/ or enhancement of the natural environment of Australia by any means considered by the Trustee appropriate including, without limitation, undertaking projects accepting gifts of property, and providing property to benefit the natural environment of Australia and to promote public awareness, education and public discussion of such natural environment and associated activities including research in accordance with the powers, and subject to the provisions, contained in this Deed AND also including without limitation:

- (i) to provide funds or property by way of grant, loan, gift or otherwise for the benefit of or in connection with the natural environment of Australia;*
- (ii) to purchase, lease, hire or otherwise acquire equipment and to give, sell, lease, hire or otherwise allow such equipment to be used by any person to grow appreciation of or for the benefit of or in connection with the natural environment of Australia;*
- (iii) to otherwise promote and encourage the Purposes of the Trusts.'*

- (c) By adding the following provisions which are to have the following paragraph numbers:

2.1(d)(a):

"to establish and maintain a public fund to be called the "FNPW Gift Fund". The Trustee will ensure that the FNPW Gift Fund complies with the requirements of Subdivision 30-E of the Act; and"

"9.2 Conduit policy

Any allocation of funds or property to other institutions, bodies, entities, organisations, government departments or persons will be made in accordance with the Purposes of the Trusts and not be influenced by the expressed preference or interest of a particular donor to the Trusts".

"11 MANAGEMENT COMMITTEE OF FNPW GIFT FUND

*The Trustee must appoint a committee of no fewer than three individuals to administer and manage the FNPW Gift Fund (the **FNPW Gift Fund Management Committee**). The individuals appointed must have a degree of responsibility to the general community, that is, be individuals who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole as distinct from obligations solely in regard to the objects described in Clause 2.1."*

"12 USE OF PROPERTY ON WINDING UP OR REVOCATION OF ENDORSEMENT – SURPLUS

If on the:

- (a) *winding up or dissolution of the FNPW Gift Fund Trust; or*
- (b) *the revocation of the FNPW Gift Fund Trust's endorsement under Subdivision 30-BA of the Act,*

*after the satisfaction of all its debts and liabilities, any property remains ("**surplus**"), the surplus must be given or transferred to some other institutions, bodies, entities, or organisations ("**Transferee Entity**):*

- (a) *having objects similar to the objects of the FNPW Gift Fund Trust (being the Purposes of the Trusts) and which is listed on the Register of Environmental Organisations; and*
- (b) *whose constitution or rules prohibits the distribution of its or their income and property among its or their members."*

"13 MINISTERIAL RULES

The Trustee must comply with any rules that the Treasurer and the Minister with responsibility for the environment may make to ensure that gifts made to the FNPW Gift Fund are only used for the Purposes of the Trust."

- (d) By removing subclause 10.4 and replacing it with the following:

"10.4 Notification to DEST

- (a) *The Trustee will give to the secretary of DEST, within four months after the end of each income year:*
 - (i) *statistical information about gifts made to the FNPW Gift Fund during that income year in accordance with section 30-275 of the Act;*
 - (ii) *an audited financial statement for the Trusts and the FNPW Gift Fund, which will provide information on the expenditure of the FNPW Gift Fund monies and the management of assets held in the FNPW Gift Fund Trust.*
- (b) *The Trustee will inform DEST as soon as possible if:*
 - (i) *it changes its name or the name of the FNPW Gift Fund Trust;*
 - (ii) *there is any change to the membership of the management committee of the FNPW Gift Fund Trust; or*
 - (iii) *there is any departure from the provisions of the Settlement Deed as amended by this Amending Deed."*

EXECUTED as a Deed.

THE COMMON SEAL of FOUNDATION
FOR NATIONAL PARKS AND
WILDLIFE

(ACN 000 744 516) was affixed in the
presence of:



Director

John Ellis Broinowski
Print name

J. Davis
Secretary/Director

GEORGE STANLEY DAVIS
Print name