
Noosa Biosphere Reserve Trust

Version: 1

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Trust Deed for the Noosa Biosphere Reserve Trust

Dated

Settlor **Lesleigh Mayes**

of Level 11, 66 Eagle Street, Brisbane, Queensland 4000

Trustee **Noosa Biosphere Reserve Foundation Ltd**

of 9 Pelican Street, Tewantin, Queensland 4565

Background

- A The Settlor wishes to establish a trust for the public charitable purposes of advancing the natural environment of the Noosa Biosphere Reserve.
- B The Settlor has paid the Settled Sum to the Trustee to hold on the trusts outlined in this deed.
- C The Trustee has power, among other things, to act as the trustee of the Trust.

Agreed terms

1 **Name**

The Trust is to be known as the '**Noosa Biosphere Reserve Trust**'.

2 **Definitions and interpretation**

2.1 **Definitions**

In this deed:

| Term | Definition |
|---|--|
| Advisory Committee | means a committee established under clause 13. |
| Associate | has the meaning outlined in section 78A <i>Income Tax Assessment Act 1936</i> (Cth) as if the reference to the donor in that section were a reference to the person who under this deed is referred to in relation to the Associate. |
| Australian Biosphere Reserve Management Principles | means the Australian Biosphere Reserve Management Principles as made under Schedule 7 of the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> (Cth). |
| Commissioner | means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation. |

| Term | Definition |
|------------------------------------|--|
| Corporations Act | means <i>Corporations Act 2001</i> (Cth). |
| Donor | means the donor of a gift to the Trust. |
| Financial Year | means: <ul style="list-style-type: none"> (a) the period from the date of this deed to the following 30 June; (b) each period of 12 months beginning on 1 July and ending on 30 June in each year; and (c) the period from the last 1 July before the winding up of the Trust until the date the Trust is wound up, or any other period that the Trustee decides from time to time. |
| Natural environment | has the same meaning as in the <i>Income Tax Assessment Act 1997</i> (Cth). |
| Noosa Biosphere Reserve | means the Noosa Biosphere Reserve area as designated under the UNESCO Man and the Biosphere Program as may be varied from time to time. |
| Property | means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description. |
| Public Fund | means the Noosa Biosphere Reserve Trust Fund. |
| Publicly Responsible Person | means a person who has a degree of responsibility to the community as a whole, and as defined in Taxation Ruling <i>TR95/27 Income tax: public funds</i> , including a person who: <ul style="list-style-type: none"> (a) performs a public function; (b) belongs to a professional body which has a professional code of ethics and rules of conduct; (c) has received formal recognition from the government for their services to the community; or (d) falls within the description of the term of 'responsible person' approved by the Commissioner of Taxation or other relevant Commonwealth authority, and who, unless the Commissioner of Taxation otherwise agrees, is not an associate of the Trustee or an associate of a director of the Trustee other than: <ul style="list-style-type: none"> (e) in a professional capacity; or (f) as a director. |
| Settled Sum | means \$10. |
| Trust | means the trust established under this deed. |
| Trustee | means: <ul style="list-style-type: none"> (a) as at the date of this deed – Noosa Biosphere Reserve Foundation Ltd; and (b) in all cases – the trustee or trustees for the time being of the Trust, or any one or more of them, whether original, additional or substituted. |

| Term | Definition |
|---|---|
| Trust Fund | <p>means:</p> <ul style="list-style-type: none"> (a) the Settled Sum; (b) any other money or any Property the Settlor or another person gifts, transfers, assigns or vests to the Trustee to be held upon the Trust; (c) any other money or Property acquired by the Trustee under this deed; (d) the investments into which any money or Property may be converted under this deed; (e) any income or capital gain accumulated by the Trustee under this deed; and (f) any income of the Trust not yet applied under clause 4.2. |
| Trust Purposes | mean the purposes set out under clause 4.1. |
| UNESCO | means the United Nations Educational, Scientific and Cultural Organisation. |
| UNESCO Man and the Biosphere Program | means the intergovernmental scientific programme under the name 'Man and the Biosphere Program' that is facilitated by UNESCO. |

2.2 Interpretation

In this deed:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this deed and references to this deed include any schedules or annexures;
- (b) a reference to a party to this deed or any other deed or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a deed or agreement (including a reference to this deed) is to that deed or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this deed includes the agreement recorded by this deed;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (h) a reference to 'month' means calendar month.

2.3 Headings

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

3 Declaration of trust

The Settlor and the Trustee declare that the Trustee must hold the Trust Fund on the trusts, with the powers and subject to the provisions in this deed.

4 Purposes

4.1 Trust Purposes

- (a) The principal purposes of the Trust are:
 - (i) advancing the protection and enhancement of a significant aspect of the natural environment, being the natural ecosystems and biodiversity of the Noosa Biosphere Reserve; and
 - (ii) advancing research, education and information about a significant aspect of the natural environment, being the Noosa Biosphere Reserve.
- (b) In seeking to achieve the principal purposes of the Trust, the Trust may, without limitation:
 - (i) foster economic and human development that is environmentally and socially sustainable and culturally appropriate;
 - (ii) develop and implement a management plan for the Noosa Biosphere Reserve that is aligned with UNESCO Man and the Biosphere Program and Australian Biosphere Reserve Management Principles;
 - (iii) monitor performance of the Noosa Biosphere Reserve and reporting to UNESCO and the Noosa community;
 - (iv) protect and manage the Property of the Trust; and
 - (v) establish and maintain a Public Fund to be called the Noosa Biosphere Reserve Trust Fund for the specific purpose of supporting the principal purposes of the Noosa Biosphere Reserve Trust. 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 Public Fund must not receive any other money or Property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997* (Cth).

4.2 Application of income and capital

The Trustee must hold the Trust Fund on trust to pay or apply the income and, if and so far as it thinks fit, all or any part of the capital of the Trust Fund for the purpose of providing money, Property or benefits towards the advancement of the Trust Purposes.

4.3 Factors Trustee may consider

In exercising its discretions under clause 4.2, but subject to the Trust Purposes, the Trustee may have regard to:

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

4.4 Policies and rules

For the purpose of paying or applying the income or capital, the Trustee may:

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

4.5 Trustee may accumulate income

In exercising its discretions under clause 4.2, the Trustee may, in any Financial Year, choose to accumulate and retain so much of the income of the Trust as it sees fit.

5 Non-profit nature of the Trust

5.1 Non-profit

- (a) The income and capital of the Trust must only be applied for the Trust Purposes.
- (b) No income or capital of the Trust may be paid or transferred, directly or indirectly, to:
 - (i) the Settlor;
 - (ii) the Trustee (or any member, director, employee, agent or officer of the Trustee);
 - (iii) a Donor; or
 - (iv) an Associate of the Settlor, the Trustee or a Donor,
 except for transfers made:
 - (v) in return for services rendered or goods supplied by a person to the Trust in the ordinary and usual course of business;
 - (vi) in the course of furthering the Trust Purposes; or

- (vii) as principal payments on money lent by a person, and interest payments if the interest is at a commercial rate.
- (c) Any surplus Property remaining after winding up of the Trust must not be distributed other than under clauses 16, 18 or 19, as applicable.

5.2 Uncommercial transactions

The Trust must not enter into any transaction which, at the time it is entered into:

- (a) would not be reasonable in the circumstances, or is on terms more favourable to the recipient than, if the transaction were conducted on an arm's length basis; and
- (b) a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances,

unless the payment or application is:

- (c) made under clause 16; or
- (d) approved by the Commissioner.

6 Determinations to be recorded

6.1 Determinations to be in writing

Any decision of the Trustee under clause 4.2 must be recorded in written minutes signed by the Trustee or, where the Trustee is a company, in written minutes recording a resolution of a majority of the directors and signed in the manner provided by its constitution.

6.2 Once recorded, decisions are irrevocable

Once a decision made under clause 4.2 has been recorded under clause 6.1, it is irrevocable with respect to the income and the capital to which it relates.

7 Power to make conditional decision

The Trustee:

- (a) may make a decision under clause 4.2 conditional on the beneficiary using the income or capital the subject of the decision for a particular purpose, project or activity; and
- (b) is not obliged to distribute the income or the capital the subject of the conditional decision to the beneficiary if the Trustee is not satisfied that the beneficiary will use the income or capital for the specified purpose, project or activity.

8 Trustee

8.1 Sole trustee a body corporate

At all times, the sole trustee of the Trust must be a body corporate, of which the majority of directors are Publicly Responsible Persons.

8.2 Retirement and appointment of a new Trustee

The Trustee may at any time retire and appoint a new Trustee.

8.3 This deed prevails

If there is any inconsistency between the provisions of this deed and the constitution of the Trustee, this deed prevails.

9 Trustee's powers

9.1 Investment

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

9.2 Other powers

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or Property of the Trust Fund;
- (c) borrow or raise or secure the payment of money and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (d) take and act on the opinion of a barrister or solicitor practising in Australia about the interpretation or effect of this deed or any of the trusts or powers of this deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction for a ruling on any matter;
- (e) take any action for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, sign and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this deed, generally:
 - (i) perform any administrative act; and
 - (ii) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;

- (i) employ and pay or provide any benefit for any employee (not being a relative or Associate of the Settlor or the Trustee or a relative or Associate of a director or shareholder of the Settlor or the Trustee) without being responsible for the default of the employee or for any loss occasioned by the employment;
- (j) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (k) sponsor, organise and undertake fund raising activities and arrange for the issue of appeals to the public for donations;
- (l) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or Property to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this deed;
- (m) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or Property;
- (n) manage any real Property it holds with all the powers of an absolute owner; and
- (o) do all other things incidental to the exercise of the Trustee's powers under this deed.

9.3 Powers are supplementary

The powers and discretions in clause 9.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

10 Liability for breaches of trust

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

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

11 Indemnity of Trustee from Trust Fund

Subject to clause 10, the Trustee is entitled to be indemnified out of the Trust Fund in respect of:

- (a) all costs and expenses incurred by the Trustee relating to:
 - (i) entering into this deed or any deed amending this deed;
 - (ii) establishing, operating, administering, amending, terminating and winding up the Trust; or
 - (iii) otherwise in respect of the Trust and all matters incidental to the Trust; and
- (b) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in respect of those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 11(a) including, but not limited to, the Trustee performing its duties and exercising its powers, rights and discretions under this deed.

12 Books of account and receipts

12.1 Trustee to keep accounts

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

12.2 Financial statements

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

12.3 Audit

If required by law to be audited, the financial statements of the Trust Fund must be audited by a person registered, or taken to be registered as an auditor under part 9.2 Corporations Act.

12.4 Receipts

Receipts issued for gifts must state:

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

13 Advisory Committees

- (a) The Trustee may establish Advisory Committees and appoint and remove, or make provision for the appointment and removal of, members of the Advisory Committee.
- (b) Each Advisory Committee may consist of a single individual or the number of individuals that the Trustee decides.
- (c) The functions of each Advisory Committee will be decided by the Trustee and, subject to the Trustee's decision, may, for example, advise the Trustee on certain environmental

issues connected with the Noosa Biosphere Reserve or how payments or applications of income and capital should be made under clause 4.2.

- (d) The Trustee may specify:
- (i) the manner in which proceedings of each Advisory Committee are to be conducted;
 - (ii) the matters which the Advisory Committee must have regard to in carrying out its functions; and
 - (iii) any other matters concerning the Advisory Committee or its functions that the Trustee decides.
- (e) To avoid any doubt, it is declared that the Trustee may appoint a single individual to act as an Advisory Committee.

14 Patrons

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

15 Amending this deed

15.1 Power to amend, vary or revoke

The Trustee may by deed revoke, add to or vary any of the trusts, powers and provisions set out in this deed.

15.2 Limitations on power to amend, vary or revoke

Despite clause 15.1, any revocation of, addition to or variation of this deed must not without the consent of the Commissioner have the effect that:

- (a) the Trust Purposes would be altered in any way;
- (b) the Trustee would be authorised to invest money of the Trust Fund other than in a manner in which the Trustee is permitted to invest under the laws of Australia or of any State or Territory of Australia; or
- (c) the Trust would fail for any reason.

16 Trustee's remuneration

Subject to clause 5, the Trustee may charge and be paid out of any part of the Trust Fund the remuneration that the Trustee considers to be fair and reasonable. However, the maximum remuneration charged by the Trustee in respect of any Financial Year must not exceed the maximum commission chargeable by trustee companies under the Corporations Act in respect of that Financial Year.

17 General

17.1 Receipts by others

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

17.2 Trustee's discretion

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

17.3 Personal interest of Trustee

The Trustee and any person who is a director or member of the Trustee may exercise or concur in exercising all powers and discretions given by this deed or by law (including making any investment authorised under clause 9.1) even though the Trustee, or any person who is a director or member of the Trustee:

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

and even if the Trustee is a sole trustee.

17.4 Delegation of powers

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

17.5 Trustee's receipts

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

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

17.6 Trustee's decisions

- (a) The Trustee may decide:
 - (i) whether any money is to be considered as capital or income;
 - (ii) whether any expense, outgoing or other payment ought to be paid out of capital or income; and

- (iii) all questions and matters of doubt arising in the execution of the trusts of this deed.
- (b) Every decision on these matters, whether made on a question actually raised or implied in the acts or proceedings of the Trustee, is conclusive and binds all persons interested under this deed.

17.7 Privilege and disclosure

The Trustee is not required to disclose any reasons for any decision made under this deed. Any memos or other material recording any decision as to an exercise of discretion or obtained for the purpose of coming to that decision are, at the option of the Trustee, privileged.

18 Winding up

Subject to clause 19.3, if, on the winding up of the Trust, any Property remains after the satisfaction of all its debts and liabilities, the Trustee must give and transfer the Property to or for one or more funds, authorities or institutions which are charitable at law and have similar purposes to the Trust Purposes.

19 Public Fund

19.1 Establishing and maintaining a Public Fund

- (a) The Trustee must establish and maintain a public fund to be called 'Noosa Biosphere Reserve Trust Fund' (**Public Fund**):
 - (i) to which Gifts and Deductible Contributions are made or credited;
 - (ii) to which any money received because of those Gifts and Deductible Contributions (including the income from the investment of all or part of the Public Fund) are credited; and
 - (iii) that does not receive any other money or Property; and
 - (iv) complies with subdivision 30-E of the *Income Tax Assessment Act 1997* (Cth).
- (b) The objective of the Public Fund is to advance the principal purposes in clause 4.1.

19.2 Management and administration of the Public Fund

- (a) The Public Fund must be managed in accordance with this clause 19.
- (b) Members of the public are invited to make gifts of money or Property to the Public Fund for the principal purposes of the Trust set out in clause 4.1.
- (c) A separate bank account is to be opened to deposit money donated to the Public Fund, including interest accruing thereon, and gifts to it are to be kept separate from other funds of the Trust.
- (d) Receipts are to be issued in the name of the Public Fund and proper accounting records and procedures are to be kept and used for the Public Fund.
- (e) The Public Fund must be operated on a not-for-profit basis.

- (f) The board of the Trustee or a committee of the board of no fewer than three persons will administer the Public Fund. A majority of the members of the committee are required to be Publicly Responsible Persons.
- (g) Any allocation of funds or Property to other persons or organisations will be made in accordance with the established purposes of the Trust and will not be influenced by the preference of the donor.

19.3 Winding up

- (a) At the first occurrence of:
 - (i) the winding up of the Trust; or
 - (ii) the winding up of the Public Fund; or
 - (iii) the Trust ceasing to be endorsed as a deductible gift recipient under subdivision 30-BA of the *Income Tax Assessment Act 1997* (Cth),

any surplus assets of the Public Fund must be transferred to one or more fund, authority or institution:

- (iv) which is charitable at law and with objects similar to the objects of the Trust;
 - (v) whose constitution or governing document prohibits the distribution of its income and Property among its members or trustees to an extent at least as great as is imposed under this deed; and
 - (vi) to which Gifts and Deductible Contributions are deductible under item 6.1.1 of section 30-55 under division 30 *Income Tax Assessment Act 1997* (Cth); and
 - (vii) which is listed on the Register of Environmental Organisations.
- (b) The fund, authority or institution to receive the surplus assets of the Public Fund under clause 19.3(a) must be decided by the Trustee. If the Trustee does not decide, the decision must be referred to the Supreme Court in accordance with clause 20.1.

19.4 Public Fund forms part of the Trust

To avoid any doubt, it is declared that the Public Fund forms part of the Trust and is bound by this deed.

19.5 Agreement to abide by Ministerial Rules

The Trust agrees to comply with any rules that the relevant Commonwealth Minister responsible for the environment and Commonwealth Treasurer impose and ensure that Gifts made to the Public Fund are used only for its principal purpose.

19.6 Statistical information

The Trust agrees to provide any statistical information that is requested by the Commonwealth department responsible for the environment on donations to the Public Fund within the four months of the end of the financial year or otherwise as required.

20 Governing law

20.1 Applicable law

This deed is governed by the laws of Queensland.

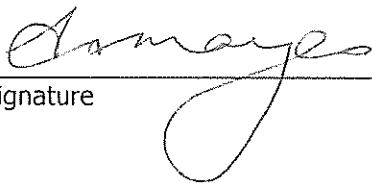
20.2 Situs of Trust

The situs of the Trust and of the Trust Fund is deemed to be Queensland.


Execution

Executed as a deed

Signed sealed and delivered
by **Lesleigh Mayes**:

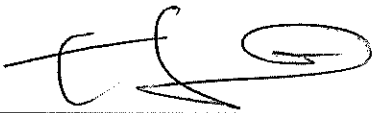
A 
Signature

A LESLEIGH FINNE MAYES
Full name

A 
Witness' signature

A HOLLEY LOUISE SHORT
Full name of witness

Signed sealed and delivered
by **Noosa Biosphere Reserve Foundation Ltd**
by:

A 
Director

A TIMOTHY FREDERICK SMITH
Full name of Director

A 
Director/Secretary

A SCOTT WILLIAMS
Full name of Director/Secretary