



## Memo

Acting General Manager

**To:** All Councillor

**From:** John Warburton  
Acting General Manager

**Date:** 21 November 2014

**Subject:** Additional Information – Council Meeting – 25 November 2014

**Record  
Number** 2014/359470

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Dear Councillors

I wish to advise Councillors of the following update to the Council Report – *Trust for the Acquisition of Environmentally Sensitive Land*.

At the time the Agenda was distributed, Council were awaiting copies of the two Deed Polls for inclusion with the Council report however they were not received in time. They are now attached for your consideration.

It is recommended that both documents are executed under the seal by Council.

The report along with the two Deed Polls is attached for your consideration.

Yours faithfully

John Warburton  
**Acting General Manager**

<b>ITEM 6.3</b>	<b>TRUST FOR THE ACQUISITION OF ENVIRONMENTALLY SENSITIVE LAND</b>
<b>REPORTING MANAGER</b>	<b>EXECUTIVE LEGAL COUNSEL</b>
<b>TRIM FILE REF</b>	<b>2014/355555</b>
<b>ATTACHMENTS</b>	<b>1 Deed</b>

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**EXECUTIVE SUMMARY**

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**PURPOSE**

To obtain Council's approval to affix the Council Seal to the Deed Poll establishing the Trust for the Acquisition of Environmentally Sensitive Land which is required to amend the original Trust Deed.

**SUMMARY**

On 10 November 2009, Council resolved to establish a Trust Fund for the acquisition of environmentally sensitive land. Contributions to the Trust Fund would be tax deductible. Unbelievably, it has taken five years for the Commonwealth to consider final approval of the Trust. It now requires minor amendments to the Trust Deed Poll which will also require the affixation of the Council Seal and signature by the Mayor and General Manager.

**FINANCIAL IMPACT**

Nil

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**RECOMMENDATION OF GENERAL MANAGER**

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That Council authorise the Mayor and the General Manager to sign the attached Deed Poll to amend the Deed establishing the Trust for the Acquisition of Environmentally Sensitive Land which includes minor amendments as advised by the Commonwealth Government; and affix the Council Seal.

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**REPORT**

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**BACKGROUND**

At its meeting on 10 November, 2009, Council resolved to establish a fund to receive donations for the acquisition of environmentally sensitive land.

After receiving legal advice, a letter was sent to the Minister on 10 May, 2010 explaining the Council decision and seeking approval for the establishment of the fund.

In July 2010, the Department of Local Government sought further particulars from Council to demonstrate that the proposal is in the public interest and requested that Council specifically address the criteria set out in the Department's Circular to Councils 07-49.

**FINANCIAL IMPACT**

Council has already allocated \$50,000 for the process of establishing the fund and obtaining all of the necessary approvals.

**POLICY IMPACT**

If approved by the Minister, the trust fund has the potential to enhance and supplement Council's statutory functions and responsibilities under the Local Government Act 1993, The Environmental Planning and Assessment Act 1979 and the Threatened Species Conservation Act 1995.

# FIRST AMENDING DEED POLL

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WARRINGAH COUNCIL TRUST

FOR THE

ACQUISITION OF ENVIRONMENTALLY SENSITIVE LAND

MatthewsFolbigg

Lawyers

Matthews Folbigg Pty Ltd

"The Barrington" Level 7, 10-14 Smith Street Parramatta 2150

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## FIRST AMENDING DEED POLL

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THIS DEED POLL is made the                      day of                      2014

### PARTIES

#### WARRINGAH COUNCIL

Civic Centre, 725 Pittwater Road, Dee Why NSW 2099 ("Trustee")

### BACKGROUND

- A. By Deed of Settlement made the 25<sup>th</sup> day of January 2013 (the "Trust Deed") John Raymond Boland settled upon the Trustee a sum of \$50 to establish a trust for the protection and enhancement of the natural environment or a significant part of the natural environment within the Local Government area of the Trustee. Such Trust is known as the "Warringah Council Trust for the Acquisition of Environmentally Sensitive Land".
- B. The Trustee wishes to amend the terms of the Trust in the manner specified in the operative part of this Deed Poll and in accordance with the provisions of Clause 16 of the Trust Deed.

### OPERATIVE PART

#### 1. DEFINITIONS AND INTERPRETATION

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- 1.1 Unless the context of this Deed Poll otherwise expressly requires, in this Deed Poll the words and expressions defined in the Trust Deed shall have the same meanings ascribed to them in the Trust Deed.
- 1.2 The rules of interpretation expressed in the Trust Deed shall apply to this Deed Poll.

#### 2. AMENDMENT OF TRUST DEED

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Clause 16.1(D) of the Trust Deed is omitted.

#### 3. RATIFICATION

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In all other respects the Trustee ratifies the provisions of the Trust Deed.

## EXECUTION

### Executed as Deed

The Common Seal of **WARRINGAH COUNCIL** was hereunto affixed on the  
day of                      2014 pursuant to a  
resolution of the Council passed on the  
day of                      2014:

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Mayor

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General Manager

## SECOND AMENDING DEED POLL

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WARRINGAH COUNCIL TRUST

FOR THE

ACQUISITION OF ENVIRONMENTALLY SENSITIVE LAND

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## SECOND AMENDING DEED POLL

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THIS DEED POLL is made the                      day of                      2014

### PARTIES

#### WARRINGAH COUNCIL

Civic Centre, 725 Pittwater Road, Dee Why NSW 2099 ("Trustee")

### BACKGROUND

- C. By Deed of Settlement made the 25<sup>th</sup> day of January 2013 (the "Trust Deed") John Raymond Boland settled upon the Trustee a sum of \$50 to establish a trust for the protection and enhancement of the natural environment or a significant part of the natural environment within the Local Government area of the Trustee. Such Trust is known as the "Warringah Council Trust for the Acquisition of Environmentally Sensitive Land".
- D. By a Deed Poll of even date made by the Trustee the Trust Deed was amended by the deletion of clause 16.1(d).
- E. The Trustee wishes to further amend the terms of the Trust in the manner specified in the operative part of this Deed Poll and in accordance with the provisions of Clause 16 of the Trust Deed.

### OPERATIVE PART

#### 4. DEFINITIONS AND INTERPRETATION

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- 4.1 Unless the context of this Deed Poll otherwise expressly requires, in this Deed Poll the words and expressions defined in the Trust Deed shall have the same meanings ascribed to them in the Trust Deed.
- 4.2 The rules of interpretation expressed in the Trust Deed shall apply to this Deed Poll.

#### 5. AMENDMENT OF TRUST DEED

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Clause 2.3(b) of the Trust Deed is omitted and replaced by the following subclause:

*"(b) where appropriate enter into Conservation Agreements with the Minister for the purposes provided for under subsections (a), (e1), (e2) and (e3) of Section 69C(1) of the National Parks and Wildlife Act 1974 (NSW) provided that a Conservation Agreement for the purposes of subsection (e3) must not be entered into if it relates to the matters referred to in subsections (b), (c) and/or (d) of Section 69C(1)."*



## 6. RATIFICATION

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In all other respects the Trustee ratifies the provisions of the Trust Deed.

## EXECUTION

### Executed as Deed

The Common Seal of **WARRINGAH COUNCIL** was hereunto affixed on the day of                      2014 pursuant to a resolution of the Council passed on the day of                      2014:

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Mayor

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General Manager