

**10.5. APPOINTMENT OF COUNCILLOR DIRECTOR TO BOARD - THE HYNE
COMMUNITY FOUNDATION - ATTACHMENTS**

ATTACHMENTS

Attachment Titles:

1. 20070326 - Deed Poll - The Hyne Community Foundation
2. 2016 - Amended Deed Poll - The Hyne Community Foundation

Attachment 1 - 20070326 - Deed Poll - The Hyne Community Foundation

1

Dated 26th March 2007

Deed of Trust

The Hyne Community Foundation

The Hyne Community Foundation Pty Ltd ACN 124 391 519
(Trustee)

Kell Moore Solicitors Pty Ltd

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ME_71589739_1 (W2003)

Contents

1.	Interpretation	3
2.	Establishment and Duration of Trust Fund	5
3.	Objects	6
4.	Control of Trust Fund	7
5.	Trustee	8
6.	Public Fund	9
7.	Investments	9
8.	Powers of the Trustee	9
9.	Gift Fund	12
10.	Non-profit	12
11.	Expenses	12
12.	Limited liability of Trustee	12
13.	Indemnity of Trustee	13
14.	Accounts and audit	13
15.	Power of alteration	14
16.	Winding up of Trust Fund	14
17.	Endorsement	15
18.	Advisory Committees	15
19.	Patrons	15
20.	Governing law	15

NLE_71580750_1 (W/2003)

Deed of Trust

Date: 26th MARCH 2007

Settlor: Hyne & Son Pty Ltd of 160 Kent Street, Maryborough Qld 4670

Trustee: The Hyne Community Foundation Pty Ltd of 160 Kent Street, Maryborough Qld 4670 (Trustee)

Background:

- A. Hyne & Son Pty Limited ACN 009 660 995 and Tumbarumba Shire Council wish to establish a charitable trust to be called "The Hyne Community Foundation" for public charitable purposes in accordance with Condition 5.29 of Development Consent 194-8-2004-i.
- B. The Settlor has agreed to pay to the Trustee as an original endowment the sum of \$100,000.00 to be held by the Trustee on the trusts declared in this Deed.
- C. The Settlor has further agreed to pay to the Trustee as an ongoing endowment the sum of \$40,000.00 per annum indexed annually in accordance with CPI and in accordance with the terms of this Deed to be held by the Trustee on the trusts declared in this Deed.
- D. The Trustee has consented to act as trustee of the Trust Fund and will hold the settled sum together with such further sums of money, investments and other property paid, given or transferred to the Trustee by way of addition to the Trust Fund, on the trusts contained in this Deed.

Operative provisions:

1 Interpretation

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

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

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

CPI means Consumer Price Index for Sydney (All Groups) or the index officially substituted for it.

Commencing Date means 26 March 2006;

ME_7158v739_1 (W2003)

Commissioner of Taxation means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the Act.

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

Council means the Tumbarumba Shire Council or any other local authority from time to time having jurisdiction over the Mill.

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

Deductible Gift Recipient has the meaning given by the Act.

Development Consent means Development Consent No. 194-8-2004-i approved by the Minister on 25 March 2006 which is attached as Annexure A.

Director means a director of the Trustee.

Execution Date means the date that the parties execute this Trust.

Land means the land that the Mill operates upon being lot 702, DP 755892, Linden Roth Drive, Tumbarumba local government area

Mill means the plantation soft wood timber mill situated on lot 702, DP 755892, Linden Roth Drive, Tumbarumba local government area.

Minister means the Minister for Planning and Natural Resources.

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

Qualified Person means a person who at the time of his first appointment as a director of the Trustee is a person who due to the tenure of some public office or position or activity in the community may be expected to have a high degree of responsibility to the public.

Review Date means each anniversary of the Execution Date while Condition 5.29 of Development Consent 194-8-2004-i remains in force.

Settlor means Hyne & Son Pty Limited ACN 009 660 995.

Settlor Obligations mean the obligations which would have been imposed on the Settlor if it had remained the owner of the Mill under this Deed, including the obligations under clause 2.2.

Successor Operator has the meaning set out in clause 2.2.

Trust means '*The Hyne Community Foundation*'.

ME_71589729_1 (W2003)

Trustee means the trustee appointed under this Deed while holding that office and also includes the trustee for the time being of the Trust Fund.

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

1.2 In this Deed unless the contrary intention appears:

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

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

2 Establishment and Duration of Trust Fund

- 2.1 The Settlor has upon the execution of this Deed transferred to the Trustee the sum of \$100,000.00 and directs that the Trustee is to, and the Trustee hereby declares that it will:
 - (a) act as Trustee of the Trust; and
 - (b) hold the Trust Fund as a public charitable trust which must have the Objects set out in clause 3 of this Deed.
- 2.2 Subject to clause 2.3, the Settlor or a subsequent owner or operator of the Mill assuming the Settlor Obligations (**Successor Operator**) will on the first Review Date provide to the Trustee a further endowment in the sum of \$40,000.00 which sum shall be increased in accordance with the CPI for each subsequent Review Date and which shall be paid to the Trustee on each Review Date. The Trustee hereby declares that it will hold the moneys paid pursuant to this sub-clause 2.2 subject to the terms of this Deed.
- 2.3 If the throughput of logs at the Mill is less than 500,000 cubic metres in any financial year, the Settlor, or Successor Operator, may with the written consent of the Council postpone a

ME_71587739_1 (W2003)

payment, or part of a payment, due under Clause 2.2 by up to a maximum of one year. Any postponement of a payment or part of a payment is due and payable by no later than the Review Date of the following year.

- 2.4 The Trust will be known as "*The Hyne Community Foundation*".
- 2.5 In managing and conducting the affairs of the Trust, the Trustee shall direct its efforts toward furthering the Objects.
- 2.6 The receipt of the secretary, treasurer or other appropriate officer of any relevant Approved Institution will be a full and sufficient discharge to the Trustee of any application of the Trust Fund and the Trustee will not be obliged to see to the application of the Trust Fund by the Approved Institution.
- 2.7 Subject to any express provision of this Deed, the Trustee may only in relation to the Trust Fund:
 - (a) hold the Trust Fund;
 - (b) exercise all rights and powers attaching or relating to the Trust Fund; and
 - (c) do any things which the Trustee is authorised, entitled or obliged to do by the provisions of this Deed.
- 2.8 The Trust Fund commences on the Execution Date, subject to the Settlor having paid the Trustee the sum of \$100,000.00 as an original endowment.
- 2.9 If the Mill is sold (or in anyway disposed of) by the Settlor or the ownership of the Land is transferred to a third party, any Successor Operator of the Mill is bound by the Conditions of the Development Consent that attach to the Land. The Settlor acknowledges that any sale or transfer of control of the Mill and/or the Land must include provision for the Successor Operator to assume the Settlor Obligations under this Trust.
- 2.10 Subject to clause 2.9, upon legal transfer of the Mill and/or Land all previous owners of the Mill and/or Land will cease to have any further obligations in relation to the Settlor Obligations.

3 Objects

- 3.1 The Trust is established and must be maintained exclusively for public charitable purposes, which are within the meaning of that expression in item 1.5B of the Act, s 50-5 and which are charitable in the legal sense, being for the benefit of the people of the Shire of Tumbarumba.
- 3.2 Without derogating from the generality of the objects described in clause 3.1, the Trust may also solicit donations, gifts, bequests and other forms of financial assistance to, or for

ME_71589739_1 (W2003)

the benefit of, the objects of the Trust, including by conducting fundraising initiatives and participating in workplace giving programs.

- 3.3 Where a gift to an Approved Institution must be made for a specific purpose identified in the relevant provisions of Subdivision 30-B of the Act the Trustee may provide the money, property or benefit to or for the Approved Institution only for the specified purpose.
- 3.4 The Trustee may apply capital as well as income of the Trust Fund for the purposes referred to in this clause.

4 Control of Trust Fund

- 4.1 To ensure that the Trust Fund is controlled and administered by persons who because of their tenure of some public office or position or some activity in the community may be expected to have a high degree of responsibility to the public in exercising that control or administration, the Directors of the Trustee must be persons in relation to which the following provisions apply:
- (a) the majority must be Qualified Persons;
 - (b) the number of Directors for the time being in office must not be less than five; and
 - (c) if the number of Directors in office falls below five the Trustee may not act in the affairs of the Trust Fund until that number is filled by the election or appointment of further Directors.
- 4.2 The Trustee must ensure that up to two persons (whether or not Qualified Persons), nominated by the Settlor while it is the owner of the Mill, or the Successor Operator, are appointed as Directors.
- 4.3 Other than the Directors to be appointed under clause 4.2, no Director will be appointed without prior written approval of Council, such approval not to be unreasonably withheld. At least one non company director appointed is to be an elected Councillor of Tumbarumba Shire Council or its successors.
- 4.4 The first chairman of the Trustee is Cornelis Marquart and on his death or retirement as a Director, the Trustee may at any time and from time to time, if so decided by a majority of the Directors, appoint another Director as chairman for a term not exceeding 3 years.

ME_71589739_1 (W2003)

5 Trustee

- 5.1 The Trustee must hold regular meetings and must meet from time to time, not less than twice each year. The first meeting must be held within three months of the date of this Deed.
- 5.2 Three Directors shall be a quorum at any meeting of the Trustee. All decisions of the meeting of the Trustee must be made by a majority of the Directors present at the meeting of the Trustee.
- 5.3 If through death, retirement or for any other reason there is a vacancy in the office of a Director, the continuing Directors may appoint a new Director to fill the vacancy. In selecting a new Director, the Directors must comply with any applicable requirements or guidelines of the Commissioner of Taxation relating to directors of trustees of public charitable trusts.
- 5.4 If the number of Directors is four, the Trustee may continue to act but may act only for the purpose of appointing a new Director or Directors until the number in office is filled up to at least five.
- 5.5 A Director vacates office if the Director is found to be of unsound mind or is a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health or to guardianship or administration.
- 5.6 A Director may retire on not less than three month's written notice to the Trustee, or in the case of a nominee of the Settlor or a Successor Operator, must retire on notice to the Trustee by the owner of the Mill.
- 5.7 If the Trustee defaults in the observance or performance of any of its obligations or duties under this Deed, the Settlor, while it remains owner of the Mill, or a Successor Operator may by a written notice to the Trustee remove the Trustee from office.
- 5.8 The Settlor, while it remains owner of the Mill, or a Successor Operator must use its reasonable endeavours to ensure that if the Trustee retires or is removed, a successor Trustee agrees to become Trustee with effect from such retirement or removal becoming effective.
- 5.9 Any successor Trustee must execute a deed by which it covenants to be bound by this Deed as if it had been an original party to it.
- 5.10 When it is removed, the outgoing Trustee is released from all obligations in relation to the Trust Fund arising after the time it retires or is removed. The outgoing Trustee must execute and deliver any documents and do every other thing, which is necessary or desirable to affect the appointment of the successor Trustee.

ME_71589759_1 (W2003)

6 Public Fund

- 6.1 The Trust Fund is at all times open to subscription by all members of the public.
- 6.2 All receipts issued by the Trustee on behalf of the Trust must quote the full name of the Trust, the ABN of the Trust and any other requirements specified under Subdivision 30-BA of the Act from time to time.

7 Investments

- 7.1 The Trust Fund may be invested solely in or on any investments or securities authorised by the law for the time being of the Commonwealth of Australia or any Australian State or Territory for the investment of trust money with power to vary or transpose those investments or securities from time to time and at any time.
- 7.2 The Trustee must obtain and consider independent and impartial advice reasonably required for the investment of the Trust Fund and the management of the investments from an experienced and qualified Australian Financial Services Licensee or other person who is appropriately qualified to give accounting, financial, taxation, investment or other advice pertinent to the operation of the Trust Fund and its investments and, where appropriate, is also a member of the Institute of Chartered Accountants, CPA Australia or the Australian Stock Exchange. The Trustee must pay out of the Trust Fund the reasonable cost of obtaining such advice.
- 7.3 Except for any investment or security in accordance with clause 7.1 no part of the capital or income of the Trust Fund may be lent to or deposited with any person.

8 Powers of the Trustee

- 8.1 In addition to the powers conferred on the Trustee by law or which are otherwise conferred on it by this Deed, the Trustee has, subject always to clause 7, the following powers and discretions:
 - (a) to accumulate any unpaid or unapplied income of the Trust Fund by investing it and the resulting income and by holding the accumulations in augmentation of and on the same trusts and conditions as are applicable to capital;
 - (b) to exercise all rights and privileges and perform all duties pertaining to any bonds, shares, stock or debentures for the time being forming part of the Trust Fund with liberty to assent to any arrangements modifying those rights, privileges or duties;
 - (c) to agree to any scheme or arrangement for the reconstruction of or the increase or reduction of the capital of any Settlor and for any such purpose to deposit, surrender and exchange any such shares or stock or the title to them and to pay any calls or contributions or other necessary expenses in connection with any shares, stock or the title to them;

ME_71589739_1 (W2005)

- (d) if at any time the Trust Fund comprises real property or any interest in real property:
 - (i) to manage, use and let it or any part of it;
 - (ii) to erect, pull down, rebuild and repair buildings and erections;
 - (iii) to carry out improvements of any nature;
 - (iv) to make allowances to and arrangement with tenants;
 - (v) to grant or acquire easements or other rights, to partition or subdivide or join in the partition or subdivision of it; or
 - (vi) generally to deal with that property or interest or to join in dealing with it as if beneficially entitled to it without being responsible for loss;
- (e) to retain any property donated to the Trust Fund without considering the question of sale, calling in or conversion for as long as the Trustee thinks fits;
- (f) to commence and carry out legal proceedings of any kind and in any court to enforce a contract entered into by the Trustee and to recover damages for breach of such a contract;
- (g) to cancel, terminate or accept surrenders of leases, to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover rent and damages for breach of lease, to sue and prosecute trespassers or other persons for damage to any part of the property and to settle, abandon, compromise and release any such actions or suits when expedient;
- (h) to repair, renovate, decorate and maintain chattels personal or land including fittings, fixtures, furnishings, furniture and equipment and grounds and outhouses whether or not part of the Trust Fund;
- (i) to acquire, lease or otherwise obtain the use of such premises, chattels, fittings and equipment as the Trustee from time to time thinks fit for the proper administration of the Trust;
- (j) to employ, engage or appoint any secretary, manager, solicitor, accountant or agent or any other person, including any Director or member of the Trustee or any firm in which that Director or member is a partner or director, to transact any business required to be done under the trusts established by this Deed, including the receipt of payment of money and the acquisition of property of any kind on behalf of the Trustee, and the Trustee may decide the amount of the remuneration and expenses to be paid to any such person;

ME_71589759_1 (W2003)

- (k) to acquire any investment to form part of the Trust Fund on terms that require the investment to be paid for by more than one instalment or that the instalments or the residue of purchase money bear interest as the Trustee thinks fit.
 - (l) to raise money which the Trustee thinks expedient for any purpose in relation to the execution of the trusts and powers conferred on the Trustee by this Deed with or without security or by mortgaging or charging with or without power of sale any part of the Trust Fund;
 - (m) to merge or mix the Trust Fund or any part of it with any other trust fund, trust moneys or trust property or to join with any other Director or person to form a common or merged fund to be invested in any investment permitted by this Deed whether or not the common or merged fund is under the control of or stands in the name of the Trustee;
 - (n) to pay out of the capital or income of the Trust Fund the costs of an incidental to the establishment of the Trust Fund and all expenses and outgoings that may be incurred in relation to the trusts of this Deed including all administration expenses;
 - (o) to invite persons to make gifts to the Trust Fund and to refuse any gift of property where the Trustee reasonably considers that any expenses associated with or likely to arise in relation to the gift of property would cause the gift of property to be onerous or uneconomic to maintain;
 - (p) to conduct activities for the raising of funds from the public, pay reasonable expenses relating to the conducting of those activities, and to apply the net proceeds for the Objects;
 - (q) to take and act on the opinion of any counsel or solicitor practising in the Supreme Court of any Australian State or Territory whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts of this Deed without being liable to any one in respect of any act done or not done by it in accordance with that opinion, but this clause does not oblige the Trustee to act in accordance with any such opinion nor prohibit the Trustee from applying to any court as it thinks fit;
 - (r) to do any act or thing which in the opinion of the Trustee is necessary for the proper and efficient management and development of any property forming part of the Trust Fund; and
 - (s) to carry out any of the foregoing powers by or through an agent and to appoint and authorise the agent to carry out all or any of the foregoing powers.
- 8.2 The Trustee may give legally binding undertakings to the Commissioner of Taxation in order to obtain or retain the endorsement of the Trust Fund as exempt from income tax under Subdivision 50-B of the Act.

ME_7158v759_1 (W2005)

9 Gift Fund

- 9.1 All other provisions of this Deed are subject to this clause 9.
- 9.2 The Trustee must maintain, for the principal purpose of the Trust as noted in clause 3.1, a fund (**the Gift Fund**):
- (a) to which gifts of money or property for that purpose are to be made; and
 - (b) to which any money received because of such gifts is to be credited; and
 - (c) that does not receive any other money or property; and
 - (d) which complies with any other requirements specified in Subdivision 30-BA of the Act.
- 9.3 The Trustee must use the following only for the principal purpose of the Trust:
- (a) gifts made to the Gift Fund; and
 - (b) any money received because of such gifts.
- 9.4 Notwithstanding any other provision in this Deed, if the Gift Fund is wound up or if the endorsement (if any) of the Trust is revoked, any surplus assets of the Gift Fund remaining after payment of liabilities attributable to it, shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

10 Non-profit

The assets and income of the Trust must be applied solely in furtherance of the Objects of the Trust and no portion may be distributed directly or indirectly to the Trustee except as bona fide compensation for services rendered or expenses incurred on behalf of the Trust.

11 Expenses

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

12 Liability of Trustee limited

- 12.1 Except in the case of the Trustee's own dishonesty or wilful or knowing breach of trust, a liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be satisfied out of the assets of the

ME_71589779_1 (W2003)

Trust out of which the Trustee is actually indemnified for the liability by clause 13. This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.

- 12.2 The Trustee is not obliged to do or refrain from doing any thing under this Deed (including incurring any liability) unless the Trustee's liability is limited in the manner specified in clause 12.1.
- 12.3 References in this clause to the Trustee include a Director, agent, servant and delegate employed, engaged or appointed by the Trustee under this Deed.

13 Indemnity of Trustee

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

14 Accounts and audit

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

ME_71589739_1 (W2003)

that purpose such documents and information as that person requires to fulfil this task; and

- (c) cause the financial statements of the Trust Fund to be audited at the expense of the Trust Fund at least once in each accounting period by an approved auditor appointed by the Trustee.

14.2 The accounts must be kept at the place which the Trustee determines and be open to inspection by any Director.

15 Power of alteration

The Trustee may by deed alter, amend, add to, delete or replace any of the trusts, powers and provisions of this Deed, including this clause, in any manner provided that:

- (a) no part of the Trust Fund becomes subject to any trust other than trusts for public charitable purposes;
- (b) no part of the Trust Fund may be paid to or applied for any purpose other than those permitted under this Deed;
- (c) no amendment is made affecting clauses 3, 7 and 9;
- (d) any amendment must comply with the Act to ensure that the Trust Fund maintains endorsement as an income tax exempt entity, if applicable; and
- (e) counsel or solicitor referred to in clause 8.1(q) certifies that in their opinion the alterations, amendments, additions, deletions or replacements are within this power.

16 Winding up of Trust Fund

16.1 If on the winding up or dissolution of the Trust Fund there remains after satisfaction of all its debts and liabilities any property, the property must be given or transferred to an Approved Institution which:

- (a) is maintained exclusively for or covenants to use the property exclusively for charitable purposes; and
- (b) prohibits the distribution of its income and property among its beneficiaries or members to an extent at least as great as is imposed on the Trust Fund.

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

16.2 An Approved Institution referred to in clause 16.1 includes any fund, authority or institution of which the Settlor, a Successor Operator or a Director is the settlor or a trustee

ME_71587739_1 (W2003)

or director or in respect of which the Settlor, a Successor Operator or a trustee is a director of its trustee.

17 Endorsement

If the Trust is endorsed by the Commissioner of Taxation as a Deductible Gift Recipient:

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

18 Advisory Committees

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

19 Patrons

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

20 Governing law

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

ME_71589739_1 (W2003)



Australian Government
Australian Taxation Office

Australian Business Register

Australian business number(ABN) : 69 065 615 254

Entity name : THE TRUSTEE FOR THE HYNE COMMUNITY
FOUNDATION

Trading Name : THE HYNE COMMUNITY FOUNDATION
(See reverse for additional trading names.)

ABN Status : Registered

ABN Registration Date : 13 March 2007

Postal Address : PO BOX 106
MARYBOROUGH QLD 4650

Business Address : 160 KENT ST
MARYBOROUGH QLD 4650

Email Address : carol.mcdougall@hyne.com.au

Type of Entity : Trust

Industry Code (ANZSIC) : 99994

Please turn over ...

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