

DEED OF TRUST

BI CYCLE NEW SOUTH WALES ENVIRONMENTAL
TRUST

THIS DEED is made on *27th May* 2003

BETWEEN: Mr Julius Wifred Hilder

71 Fleet Street

Carlton NSW 2218

(hereafter called "the Settlor")

of the one part

AND: Bicycle New South Wales Inc

209 Castlereagh Street

SYDNEY NSW 2000

(hereafter called "the Trustee")

NEW SOUTH WALES DUTY
18-06-2003 0001451477-001
SECTION 58(1)
DUTY \$ *****200.00

RECITALS:

The Settlor desires to establish and maintain a public fund to be held by the Trustee for the purpose of the objects of the Trust. The public fund is to be called the Bicycle NSW Environmental Fund for the specific purpose of supporting the environmental objects/purposes of BICYCLE NEW SOUTH WALES ENVIRONMENTAL TRUST. The fund is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

The Settlor desires that such fund shall be truly public in nature and that therefore the Trustee shall take such action as it considers appropriate to invite and attract further contributions to the fund from the widest selection of the community for the specific purpose of supporting the environmental objects/purposes of the Trust on the terms and conditions set out in this Deed.

The Settlor believes that the incentive to make contributions to the fund will be enhanced by the right of any donor to claim an allowable deduction from their gross income to the extent of any donation in excess of \$2.

The Trustee is prepared to accept donations and administer a public fund established in accordance with the Settlor's intention as stated above.

The Settlor has on or before the execution of this Deed paid to the Trustee the sum of \$10 to the intent that the said sum shall be held by the Trustee for the purposes /objects of the trust and as an original contribution to the fund.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise permits:

- (a) "Auditor" means the person appointed by the Trustee as auditor of the Trust in accordance with clause 7.4.
- (b) "Charitable" means charitable under the relevant laws of a state of Australia.
- (c) "Department" means the Commonwealth Department of the Environment and Heritage or its successor responsible for maintaining the Register.
- (d) "Exempt Charity" means a Charitable trust, institution or other organisation whose income is exempt from income tax under Division 50 of Part 2-15 of the Tax Act and to which gifts may be made on the basis that they are allowable deductions against assessable income of donors under Division 30 of Part 2-5 of the Tax Act, or any Charitable organisation which enjoys substantially the same privileges under future legislation.
- (e) "Guidelines" mean the guidelines to the Register from Environment Australia.
- (f) "Management Committee" means the persons appointed to the committee of management established in accordance with clause 6.
- (g) "Objects" means the objects of the Trust set out in clause 4.
- (h) "Power" means a power, right, authority, discretion or remedy which is conferred on the Trustee:
 - (i) by this Deed; or
 - (ii) by law in relation to this Deed.
- (i) "Public Fund" means the Bicycle New South Wales Environmental Fund established and maintained in accordance with clause 6.
- (j) "Register" means the Register of Environmental Organisations referred in subdivision 30-E of the Tax Act.
- (k) "Settled Sum" means the sum of \$10 paid by the Settlor to the Trustee as referred to in the Recitals.
- (l) "Tax Act" means the *Income Tax Assessment Act 1997* (Cth).
- (m) "Trust" means the BICYCLE NEW SOUTH WALES ENVIRONMENTAL TRUST constituted by this Deed.

- (n) "Trust Property" means the assets referred to in clause 2, including the Public Fund.
- (o) "Trustee" means the party described as the Trustee or any substitute or replacement trustee for the time being of the Trust.
- (p) "Year" means:
 - (i) The period from the date of this Deed until 30 June 2003; or
 - (ii) The period commencing on each successive 1 July and concluding on 30 June in the following year.

1.2 General

In this Deed, unless the context otherwise requires:

- (a) The singular includes the plural and vice versa;
- (b) A reference to an individual or person includes a Corporation, partnership, joint venture, association, authority, trust, state, or government and vice versa;
- (c) A reference to any gender includes all genders;
- (d) A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to this Deed;
- (e) A recital, schedule, annexure or a description of the parties forms part of this Deed;
- (f) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
- (g) A reference to a statutory provision includes a reference to that provision as amended or substituted from time to time and any provision replacing the first provision referred to.

1.3 Headings

In this Deed headings are for convenience of reference only and do not affect interpretation.

2. DECLARATION OF TRUST

The Settlor declares and directs that the Trustee must, and the Trustee declares that it will, act as trustee in respect of the Trust and will hold on trust:

- (a) the Settled Sum;
- (b) any money, investment or other asset which the Trustee acquires as trustee under this Deed; and
- (c) any proceeds of the above (whether capital or income) or any investment of the proceeds, with and subject to the powers and remaining provisions set out in this Deed.

3. NAME OF THE TRUST

The name of the Trust shall be Bicycle New South Wales Environmental Trust.

4. OBJECTS

The objects of the Trust are solely for charitable purposes and are as follows:

- (a) to conserve and protect the natural environment through the promotion of bicycling as an environmentally beneficial means of transport;
- (b) to promote the use of the bicycle as a key element of ecologically sustainable development practices;
- (c) to promote bicycle transport as a means of reducing greenhouse gas emissions, improving air and water quality, reducing non – renewable energy consumption, and improving land use; and
- (d) to promote the use of the bicycle as a healthy, environmentally sustainable means of enhancing accessibility and personal mobility in the community.

5. APPLICATION OF INCOME AND PROPERTY

Subject to this Deed, the Trust Property will be used and applied solely in promotion of the Objects and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to the Trustee.

6. ESTABLISHMENT OF THE PUBLIC FUND

6.1 Establishment

The Trustee will establish the Public Fund to be called Bicycle New South Wales Environmental Fund for the specific purpose of supporting the Objects. All gifts of money or property for this purpose and any money received because of such gifts must be credited to the Public Fund. The Public Fund must not receive any other money or property into its account and it must comply with subdivision 30-E of the Tax Act.

6.2 Rules of the Public Fund

- (a) The objective of the Public Fund is to support the Trust's environmental objects.
- (b) Members of the public are to be invited to make gifts of money or property to the Public Fund for the Objects.
- (c) Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the Public Fund.
- (d) 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.

- (e) 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.
- (f) The Public Fund will be operated on a non-profit basis.
- (g) The Management Committee will administer the Public Fund.

6.3 The Management Committee

- (a) The Management Committee for the Public Fund shall be made up of no less than three persons.
- (b) The members of the Management Committee will be appointed by the Trustee.
- (c) A majority of the members of the Management Committee must be 'responsible persons' as defined by the Guidelines to the Register, or, where not defined by the Guidelines, persons that have the requisite degree of responsibility to the general community as required by the Department, being persons 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 environmental objectives of the Trust.
- (d) Any changes to the membership of the Management Committee are to be advised by the Trustee to the Department within a reasonable time following the making of the changes.
- (e) The procedures for the calling of meetings of the Management Committee and for the conduct of business at those meetings will be the same as those that govern meetings of the committee of management of the Trustee.

6.4 Requirements for Public Fund

- (a) The Trustee will inform the Department as soon as possible if:
 - (i) the Trust changes its name or the name of the Public Fund;
 - (ii) there is any change to the membership of the Management Committee; or
 - (ii) there has been any departure from the model rules for public funds set out in the Guidelines to the Register.
- (b) The Trustee will inform the Australian Taxation Office and the Department if there are any amendments made to this Deed.

6.5 Ministerial Compliance

The Trustee must comply with any rules made by the Commonwealth Treasurer and the Commonwealth Minister with responsibility for the environment to ensure that the gifts to the Public Fund are used only for its principal purpose.

6.7 Conduit Policy

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

6.8 Statistical Information

Statistical information requested by the Department on donations to the Public Fund will be provided within four months of the end of the financial year.

An audited financial statement for the Trust and the Public Fund will be supplied with the annual statistical return. The statement will provide information on the expenditure of public fund monies and the management of public fund assets.

7. AUDIT AND REPORTING

7.1 Accounts

The Trustee must keep or cause to be kept accounts in accordance with generally accepted accounting principles of all receipts, payments, assets and liabilities relating to the Trust and Public Fund and of all other matters necessary for showing a true state of affairs and condition of the Trust and Public Fund.

7.2 Annual Accounts

The Trustee must as soon as practicable after the last day of each Year prepare or cause to be prepared a statement of income and expenditure in respect of that Year and a balance sheet disclosing the assets and liabilities of the Trust and Public Fund as at the last day of the Year (together called "the Accounts").

7.3 Audit

The Trustee may from time to time, and must in any event within 12 weeks after the end of each Year, have the Accounts of the Trust and Public Fund audited by the Auditor.

7.4 Auditor

The Trustee must appoint an auditor. The Auditor:

- (a) must be approved by the Management Committee;
- (b) must be a registered company auditor carrying on practice in New South Wales; and
- (c) must not be the Trustee or a member of the Management Committee or be closely related to the Trustee or a member of the Management Committee.

7.5 Auditor's Report

The Auditor must report in writing to the Trustee and provide a copy to the Management Committee as to whether:

- (a) the accounts have been properly drawn up so as to give a true and fair view of the income and expenditure of the Public Fund for the Year and the state of affairs of the Public Fund as at the end of the Year;
- (b) proper provision has been made in the accounts of the Public Fund for bad and doubtful debts;
- (c) the accounting records have in the opinion, of the Auditor, been properly kept;
- (d) the Auditor has obtained all information and explanations regarding the Public Fund required to conduct the audit in a complete and thorough manner;
- (e) there are any defects or irregularities in the accounts; and
- (f) the Public fund has been properly administered in accordance with clause 6.

The Auditor must give the reasons for any adverse comments made in the audit by the Auditor.

7.6 Auditor's Term of Office

The Auditor will continue in office until he or she resigns or is removed by the Trustee at the request of the Management Committee. The Trustee, with the approval of the Management Committee, must appoint another qualified auditor to act as Auditor in the place of any auditor so removed and such new Auditor must have signified his or her willingness to act as Auditor prior to such appointment.

8. TRUSTEE

8.1 Payments to Proper Officer

In applying the capital or income of the Trust Property in accordance with this Deed the Trustee may make payment to a person who, in the Trustee's opinion, is the proper officer for the receipt of such money and is not responsible to see to the application of the money so paid.

8.2 Trustee's powers

In addition to the powers conferred on it by law, the Trustee may do any of the following:

- (a) effect any transaction relating to the management or disposition of the Trust Property as if it were beneficial owner;
- (b) invest any of the Trust Property in the same way as trustees may invest trust funds under the *Trustee Act 1925* (NSW);
- (c) allow any investment or amount at any time forming part of the Trust Property to remain in the original form in which it is received by the Trustee and at any time to sell call in or convert the same into money or other securities or property;

- (d) sell, realise or otherwise dispose of any of the Trust Property on any terms and for any price (including partly or wholly on credit and with or without security for that credit);
- (e) maintain and repair the Trust Property;
- (f) develop, improve or vary the Trust Property in any way;
- (g) insure the Trust Property for any amount against any risk;
- (e) pay expenses and outgoings (including taxes) incurred in respect of the Trust Property or in carrying out the Objects (including expenses and outgoings incurred by the Trustee in the exercise of its Powers) out of capital or income;
- (f) lease Trust Property at any rent and on any terms;
- (g) add to the Trust Property any part of the income arising from its application for the Objects;
- (h) borrow and raise money (including by the drawing and discounting of bills of exchange) for investment or for the Objects;
- (i) mortgage or charge the Trust Property as security for any liability incurred by the Trustee;
- (j) grant guarantees or indemnities;
- (k) solicit and receive as additions to the Trust Property gifts and benefactions of any kind whether inter vivos or testamentary;
- (l) take any action to enforce a debt or other claim relating to the Trust Property;
- (m) compromise and settle matters arising in relation to the Trust Property;
- (n) institute and defend proceedings at law, to proceed to the final end and determination of the proceedings or compromise the same;
- (o) employ any person as paid employee or as a volunteer to transact any business or to do any act in relation to the Trust Property or the Objects, including the receipt and payment of money;
- (p) delegate in writing any of its functions to any person. The Trustee is not liable for the default of any such person (even if the delegation was not strictly necessary or expedient), provided the Trustee took reasonable care in selecting and supervising the delegate;
- (q) appoint any person as agent or nominee of the Trustee to hold, deal with, manage and dispose of any Trust Property;
- (r) pay, transfer or apply any Trust Property for the benefit of any other organisation which is an Exempt Charity to be used for the Objects or Charitable purposes similar

to the Objects, whether or not (in the case of a trust) the Trustee is a trustee of that trust;

- (s) print and distribute any material; and
- (t) anything which is incidental or conducive to the exercise of its functions to further the Objects.

8.3 Remuneration and Reimbursement

- (a) Subject to paragraph (b), the Trust Property must be applied only for the Objects and no remuneration or other benefit in money or money's worth will be paid or transferred, directly or indirectly, to the Trustee, any member or office-bearer of the Trustee.
- (b) Nothing in this Deed shall prevent any payment in good faith by the Trustee out of the Trust Property for:
 - (i) reasonable remuneration to any member, office-bearer, employee or agent of the Trustee for services actually rendered to the Trustee in advancing the Objects;
 - (ii) reasonable rent for premises let or demised by any member, office-bearer, employee or agent of the Trustee to the Trustee for use in advancing the Objects;
 - (iii) costs and out of pocket expenses reasonably incurred by the Trustee or any member, office-bearer, employee or agent of the Trustee in advancing the Objects or carrying out the Trustee's functions under this Deed; and
 - (iv) fees and disbursements to any solicitor, accountant or other person engaged in any profession incurred by the Trustee in advancing the Objects,

provided that these payments have been approved by the committee of management of the Trustee.

8.4 Trustee discretion

The Powers of the Trustee may be exercised at its:

- (a) absolute discretion; and
- (b) from time to time as circumstances require,

provided that the Trustee only exercises its Powers in connection with the administration of the Public Fund in accordance with the direction of the Management Committee.

8.5 Obligation to Investigate

Nothing in this Deed imposes any obligation upon the Trustee to investigate the accounts or management control of any person in which any of the assets forming part of the Public Fund

may be invested nor is the Trustee under any obligation to bring any action, suit or proceedings or in any other manner to seek to interfere with the constitution, management or control of any such entity.

9. LIMITATION OF LIABILITY

The Trustee, its office-bearers, employees, agents and attorneys and any member of the Management Committee are not liable for:

- (a) any loss to the Trust Property; or
- (b) any action taken or omitted to be taken by it or them under this Deed,

except a loss attributable to the Trustee's or their own wilful misconduct, fraud or negligence.

10. INDEMNITY AND INSURANCE

10.1 Indemnity

The Trustee, its office-bearers, employees, agents and attorneys and the members of the Management Committee (each an *Indemnified Person*) are indemnified out of the Trust Property for:

- (a) all costs, charges, liabilities and expenses (including legal costs and expenses) incurred in connection with the performance or exercise or attempted exercise of any duty or power; and
- (b) any action brought against any of them concerning this Deed, the Trust Property or the neglect or default of any solicitor, banker, accountant or other agent employed in good faith by the Trustee,

except to the extent that any of the above arise from the Indemnified Person's wilful misconduct, fraud or negligence.

10.2 Insurance

- (a) Subject to clause 10.2(c) and 10.2(d), the Trustee may effect and maintain a contract of insurance from an established and reputable insurer, which insures each Indemnified Person against all liabilities incurred by them whilst acting in that capacity, provided that the liability does not arise out of conduct involving a wilful breach of duty to the Trustee or the Trust. The Trustee may pay for the premium on such insurance contracts out of Trust Property.
- (b) Unless the Trustee agrees otherwise, the contract of insurance referred to in clause 10.2(a) will, if possible, contain a provision waiving all rights of subrogation or action against each Indemnified Person.
- (c) The exercise of the Trustee's discretion under clause 10.2(a) only arises if the Trustee receives a written request (either as a standing request or from time to time) from an Indemnified Person and if and to the extent that the Indemnified Person does not

otherwise have the benefit of a contract of insurance on the same terms as set out in that clause.

- (d) The Trustee may exercise its discretion under clause 10.2(a) by paying the premium attributed to the Indemnified Persons by a broker under a general contract of insurance that includes coverage for at least the Indemnified Persons.
- (e) The Trustee will use all reasonable endeavours to ensure that it does not do anything which will render void any contract of insurance maintained under this clause.

11. THIRD PARTIES

A person dealing in good faith with the Trustee (including as vendor, purchaser or mortgagor) is not bound to enquire:

- (a) as to the authority or purpose of the Trustee;
- (b) as to the application of money received by the Trustee;
- (c) whether the dealing is necessary or proper; or
- (d) in any other way as to the proprietary or regularity of the dealing.

12. RETIREMENT OF TRUSTEE

The Trustee may retire on the expiration of three months' notice to the Settlor (or such lesser period as may be agreed between them). The Trustee undertakes that if it retires it will use all reasonable endeavours to appoint a new trustee who is committed to observing the Objects.

13. TERMINATION AND WINDING-UP

13.1 Term of the Trust

The Trustee may wind up or terminate the Trust at any time.

13.2 Distribution of surplus property

At the earliest of the winding up of the Trust, the Public Fund and the revocation of the Trust's endorsement as a deductible gift recipient, if there remains any surplus Trust Property, the Trust Property will be applied as follows:

- (a) first: in payment of any amounts payable to any creditor of the Trust; and
- (b) second: the balance will be transferred by the Trustee to one or more organisations selected by the Trustee:
 - (i) having objects similar to the Objects; and
 - (ii) which is on the Register.

13.3 Distribution where initial criteria are not met

If property is required to be given or transferred to one or more institutions under clause 13.2 and there is no institution having objects similar to the Objects, the surplus property must be given or transferred to one or more organisations selected by the Trustee which is on the Register.

14. VARIATION OF THIS DEED

14.1 Amendments to Deed

Subject to the following clauses, the Trustee may from time to time amend this Deed by a deed executed by the Trustee.

14.2 Certain Amendments of no Effect

No variation or modification of this Deed is of any force or effect if its effect is:

- (a) to change the Objects;
- (b) to change clause 6 or this clause 14.2(b) unless the Australian Taxation Office has been notified of the proposed change and no objection to the proposed change is made by the Australian Taxation Office; or
- (c) to disentitle the deductibility under the Tax Act of donations made to the Public Fund.

14.3 Fundraising

An amendment to this Deed is not effective unless it has been previously submitted to and approved by the relevant Minister or other authority but only if so required by the *Charitable Fundraising Act 1991* (NSW) or similar legislation in any other State.

15. CERTIFICATES

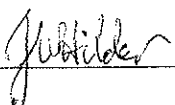
A certificate signed by the chairperson of the Trustee or the chairperson of the Management Committee that a resolution has been passed by the Trustee or the management Committee (as the case may be), is conclusive evidence that the resolution has been duly passed at a properly convened meeting of the Trustee or the Management Committee.

16. GOVERNING LAW

This Deed is governed by the laws of New South Wales.

EXECUTED and delivered as a deed.

**Signed Sealed and Delivered by
Julius W. Hilder** in the presence of:



Witness Signature

NEIL TONKIN

Print Name

The Common Seal of Bicycle New South Wales, Incorporated was affixed in the presence of:

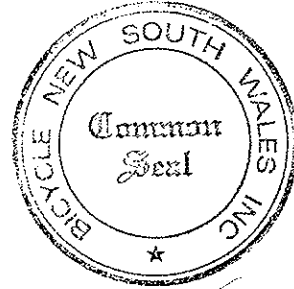
Chris Bushell

Committee Member Signature

CHRIS BUSHELL

Print Name

Neil Tonkin
Signature



Timothy R Hoskins

Committee Member / ~~Public Officer~~ / Secretary Signature

TIMOTHY R HOSKINS

Print Name