

**TRUST DEED
dated 20 November 2020**

&

**DEED OF VARIATION
dated 22 October 2021**

TRUST DEED

TOOWONG ROWING FOUNDATION

Date: 21st November 2020

Toowong Rowing Foundation Limited (Limited by Guarantee)

ACN 644 771 620 (Trustee)

And

Paul Silvio Pradella (Settlor)

(Author: Robert Gunningham)

I certify that this and
the succeeding nine pages
is a true copy of the
Trust Deed of the Toowong
Rowing Foundation dated
21st November 2020


ROBERT PHILIP HOWARD GUNNINGHAM
SOLICITOR
BRISBANE

21.11.20

TRUST DEED

TOOWONG ROWING FOUNDATION

Date: 21st November 2020

This Trust Deed is made by **Toowong Rowing Foundation Limited (Limited by Guarantee)**

ACN 644 771 620 (Trustee)

And

Paul Silvio Pradella (Settlor)

BACKGROUND

- A. The Trustee has agreed to act as Trustee of the Foundation
- B. The purpose of the Foundation is to receive gifts and bequests from members and friends of **Toowong Rowing Club Inc.** (the Beneficiary) to support the long-term viability of the Beneficiary.
- C. The Settlor has paid, or will pay, the sum of \$10.00 (the settlement sum) to the Trustee, and intends, by this deed, to establish a trust, namely, the Foundation, for the benefit of the Beneficiary.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

“Accounting Period” means each one of the following periods as appropriate:

- (a) The period from the date of this deed until the next 30 June;
- (b) Each following period of 12 months until 30 June preceding the Vesting Day;
- (c) The period starting on 1 January immediately before the Vesting Day and ending on the Vesting Day.

“Beneficiary” means **Toowong Rowing Club Inc.**, an incorporated association, or any successor entity.

“Earnings” means all income and capital gains from the money or property in the Trust Fund, for the Accounting Period, and which is deemed to be net income of the Trust Fund, pursuant to the Income Tax Assessment Act.

“Foundation”, “Fund” and “Trust” means the trust for the Trust Fund established by this Deed.

“Tax” means a tax or duty, however imposed and by whatever name called, whether on income or capital gains and includes tax or duty imposed as additional tax or duty or penalty tax or duty.

“Trust Fund” has the meaning set out in clause 2.3.

“Trustee” means the company named in this deed as Trustee, or any other company which may be appointed in the future as trustee.

“Vesting Day” means the day which is 80 years from the date of this deed or such earlier day as may be determined under clause 8.

2. ESTABLISHING THE TRUST

2.1 The Settlor

The settlor agrees:

- (a) to pay the Settlement Sum to the Trustee, this sum to be the first gift to the Fund.
- (b) that s/he will have no right to any benefit from the Trust or to exercise any powers under the trust.

2.2 Trustee to hold Trust Fund

The Trustee accepts appointment as Trustee and agrees to hold the Trust Fund upon these trusts with and subject to the powers and provisions of this deed.

2.3 Name of Trust

The name of the Trust is “**Toowong Rowing Foundation**”.

2.4 Trust Fund

The Trust Fund consists of:

- (a) All gifts of money, including the settlement sum, or property accepted by the Trustee;
- (b) The earnings of the fund
- (c) Any amounts of earnings re-invested in the Foundation.
- (d) Any investments or property into which any of the above may be converted or which become subject to the trusts and provided for in this deed.

2.5 Objects of the Trust

Without limiting the powers of the Trustee, the objects of the Trust are, for the benefit of the Beneficiary, to:

- a) receive funds from benefactors and invest those funds for the long-term benefit of the Beneficiary
- b) provide financial support for the construction, maintenance and operation of boatsheds and associated infrastructure for the long-term benefit of the Beneficiary and the local community
- c) provide financial support for the acquisition of boats and associated rowing equipment
- d) provide financial support to subsidise membership fees for youth rowers
- e) provide financial support for rowers selected to participate in high performance rowing programmes
- f) provide protection against any adverse financial or other events which may occur, that are outside the control of the Beneficiary
- g) give such other financial assistance and undertake such other activities considered by the Trustee to be in accord with these objects
- h) promote the Beneficiary's role and participation within the local community.

2.6 Power to accept gifts and bequests

The Trustee may:

- (a) Accept gifts or bequests of money or property subject to conditions or otherwise;
- (b) Indemnify donors such as executors of estates and trusts;
- (c) Decline gifts or bequests which do not readily serve the objects of the Foundation;
- (d) Do all such other things as the Trustee considers necessary or desirable to perform the objects of the Trust.

2.7 Register of benefactors

The Trustee must keep a register of benefactors and may:

- (a) Acknowledge the contribution of benefactors
- (b) Involve the benefactors in the activities of the Foundation
- (c) Inform benefactors of the results of the Foundation's activities.

2.8 Investment and risk policy and investment charter

(a) The Trustee will create the following comprehensive documents:

- Toowong Rowing Foundation Investment and Risk Policy
- Toowong Rowing Foundation Investment Charter

(b) The Trustee will review these documents from time to time to ensure they are current and relevant.

3. BENEFICIARY

The Beneficiary is absolutely entitled to the Trust Fund upon the Vesting Day.

4. TRUST DISTRIBUTIONS

4.1 Re-investment of Earnings

The Trustee, after each accounting period, will re-invest the earnings, after tax, for the Foundation, as part of the Trust Fund.

4.2 Distribution of capital on vesting day

On and after the Vesting Day the Trustee will stand possessed of the Trust Fund and subsequent earnings to pay them to:

- (a) the Beneficiary, or
- (b) at the written direction of the Beneficiary to a fund or organisation with similar objectives as the Foundation.

4.3 Distribution of capital or loans, and projects, before Vesting Day

The Trustee may before the Vesting Day:

- (a) Transfer money or a specific asset from the Trust Fund to the Beneficiary;
- (b) Lend money from the Trust Fund to the Beneficiary;
- (c) Conduct projects and engage in acts, in accordance with the objects referred to in clause 2.5, funded by the Trust Fund, for the benefit of the Beneficiary.

5. INVESTING THE TRUST FUND

5.1 Trustee empowered to manage and invest the Fund

The Trustee is empowered to do whatever the Trustee considers appropriate to manage and invest the Trust Fund, pursuant to the Foundation's Investment Charter and Investment and Risk Policy.

Except as the Act otherwise provides the Trustee is not bound by the Trusts Act regarding trustee investments, but the Trustee may exercise any powers conferred on the Trustee by the Act.

5.2 Power to create sub-funds

The Trustee is empowered to divide the Trust Fund into sub-funds, and the assets in sub-funds can be pooled. The Trustee may:

- (a) Establish sub-funds for building improvements;
- (b) Allocate the Trust Fund between sub-funds
- (c) Merge, re-define or discontinue sub-funds.

6. ACCOUNT AND AUDIT

6.1 Trustee must keep records

The Trustee must keep records that explain the transactions and financial position of the Foundation, so that accounts and audits can be prepared as required by law.

6.2 Trustee must prepare accounts

The Trustee must prepare or cause to be prepared accounts that show the financial position and results of the Foundation for each accounting period.

6.3 Audit of the Fund

The Trustee must appoint an auditor and arrange for the auditor to annually audit the Foundation's accounts and provide an audit report.

6.4 Audit report to be tabled

Within 90 days of receipt of the audit report the Trustee must table it with the secretary of the Beneficiary.

6.5 Tax returns

The Trustee will lodge all tax returns for the Foundation and pay any tax from the Fund.

7. TRUSTEE PROVISIONS

7.1 Qualification of trustee

The Trustee will, at all times be, and is, at commencement of the trust, a single body corporate;

7.2 Appointing replacement trustee

In the event of a change of trustee a new trustee must be a single body corporate.

7.3 Transfer of assets on change of trustee

In the event of the appointment of a new corporate trustee the assets of the Trust Fund will vest in that trustee.

The board of the outgoing corporate trustee must do all acts required to effect vesting of the assets of the Trust Fund in the new corporate trustee.

7.4 Remuneration of Trustee

The Trustee is not entitled to any remuneration payable from the Trust Fund for acting as Trustee.

7.5 Reimbursement of Trustee`s expenses

Subject to approval of the board of the Trustee, members of the board may be reimbursed out of pocket expenses from the Fund that are reasonably incurred in performing duties as board members of the trustee.

7.6 Trustee`s minutes and records

- (a) The Trustee will regulate the affairs of the Foundation.
- (b) The Trustee will ensure minutes of meetings and records are kept.
- (c) A resolution signed by the Trustee will be valid evidence of it having been passed at a meeting.

7.7 Foundation Secretary

The Trustee company will appoint a secretary who will in effect be secretary of the Foundation.

7.8 Trustee may engage service providers

The Trustee may engage any person or entity, on reasonable terms, to provide services, including administration, accounting, audit, investment management and legal, to the Fund.

7.9 Power to delegate

The Trustee, where reasonable, may delegate only in writing, any of the Trustee`s powers or functions to any person or entity, and anything done by the delegate is to be treated as having been done by the Trustee.

7.10 Authority to sign documents

Without limiting the powers of the Trustee under clauses 5.1, 7.8 and 7.9, or any other provisions of this deed, the Trustee, by resolution, may authorise the signing of a contract or any other document, the drawing of a cheque, the operation of any bank account or the doing of any other act on behalf of the Trustee, by any two or more directors of the corporate trustee.

7.11 Trustees discretion

The Trustee has an absolute and uncontrolled discretion concerning the exercise of its powers under this deed, and may exercise them or not do so entirely within its discretion.

7.12 Powers of the Trustee

In addition to the powers given by law, and this deed, and without limiting those powers, the Trustee has the following powers:

- (a) retain all or part of the capital and accumulate all or part of the income of the fund, up to the period of time permitted by law;
- (b) refrain, temporarily or permanently, from distributing or providing income, capital or other benefits from or relating to the fund, to the Beneficiary;
- (c) deal with all property in the fund in any way that the trustee chooses as if the trustee were the absolute and beneficial owner of the fund;
- (d) amend or vary, by deed, the provisions and terms of the trust, but not so as to alter the beneficiary of the trust or to cause a resettlement of the trust or infringe the law against perpetuities;
- (e) bind by deed the future operations of the trust (including future distributions of income or capital of the trust fund, or future vesting of trust income or capital of the trust fund in the beneficiary of the trust);
- (f) alter, amend or revoke by deed a previous deed binding the future operations of the trust;
- (g) subject to adhering to the Foundation's Investment Charter and Investment and Risk Policy, to borrow money, and secure the borrowing in such manner as is prudential and appropriate.

7.13 Liability and indemnity

- (i) The Trustee or its board members are not liable for loss or damage arising out of anything they do or fail to do while acting in that capacity, subject to clause 7.13 (iv).
- (ii) The Trustee and its board members are indemnified out of the assets of the Fund for any liability incurred while acting in that capacity.

(iii) The trustee may take out and maintain trustees' indemnity insurance to insure board members of the Trustee, at the cost of the Fund.

(iv) The board members of the Trustee will have no right to indemnity, or be released from, liability:

- if they fail to act honestly when acting in their capacity,
- are grossly negligent or reckless,
- deliberately act or omit to act in a way known to be a breach of trust.

7.14 Decisions of the Trustee

The decisions of the board members of the Trustee, will be subject to and made in the same way as provided for in the provisions of the Trustee's constitution.

7.15 Trustee's Obligation

The Trustee must invest on behalf of the Fund at arms-length on a commercial basis, and in accordance with the Foundation's Investment charter and Investment and Risk Policy.

8.0 TERMINATING THE TRUST

8.1 Trustee may terminate the Trust

(a) The Trustee may terminate the Trust from a specified day which will become the vesting day.

(b) After the Vesting Day, the Trustee must not undertake any further transactions or accept any further additions to the Fund, other than Earnings or moneys due but not paid.

(c) As soon as practicable after the Vesting Day the Trustee must satisfy the liabilities of the Fund, and must distribute the remaining assets in accordance with clause 4.2, after which the Trust is terminated.

9. LAW AND JURISDICTION

9.1 Governing law

This deed is governed by the law in force in Queensland, and subject to that state's courts.

9.2 Perpetuity Period

The perpetuity period applicable to the Trust is eighty years from the date of this deed.

SIGNED AS A DEED THIS 21ST DAY OF November 2020

Signed in accordance with the constitution of Toowong Rowing Foundation Limited (Trustee)

by:

John Russell Kerrison

Director

John Russell Kerrison

Robert Cornelis Joseph van Mourik

Director

Robert Cornelis Joseph van Mourik

Signed sealed and delivered by the Settlor

in the presence of:

Paul Silvio Pradella

Settlor

Paul Silvio Pradella

Calile Clarence Malouf

Witness

Calile Clarence Malouf

Anderssen
lawyers

Level 24 The Blue Tower
12 Creek Street Brisbane Q 4000
GPO Box 7112 Brisbane Q 4001
www.anderssens.com.au

TOOWONG ROWING FOUNDATION LIMITED (LIMITED BY GUARANTEE)
(ACN 644 771 620)
("Trustee")

**DEED OF VARIATION
FOR THE
TOOWONG ROWING FOUNDATION**

Phone: 07 3234 3101
Email: nick@anderssens.com.au
Our Ref: NP:315109
[FOLIO ID: 1166550]

THIS DEED OF VARIATION is made this 22nd day of October 2021 by TOOWONG ROWING FOUNDATION LIMITED (LIMITED BY GUARANTEE) (ACN 644 771 620) of 127 Central Avenue, St Lucia in the State of Queensland ("Trustee")

WHEREAS:

- A The Toowong Rowing Foundation ("the Trust") was constituted on 21 November 2020 by a Deed of Settlement ("the Trust Deed") between Paul Silvio Pradella as Settlor and Toowong Rowing Foundation Limited (ACN 644 771 620) as Trustee.
- B Clause 7.12(d) of the Trust Deed provides that, subject to certain provisos contained in the Trust Deed, the Trustee may by deed amend or vary the provisions and terms of the Trust Deed.
- C The Trustee proposes to vary the Trust Deed by deleting certain provisions and replacing them with the provisions set out below in this Deed of Variation.
- D The Trustee intends that the proposed variation is in accordance with the provisos limiting the variation of the Trust Deed and is not intended to give rise to any change in the beneficial entitlements in the Trust or a resettlement of the Trust.
- E Details of the Trust on execution of this deed are summarised in the Schedule to this Deed of Variation.

NOW THIS DEED WITNESSES AS FOLLOWS:

1. VARIATION TO DEFINITIONS OF EARNINGS

The Original Trust Deed is varied by deleting the definition of "Earnings" in Clause 1.1 and replacing it with the following:

"Earnings" means:

- (a) amounts which, by virtue of the definition of 'net income' in relation to a trust estate contained in section 95 of the ITAA 1936, comprise the net income of the trust estate evidenced by this Deed other than notional amounts and amounts ("**Excluded Amounts**") determined by the Trustee not to be treated as Income; and
- (b) amounts ("**included Amounts**") which the Trustee has determined to be Income which but for that determination would not be included in Income including any notional amount or other amount;

and Excluded Amounts and Included Amounts may be positive or negative and may, amongst other things, be due to differences of timing or permanent or other differences including:

- (i) amounts that are assessable under the ITAA which are not income for accounting purposes;
- (ii) amounts that are not assessable under the ITAA which are income for accounting purposes;
- (iii) amounts that are allowable deductions under the ITAA which are not an expense for accounting purposes;
- (iv) amounts that are not deductible under the ITAA but which are expenses for accounting purposes; or
- (v) such other differences or adjustments as the Trustee determines;

provided that, unless the Trustee determines a different amount of Income which involves an Excluded Amount or an Included Amount, Income shall be 'net income' determined under section 95 of the ITAA 1936 excluding notional amounts.

2. VARIATION TO TRUST DISTRIBUTIONS

The Trust Deed is varied by deleting Clause 4 and inserting the following new Clauses 4 and 4A:

4. EARNINGS

4.1 The Trustee may, in its absolute discretion, in respect of any Accounting Period:

- (a) identify and separately record and maintain in the Accounts and records categories or classes of Income, capital, payment, expense, outgoing or liability having a particular source, nature, characteristic, attribute or identifiable taxation consequence or benefit;
- (b) allocate and apportion payments, expenses, outgoings, losses (whether such losses are on revenue or capital account), liabilities or other amounts to such one or more classes, Accounts or the Beneficiary;
- (c) Apply or confer a specific entitlement or otherwise appoint in any manner the amount of Earnings of any class or Account to the Beneficiary as the Trustee in its absolute discretion determines; and
- (d) accumulate the whole or any part of the Earnings of the Trust or any other amount for an Accounting Period in an accumulated income fund or add the accumulations to the capital of the Trust Fund as the Trustee may in its absolute discretion determine;

and to the extent (if any) that the Trustee does not determine to Apply or accumulate the Income before 11.30pm on the last day of the relevant Accounting Period such Income shall be held by the Trustee for the Beneficiary.

4.2 The Trustee may, in respect of any Earnings, Apply it:

- (a) to the Beneficiary;
- (b) by investing it as the Trustee thinks fit in the name of the Beneficiary as part of the Trust or in one or more sub-trusts (without infringing any rule against perpetuities applicable thereto); and
- (c) by holding it on trust for the Beneficiary absolutely (without infringing any rule against perpetuities applicable thereto).

and any such Application constitutes a full and final discharge of the Trustee in relation to that amount.

4.3 The Trustee may determine:

- (a) any increase or decrease in the amount or value of any asset; or
- (b) the amount or value of any receipt, payment or other transaction;

that is to be treated as capital or Income or is to be debited or credited to a particular Account or otherwise. The Trustee may set such other rules and practices as it sees fit from time to time to conveniently and efficiently record and account for the Trust.

4.4 In determining any categories or classes of Earnings of the Trust, the Trustee may determine and separately record and maintain categories or classes of income or capital including (but not limited to):

- (a) capital gains, discounted capital gains, indexed capital gains, disregarded capital gains, net capital gains, concessional, reduced taxed capital gains or any other category or class of capital gain;
 - (b) unfranked dividends, partly franked dividends, fully franked dividends or any other category or class of dividend or similar distribution;
 - (c) dividend, interest or royalties income or amounts otherwise subject to withholding tax or a similar tax;
 - (d) exempt income, non-assessable, non-exempt income or amounts otherwise not liable to be taxed;
 - (e) Australian sourced or ex-Australian sourced amounts;
 - (f) amounts to which any tax credit, rebate, offset or other attribute attaches; and
 - (g) attributable amounts, notional amounts and deemed amounts and similar amounts whether arising under legislation or otherwise.
- 4.5 In determining any categories or classes of Earnings of the Trust, the Trustee may exclusively allocate to or subtract from that category or class any one or more categories or classes of payment, expense, outgoing or liability.
- 4.6 Unless the Trustee determines otherwise, expenses and outgoings directly referable to a franked distribution are to be allocated first to that franked distribution, but all other outgoings are to be allocated last to any franked distributions. A franked distribution includes a dividend from a share with an attributable franking offset or a non-share equity interest as well as a franked distribution received from another trust.
- 4.7 Accumulated Income, less any Tax provided for or paid, is an addition to the Trust Fund but the Trustee may at any time deal with any accumulation as if it was current Income.
- 4.8 The Trustee may appropriate income or capital of the Trust in respect of any Accounting Period for the purpose of discharging a liability of the Trustee to pay any Tax whether the liability relates to Income in that or any other Accounting Period.
- 4.9 Any amount held or otherwise Applied for a Beneficiary may be dealt with as part of the Trust Fund or dealt with as a sub-trust for a Beneficiary. The Trustee may administer any sub-trust in accordance with the provisions of this Deed with any necessary modification.

4A CAPITAL

4A.1 The Trustee may, at any time:

- (a) Apply in any manner the whole or any part of the capital of the Trust to the Beneficiary in such amounts as the Trustee in its absolute discretion determines so long as such distribution will first be in full satisfaction of any vested interest that the Beneficiary may have in the Trust Fund;
- (b) Lend in any manner and upon such terms and conditions as the Trustee shall at its absolute discretion determine the whole or any part of the capital of the Trust to the Beneficiary in such amounts as the Trustee in its absolute discretion determine.

4A.2 The Trustee shall on and from the Vesting Day:

- (c) Apply and hold the Trust Fund on trust as to both capital and Earnings for the Beneficiary as the Trustee shall on or before the Vesting Day by an instrument in writing have nominated. The Trustee may by written instrument on or before the Vesting Day revoke or vary such a nomination.

(d) At the written direction of the Beneficiary apply both capital and Earnings to a Fund or organisation with similar objectives as the Foundation.

4A.3 The provisions in Clause 4.2 shall apply on the same basis (with necessary amendment) to any amount Applied under Clause 4A.1 or Clause 4A.2.

3. CONTINUED OPERATION

This Deed of Variation and the Trust Deed maintain the trust relationship and shall not give rise to any change in beneficial entitlement in the Trust or a resettlement of the Trust and shall be void to the extent that it would otherwise do so.

5. DEFINITIONS AND INTERPRETATION

(a) Unless the context otherwise requires the words defined in the Original Deed have the same meaning whenever they appear in this deed.

(b) In this Deed of Variation, unless expressed or implied to the contrary:

Deed of Variation means this deed.

Trust Deed means the Deed of Settlement dated 21 November 2020.

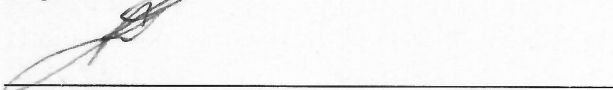
Trust means The Toowong Rowing Foundation.

EXECUTED as a deed on the day and year hereinbefore first written.

TRUSTEE

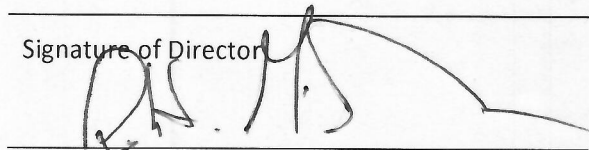
EXECUTED by **TOOWONG ROWING FOUNDATION**)
LIMITED (LIMITED BY GUARANTEE) ACN 644 771)
620 in accordance with s.127 of the *Corporations*)
Act 2001 (Cth):)

Signature of Director



PETER ROBERT MACGREGOR

Signature of Director



Robert Cornelis Joseph van Mourik

SCHEDULE

DETAILS OF THE TRUST

1.	ORIGINAL NAME OF THE TRUST FUND:	Toowong Rowing Foundation
2.	DATE OF SETTLEMENT:	21 November 2020
3.	SETTLOR:	Paul Silvio Pradella
4.	TRUSTEE:	Toowong Rowing Foundation Limited (Limited by Guarantee) ACN 644 771 620
5.	SETTLEMENT SUM	\$10.00
6.	SETTLOR	Paul Silvio Pradella
7.	BENEFICIARY	Toowong Rowing Club Inc
8.	VARIATIONS AND RELATED TRUST DOCUMENTS:	Original Trust Deed - 21 November 2020 Deed of Variation - 22 October 2021
9.	VARIATION CLAUSE:	Clause 7.12