

31 August 2015

**Postal address:**  
PO Box 401  
Nth Melbourne VIC 3051

**Email:**  
info@esuperfund.com.au

**Phone:**  
1300 224 797

**Facsimile:**  
(03) 8677 2425

Ms Mary-Anne Cairns  
C/- Marning Cairns Superfund  
PO Box 510  
THIRROUL NSW 2515

Dear Trustees,

**Security Custodian Documentation**

Please find enclosed Security Custodian Documentation to finalise the purchase of a Property by your SMSF.

**ACTION REQUIRED**

1. Please complete the Sections in the enclosed documentation indicated with "Please Complete".
2. Please sign and return the enclosed documentation to:

C/- ESUPERFUND  
Reply Paid 401  
North Melbourne VIC 3051

Please note that once the property purchase has settled we will return the documents to you and you will need to arrange to have the Security Custodian Deed stamped with the Office of State Revenue in the state of which the property was acquired.

Yours sincerely,

Client Services Team  
**ESUPERFUND**

**e•superfund**

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PO Box 401  
Nth Melbourne VIC 3051

**Email:**  
info@esuperfund.com.au

**Phone:**  
1300 224 797

**Facsimile:**  
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**Marning Cairns Superfund**

**Documentation to be signed and returned to:**

**C/- ESUPERFUND  
PO Box 401  
NTH MELBOURNE VIC 3051**

**JUMP RIGHT IN PTY LTD**

**(“Security Custodian”)**

AND

Mary-Anne Cairns  
Graham Patrick Marning

In their capacity as Trustees of the Marning Cairns Superfund  
**(“Borrower”)**

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**CUSTODIAN TRUST DEED**

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THIS DEED is made on 31 August 2015

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## 1. PARTIES

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- 1.1 JUMP RIGHT IN PTY LTD - 607811478  
PO Box 510 , THIRROUL, NSW, 2515 (“Security Custodian”)
- 1.2 Mary-Anne Cairns  
Graham Patrick Marning

Fund’s Address: PO Box 510 , THIRROUL, NSW, 2515

In their capacity as Trustees of the Marning Cairns Superfund (“Borrower”)

### RECITALS

The Borrower proposes to borrow funds under a loan agreement with Bank of Melbourne/St George Bank Limited to fund the acquisition of a property (the "property") by the Security Custodian on the Borrower's behalf and Security Custodian proposes to mortgage the Property to Bank of Melbourne/St George Bank Limited (the “Mortgage”).

**NOW IT IS AGREED** as follows:

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## 2. DECLARATION OF TRUST

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The Security Custodian:

- 2.1 **HEREBY ACKNOWLEDGES AND AGREES** that it will acquire and hold the Property being the whole land in Certificate of Title Volume:  
Folio:  
Situated at: UNIT 20, 16 QUARRY STREET, PORT KEMBLA, NSW, 2505  
on trust for the Borrower subject to the Mortgage; and
- 2.2 **HEREBY UNDERTAKES after the Mortgage is discharged on being directed to do so by the Borrower to transfer legal title to the Property to the Borrower or as the Borrower otherwise directs.**
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## 3. TRANSFER OF PROPERTY

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- 3.1 Subject to clause 3.2 the Security Custodian must deal with the Property as directed by the Borrower from time to time and the Security Custodian must immediately transfer legal title to the Property to the Borrower if so directed by the Borrower.
- 3.2 The Borrower **HEREBY AGREES** that it will not direct the Security Custodian to transfer legal title to the Property to the Borrower until such time as:
- (a) the Borrower has satisfied all of its obligations with respect to the repayment of the loan taken out by the Borrower in respect of the purchase of the Property; and
  - (b) the Property is not subject to any charge including a mortgage, lien or other encumbrance.

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#### **4. POWER OF APPOINTMENT**

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The power to appoint a new security custodian or remove an existing security custodian of these presents is vested in the Borrower.

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#### **5. MISCELLANEOUS**

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##### **5.1 Further action**

Each party must do all things necessary to give full effect to this deed and the transactions contemplated by this deed.

##### **5.2 Governing Law and jurisdiction**

- (a) This deed is governed by the laws of NSW
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of NSW
- (c) Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

##### **5.3 Duties, costs and expenses**

- (a) The Borrower must pay any stamp duty payable in respect of the execution, delivery and performance of this deed.
- (b) The Borrower must pay all costs, including those incurred by the Security Custodian in respect of the negotiation, preparation, execution, delivery and registration of this deed.

##### **5.4 Successors**

A reference to a party in this deed includes a reference to that party's executors, administrators, successors, legal personal representatives, substitutes and assigns.

##### **5.5 Counterparts**

This deed may be executed in any number of counterparts and all such counterparts taken together constitute one and the same instrument. An executed counterpart may be delivered by facsimile.

**EXECUTED** as a deed

**EXECUTED** by the Security Custodian  
JUMP RIGHT IN PTY LTD - ACN (607811478)  
in accordance with s127 of the Corporations Act by:

\_\_\_\_\_  
Mary-Anne Cairns  
Director

\_\_\_\_\_  
Graham Patrick Marning  
Director



**SIGNED** by the Borrowers

Mary-Anne Cairns  
Graham Patrick Marning

as Trustee for Marning Cairns Superfund  
in the presence of:

\_\_\_\_\_  
Mary-Anne Cairns



\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Graham Patrick Marning



\_\_\_\_\_  
Full Name of Witness

**TRUSTEE LETTER OF ACKNOWLEDGEMENT**  
**Marning Cairns Superfund**

31 August 2015

**From:**

Mary-Anne Cairns  
Graham Patrick Marning

PO Box 510  
THIRROUL NSW 2515

To whom it may concern,

**Loan to the Trustees of the Marning Cairns Superfund (Fund)**

We the Trustees hereby acknowledge that ESUPERFUND has adequately explained the following important aspects relating to borrowing to acquire a Property in a SMSF and acknowledge as follows:

**Regulated Fund**

The Trustees confirm that the Fund is registered with the Australian Taxation Office as a regulated and complying self-managed superannuation fund under the Superannuation Industry (Supervision) Act 1993 (**SIS Act**);

**Legislative Changes allowing the Fund to Borrow**

The Trustees acknowledge that they are aware that in September 2007, the law was amended to allow a SMSF to borrow to purchase property. The new borrowing provisions are typically referred to as an Instalment Warrant Trust Structure or Bare Trust. This Structure is referred to as a Security Custodian Trust by Bank of Melbourne/St George Bank when you apply for a SMSF Loan for your Fund.

**Borrowing Complies with Superannuation Law**

The Trustees confirm that the purchase of a Property with a borrowing from Bank of Melbourne/St George Bank will comply in all respects with superannuation law, including:

The requirements of section 67(4A) of the Superannuation Industry (Supervision) Act 1993:

- that the loan money only be used to purchase the assets; and
- concerning the structure of the 'instalment warrant arrangement' by which the assets will be purchased and held;

The requirements of the SIS Act concerning the restrictions on acquiring assets from related parties of the Fund;

The requirements of the SIS Act concerning the purchase of, investment in and holding of the assets complying with the 'sole purpose test' and not breaching the 'in-house asset rules';

The requirements of the SIS Act that the purchase of, investment in and holding of the assets constitutes a prudent investment made in accordance with the Fund's Investment Strategy; and

The requirements of the SIS Act that all relevant transactions contemplated by the 'instalment warrant arrangement' are entered into at arm's length or on arm's length terms in accordance with section 109 of the SIS Act.

### **Property is purchased by the Security Custodian Trust**

The Trustees confirm that they understand that the Security Custodian Trust is an entity that must be established completely separate from the SMSF. The Security Custodian Trust will have a Company as a Trustee. When a SMSF wishes to borrow to purchase a Property, the Property must be acquired by the Security Custodian Trust and not the SMSF directly. The Property purchased is held on Trust by the Security Custodian Trust on behalf of the SMSF which has a beneficial right (but is not obligated) to acquire the Property from the Security Custodian at a future point in time, usually when the Loan is repaid.

### **Loan is made to the SMSF**

The Trustees confirm that they understand that whilst the Security Custodian Trust will actually purchase the Property it is the SMSF who will borrow from the Lender ( Bank of Melbourne/St George Bank ) to fund the Property purchase. In return the Trustee of the Security Custodian Trust will provide a mortgage over the Property purchased to the Lender as security for the SMSF Borrowing (which must be a Limited Resource Loan).

### **Limited Recourse Loan**

The Trustees confirm that they understand that the Security Custodian Trust will provide the Property purchased as security for the Loan made to the SMSF. This is the only asset that can be pledged to the Lender as security for the loan made to the SMSF. In this way, the Lender's right to recover is limited to the Property purchased in the Security Custodian Trust. This means that in the event that the SMSF defaults on the Loan the Lender can repossess or sell the Property only, but cannot repossess or sell any other SMSF Asset.

### **SMSF will acquire the Property from the Security Custodian Trust**

The Trustees confirm that they understand that under the above arrangement the SMSF must have a right to acquire legal ownership of the Property from the Security Custodian Trust by making agreed instalment payments after the Property is purchased. Practically this means that under the above arrangement the SMSF will acquire the Property from the Security Custodian Trust through a series of agreed instalment payments which typically will work as follows:

- The SMSF will make an initial upfront payment of part of the Property Purchase Price;
- The SMSF will repay the Lender (Bank of Melbourne/St George Bank) in Instalments until the asset is repaid in full.

### **Property Income and Expenses**

The Trustees confirm that they understand that as the SMSF is the "Beneficial Owner" of the Property (the Security Custodian Trust is the Legal owner of the Property until the Loan is repaid) the SMSF is entitled to all Property Rent and will be responsible for paying all Fund Expenses such as rates, insurance etc.

### **Repayment of Loan to Lender**

The Trustees confirm that they understand that on the repayment of the Loan to the Lender (Bank of Melbourne/St George Bank) the Property purchased can be transferred from the Security Custodian Trust to the SMSF. Based on current legislation, the transfer will not be subject to CGT and nominal Stamp Duty will apply.

### **What happens when the asset is sold?**

The Trustees confirm that they understand that when the asset is sold, the SMSF Trustees must use the proceeds of sale to repay the loan. The balance of the proceeds of sale can then be kept in cash or used to buy another asset. However, the existing loan cannot be used to buy another asset.

### **Costs**

The Trustees confirm that the costs to implement the borrowing have been clearly explained to the Trustees and can be found in the ESUPERFUND Website here:

<http://www.esuperfund.com.au/property/RatesandFees.aspx>

### **Benefits**



The Trustees confirm that they understand the benefits of acquiring Property in the name of the SMSF which are briefly detailed as follows:

- Member's Accumulated Super Benefits can be used to fund the Property Deposit
- Rental Income Return
- Long Term Capital Growth
- Tax Free Rent and Capital Growth on the Commencement of a Pension
- Interest costs claimed against SMSF Income provide annual tax benefits. It is however noted that the same level of negative gearing benefits available in an Individual's Name is not possible in a SMSF given that any negative property earnings cannot be offset against an Individual's Personal Income.

#### **Risks of Direct Property Investment in a SMSF**

The Trustees confirm that they understand the risks of acquiring Property in the name of the SMSF which are briefly detailed as follows:

- Capital Loss
- Property is Non Tenanted
- Income requirements in Retirement. The Trustees acknowledge that the Fund cannot sell part of the Property to Fund the Member's Retirement needs causing potential liquidity issues in the %drawdown+ super phase.

#### **Investment Strategy**

The Trustees confirm that they understand the purchase of a Property by the Fund must be within the Investment Strategy of the Fund. The Trustees confirm that the Investment conformed to the Funds Investment Strategy. The Trustees also note that a minute detailing the rationale for the Property Purchase and how it conformed with the Fund's Investment Strategy would be prepared using the Standard Minuted at the ESUPERFUND Website here:

<http://www.esuperfund.com.au/property/RatesandFees.aspx>

#### **Particulars of Bank of Melbourne/St George Bank Loan**

The Trustees acknowledge the following about the Bank of Melbourne/St George Bank Loan Borrowing:

That the SMSF will need to meet the Loan Repayments on the borrowing to acquire the Property and that the Loan Repayments would be funded from fund earnings and contributions.

Bank of Melbourne/St George Bank debits the loan account with the amount borrowed and all fees and interest the Bank can charge under the loan:

Bank of Melbourne/St George Bank charges interest on all amounts debited to the loan account including the amount borrowed, unpaid fees and unpaid interest;

The amount owed by the Borrower on the loan must be repaid before the legal title to the security property can be transferred to the Borrower.

Date: 31 August 2015

.....  
Mary-Anne Cairns

.....  
Graham Patrick Marning



**Minutes of Meeting of the Trustees of the  
Marning Cairns Superfund**

<b>Venue</b>	1 Virginia Terrace THIRROUL NSW 2515
<b>Date</b>	31 August 2015
<b>Present</b>	Mary-Anne Cairns Graham Patrick Marning
<b>Chair</b>	Mary-Anne Cairns

**Instalment Warrant Arrangement for Marning Cairns Superfund**

1 **Noted** by the persons present that:

1.1 The fund has applied to Bank of Melbourne/St George Bank (Lender) to borrow money for the purchase of the following assets (Assets):

UNIT 20, 16 QUARRY STREET, PORT KEMBLA, NSW, 2505

Certificate of Title Volume: , Folio:

The Fund has been provided with copies of the documents by which the Fund will formally purchase the Assets;

1.3 The Lender has agreed to lend \$756,000 (Loan Money) to the fund on the condition that the Lender is provided with a charge or mortgage over the Assets, a Custodian is appointed to hold legal title to the Assets and the arrangements are otherwise in accordance with section 67(4A) of the Superannuation Industry (Supervision) Act 1993 (SIS Act);

1.4 JUMP RIGHT IN PTY LTD (Custodian) has agreed to act as Custodian of the Assets;

1.5 The fund has agreed with the Lender to ensure that the Custodian provides the Lender with a charge over the Assets;

1.6 The arrangement is in compliance with the requirements of section 67(4A) of the SIS Act; and

1.7 The arrangement, including all associated transactions, will not result in the fund breaching the SIS Act or any other requirements of superannuation law.

2 **Tabled** by the persons present:

2.1 a declaration of custody trust by which the Custodian agrees to hold legal title to the Assets for the fund; and

2.2 a compliance letter being a letter from the fund to the Lender attesting to the fund's current and on-going compliance with the SIS Act and all other requirements of superannuation law.

3 **Resolved unanimously** by the persons present to:

3.1 Adopt and execute each of the documents by the chair executing the compliance letter and all the trustees executing the Declaration of Custody Trust by the trustee; and

3.2 To pay all relevant duty on the documents.

4        There being no further matters to discuss, the meeting was closed.

Date:    31 August 2015

Signed: \_\_\_\_\_

Mary-Anne Cairns

**Chair**

# Marning Cairns Superfund

## Minutes of a Meeting of the Trustees of the Marning Cairns Superfund

<b>Venue</b>	1 Virginia Terrace THIRROUL NSW 2515
<b>Date</b>	31 August 2015
<b>Present</b>	Mary-Anne Cairns Graham Patrick Marning

### Superfund Investment

1. **Noted** that the Trustees were considering the acquisition of the following Investment for the Fund:  
UNIT 20, 16 QUARRY STREET, PORT KEMBLA, NSW, 2505

2. **Noted** that the Trustees considered the Investment to be appropriate for the Fund for the following reasons:

**Please list reasons the Investment is being acquired:**

- 
- 
- 
- 
- 



3. **Noted** that the intended Investment did not breach any Superannuation Law and was therefore an Investment permitted to be made for the Fund.

4. **Noted** that the Investment conformed to the Fund's Investment Strategy as follows:

The Investment Strategy of the Fund was tabled and it was noted the proposed Investment was within the Investment Objectives and the Investment Strategy of the Fund.

It was further noted the Investment was within the liquidity requirements of the Fund given the age profile of the members.

It was further noted that the anticipated annual return on the Investment was within the required return on investments pursuant to the Fund's Investment Strategy.

5. **Trustees confirm** that at no time will the Investment be used for personal use by any Fund Member or any associate of a Fund Member.

6. **Trustees confirm** that the Investment will be insured.

7. **Trustees confirm** that the Investment will be acquired in the name of the Superfund and documentary evidence will be provided to the Fund auditor on request to support the acquisition of the Investment in the Superfund Name.

8. **Resolved unanimously** that the Fund would acquire the Investment.

There being no further matters to discuss, the meeting was closed.

**Signed as a true record of the meeting**

Date: 31 August 2015

\_\_\_\_\_  
Mary-Anne Cairns

\_\_\_\_\_  
Graham Patrick Marning

