

Westpac Banking Corporation
ABN 33 007 457 141
SMSF Side Deed

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SMSF Side Deed

Details

Financier:
(“we”)

Westpac Banking Corporation, ABN 33 007 457 141
Address: 275 Kent Street, Sydney NSW 2000

SMSF trustee:

How Heavenly Pty Ltd ACN 169 433 587
Address: c/- Heather Byrne Accountant,
175 Argyle Street,
Moss Vale NSW 2577
(including its successors and assigns)

SMSF trust name:

The HB and AP Superannuation Fund

SMSF trust deed:

The deed of trust
dated: 19 December 2003
by: Andrew Robert Pierce and Heather Lynne Byrne
establishing the trust

**SMSF trustee’s
documents:**

(describe all documents the trustee
enters into in connection with the
transaction)

This deed
Business Finance Agreement dated 12 March 2015
Guarantor’s Indemnity Waiver
Statutory Declaration regarding legal and financial advice
and any document signed or to be signed by the *SMSF trustee* connected with
any of them.

**Directors of SMSF
trustee (if the trustee is a
company):**

Andrew Robert Pierce and Heather Lynne Byrne both of 48 Highland Drive,
Bowral NSW 2576

**SMSF beneficiaries who
are intended to sign this
document:**

Andrew Robert Pierce and Heather Lynne Byrne both of 48 Highland Drive,
Bowral NSW 2576

Security custodian:

Mews Bowral Pty Ltd ACN 603 671 487
Address: c/- Heather Byrne Accountant,
175 Argyle Street,
Moss Vale NSW 2577
(including its successors and assigns)

Security custodian trust name:

The Holding Trust – 8/11 Bundaroo Street, Bowral NSW

Custodian trust deed:

The deed of trust
dated: 5 March 2015
between: Mews Bowral Pty Ltd ACN 603 671 487
and: How Heavenly Pty Ltd ACN 169 433 587
establishing the trust

Property:

Title description Folio Identifier 8/SP49134
Location The Mews 8/11-13 Bundaroo Street, Bowral NSW 2576

Mortgage:

The deed of mortgage over the property dated on or about the date of this deed granted by the security custodian in favour of us.

Security custodian's documents:

(describe all documents the security custodian enters into in connection with the transaction)

This deed
the mortgage
Guarantee
Guarantor's Indemnity Waiver
and any document signed or to be signed by the *security custodian* connected with any of them.

Directors of security custodian:

Andrew Robert Pierce and Heather Lynne Byrne both of 48 Highland Drive, Bowral NSW 2576

Date of SMSF side deed:

Provisions

Key words

The meaning of words printed *like this* and of some other common key words is explained at the end of this deed.

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Declarations

- 1.1 You declare that:
- (a) the *SMSF trustee* is the only trustee of the *SMSF trust*; and
 - (b) the *SMSF trustee* has the power to sign the *SMSF trustee's documents* and perform its obligations under them; and
 - (c) the *SMSF trustee* has signed or will sign the *SMSF trustee's documents* as trustee of the *SMSF trust*; and
 - (d) the *SMSF trustee* has signed or will sign the *SMSF trustee's documents* and all transactions contemplated by them including the acquisition of the *property* with the consent of the *beneficiaries* who sign this deed and for the benefit of all beneficiaries of the *SMSF trust*; and
 - (e) the *SMSF trustee* has the right to be indemnified out of the *SMSF trust fund* for all obligations it incurs in relation to the *SMSF trustee's documents* and the *SMSF trust fund* is sufficient to satisfy that right of indemnity; and
 - (f) no action has been taken or proposed to remove the *SMSF trustee* as trustee of the *SMSF trust* or to appoint an additional or alternate trustee of the *SMSF trust*; and
 - (g) you have given us true (ie complete and up to date) copies of the *SMSF trust deed* and other documents relating to the *SMSF trust* containing all the terms of the *SMSF trust*; and
 - (h) the *SMSF trust* has been properly constituted and the *SMSF trust deed* is valid and enforceable; and
 - (i) the *SMSF trustee* has complied with the *SMSF trust deed* and its obligations as *SMSF trustee*; and
 - (j) no action has been taken or proposed to terminate the *SMSF trust* or revoke a power of the *SMSF trustee* and (as far as you are aware) no-one intends to take any such action; and

- (k) unless you tell us otherwise in writing, the *beneficiaries* who sign this deed are the only beneficiaries of the *SMSF trust*; and
 - (l) our rights under the *SMSF trustee's documents* have priority over the interests of the *beneficiaries*; and
 - (m) the *security custodian* is the only trustee of the *security custodian trust*; and
 - (n) the *SMSF trustee* is the only beneficiary of the *security custodian trust*; and
 - (o) the *security custodian* has the power to sign the *security custodian's documents* and all transactions contemplated by them, including the acquisition of the *property* and perform its obligations under them; and
 - (p) the *security custodian* has signed or will sign the *security custodian's documents* as trustee of the *security custodian trust*; and
 - (q) the *security custodian* has signed or will sign the *security custodian's documents* with the consent of the *beneficiaries* who sign this deed; and
 - (r) no action has been taken or proposed to remove the *security custodian* as trustee of the *security custodian trust* or to appoint an additional or alternate trustee of the *security custodian trust*; and
 - (s) you have given us true (ie complete and up to date) copies of the *custodian trust deed* and other documents relating to the *security custodian trust* containing all the terms of the *security custodian trust*; and
 - (t) the *security custodian trust* has been properly constituted and the *custodian trust deed* is valid and enforceable; and
 - (u) the *security custodian* has complied with the *custodian trust deed* and its obligations as *security custodian*; and
 - (v) no action has been taken or proposed to terminate the *security custodian trust* or revoke a power of the *security custodian* and (as far as you are aware) no-one intends to take any such action; and
 - (w) our rights under the *security custodian's documents* have priority over the interests of the *beneficiaries* or the *SMSF trust*; and
 - (x) the *SMSF trust* was constituted and at all times has been and will be conducted and administered in accordance with all applicable laws, including the *SIS laws* and the entering into of the *SMSF trustee's documents* and all transactions contemplated by them including the acquisition of the *property* will comply with, all applicable laws, including the *SIS laws*.
- 1.2 You must tell us whenever anything happens preventing you from repeating all the declarations in clause 1.1.

Undertakings and consent

- 2.1 The *SMSF trustee* agrees:
- (a) to do everything necessary to bind itself and its successors under the *SMSF trustee's documents*; and
 - (b) to comply with its obligations as *SMSF trustee*; and
 - (c) to ensure that it is the sole beneficiary of the *security custodian trust*.
- 2.2 The *security custodian* agrees:
- (a) to do everything necessary to bind itself and its successors under the *security custodian's documents*; and
 - (b) to comply with its obligations as *security custodian*; and
 - (c) to transfer the *property* to the *SMSF trustee* once all amounts secured by the mortgage over the *property* has been repaid in full and the mortgage discharged, at the request of the *SMSF trustee*; and
 - (d) to ensure that the *SMSF trustee* is the sole beneficiary of the *security custodian trust*.

2.3 You agree to ensure that, without our consent:

- (a) the *SMSF trustee* does not retire or cease to act and is not removed or replaced as trustee of the *SMSF trust*; and
- (b) another person is not appointed as joint or alternate trustee of the *SMSF trust*; and
- (c) the *SMSF trust* is not terminated and a vesting date is not declared; and
- (d) the *SMSF trust deed* is not changed and the terms of the *SMSF trust* are not otherwise varied; and
- (e) the *SMSF trust fund* is not mixed with other property, resettled or sought to be brought under court control; and
- (f) the *SMSF trustee's* right to be indemnified out of the *SMSF trust fund* for obligations it incurs in relation to the *SMSF trustee's documents* is not restricted; and
- (g) nothing is done to restrict the ability of the *SMSF trustee* to comply with its obligations in relation to the *SMSF trustee's documents*; and
- (i) the *security custodian* does not retire or cease to act and is not removed or replaced as trustee of the *security custodian trust*; and
- (j) another person is not appointed as joint or alternate trustee of the *security custodian trust*; and
- (k) the *security custodian trust* is not terminated and a vesting date is not declared; and
- (l) the *custodian trust deed* is not changed and the terms of the *security custodian trust* are not otherwise varied; and
- (m) the *security custodian trust fund* is not mixed with other property, resettled or sought to be brought under court control; and
- (n) the *security custodian's* right to be indemnified out of the *security custodian trust fund* for obligations it

incurs in relation to the *security custodian's documents* is not restricted; and

- (o) nothing is done to restrict the ability of the *security custodian* to comply with its obligations in relation to the *security custodian's documents*.

2.4 You (other than the *SMSF trustee*) consent to the *SMSF trustee* signing the *SMSF trustee's documents* and exercising rights and performing obligations in relation to the *SMSF trustee's documents*.

2.5 You (other than the *security custodian*) consent to the *security custodian* signing the *security custodian's documents* and exercising rights and performing obligations in relation to the *security custodian's documents*.

Indemnity

3. You indemnify us against and you must therefore pay us for:
- (a) loss we suffer in connection with you not observing any of your obligations or agreements under this deed or in connection with any declaration in this deed being inaccurate; and
 - (b) the reasonable expenses we reasonably incur in enforcing this deed.

Waiver

- 4.1. You waive any right you have to claim that the *SMSF trustee* breaches the *SMSF trust* by signing a *SMSF trustee's document* or exercising rights or performing obligations in relation to a *SMSF trustee's document*.
- 4.2. You waive any right you have to claim that the *security custodian* breaches the *security custodian trust* by signing a *security custodian's document* or exercising rights or performing obligations in relation to a *security custodian's document*.

Acknowledgement

- 5.1 You know that we are relying on you entering this deed before signing or accepting the *SMSF trustee's documents* and *security custodian's*

documents and that, each time we give or continue to provide the *SMSF trustee* financial accommodation under the *SMSF trustee's documents* or we give or continue to provide to any person financial accommodation of which the *SMSF trustee* or *security custodian* guarantees repayment, we will be relying on your not having breached this deed. You acknowledge incurring obligations, and giving us rights, under this deed for valuable consideration from us.

- 5.2 ***You acknowledge that you are responsible for ensuring that all of the SMSF trustee's documents, the security custodian's documents, the investment, and all associated transactions comply with all legal requirements (including the SIS laws and the documents establishing the SMSF trust). You should seek your own advice and make your own enquiries concerning all legal, taxation or financial aspects or risks. You should not rely on us or any of our representatives or employees. None of us or them are giving any advice or assurance. If we check any of the above, or satisfy ourselves with respect to them we do it for our own purposes, and you should not place any reliance on us doing so.***

Limited recourse

- 6.1 Despite any other provision of the *mortgage*, we may not have recourse to the *SMSF trustee* or its assets in connection with the *mortgage*. However, with respect to the amounts secured by the *mortgage*, we may have recourse to the *property* and its proceeds and the total amount available to us as a result of a realisation of the *property* (after payment of enforcement costs etc).
- 6.2 Subject to clause 6.3, nothing in clause 6.1 above limits us in:
- (a) exercising our rights or powers under the *mortgage* in relation to the *property*;
 - (b) obtaining an injunction or other order to restrain any breach of the *mortgage*; or
 - (c) obtaining declaratory relief.
- 6.3 In exercising any right, power or remedy under the *mortgage*, neither we nor any receiver, receiver and manager, agent or attorney appointed under the *mortgage* shall

incur, or have the authority to incur, any liability on your behalf or for your account except a liability which is itself subject to the limitation in clause 6.1.

- 6.4 For the purpose of determining the liability of any other guarantor or any security provider in relation to the amount owing the limit on liability under clause 6.1 will be disregarded.
- 6.5 We will not, in relation to any liability for which the *SMSF trustee* is not liable under clause 6.1:
- (a) obtain a judgment for the payment of money or damages by the *SMSF trustee*;
 - (b) issue any demand under s459E(1) of the Corporations Act (or any analogous provision under any other law) against the *SMSF trustee* ;
 - (c) apply for the winding up of the *SMSF trustee* or its bankruptcy;
 - (d) levy or enforce any distress or other execution to, on or against any of the *SMSF trustee's* assets other than the *property*;
 - (e) apply for the appointment by a court of a receiver to any of the *SMSF trustee's* assets other than the *property*;
 - (f) exercise or seek to exercise any set-off or counterclaim against the *SMSF trustee*; or
 - (g) take proceedings for any of the above and we waive our rights in respect of those applications and proceedings.
- 6.6 The *SMSF trustee* agrees that its beneficial interest in the *property* will be subject to the *mortgage* and any other any *security interest* which the *security custodian* gives to us over the *property*. We are not obliged or required to take notice of, or be bound by, any actual, contingent or future interest the *SMSF trustee* may have in the *property*.

Your obligations are unaffected

- 7 You agree that you are bound by this deed even if a person who was intended to sign this deed or a similar document does not do so or does not do so effectively.

Consents

- 8 Consents in connection with this deed must be in writing. We may give or refuse our consent in any way we consider appropriate, including by imposing conditions.

Applicable law

- 9 This deed is governed by the law of the state or territory where our address specified in the details is situated.

Execution

- 10 Where any party to this deed is a party in more than one capacity, the proper execution of this deed once will bind that party in each of its capacities.

Deed

- 11 This document is a deed.

Meaning of words

- 12 **beneficiaries** means all the beneficiaries of the *SMSF trust*.

arrangement with us means an arrangement (including an agreement or a security interest) under which the *SMSF trustee*, the *Security Custodian* or any other party to a *security interest* specified in the facility offer (as defined in the *SMSF trustee's documents*) has or could in the future have obligations to us or any of our "related entities" (as defined in the Corporations Act).

custodian trust deed means the Custodian trust deed described in the details.

mortgage means the mortgage described in the details.

property means the property described in the details.

security custodian means each person named in the details as security custodian. If there are more than one, *security custodian* means each of them separately and every two or more of them jointly.

security custodian's documents means the security custodian's documents described in the details.

security custodian trust means the trust established under the *custodian trust deed*.

security custodian trust fund means the property held on trust by the *security custodian* under the *custodian trust deed*.

security interest means any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust, power, title retention or flawed deposit arrangement. *Security interest* also includes a guarantee and indemnity.

SIS laws means Superannuation Industry (Supervision) Act 1993 (Cth) and Superannuation Industry (Supervision) Regulations 1994 (Cth).

SMSF trust means the trust established under the *SMSF trust deed*.

SMSF trust deed means the SMSF trust deed described in the details.

SMSF trustee means each person named in the details as SMSF trustee. If there are more than one, *SMSF trustee* means each of them separately and every two or more of them jointly.

SMSF trustee's documents means the SMSF trustee's documents described in the details.

SMSF trust fund means the property held on trust by the *SMSF trustee* under the *SMSF trust deed*.

we means the person or persons named in the details as financier. If there are more than one, we means each of them separately and every two or more jointly. **We** includes our successors and assigns.

you means each of the *SMSF trustee*, each director of the *SMSF trustee* (if it is a

corporation), the *security custodian*, each director of the *security custodian* (if it is a corporation), and each *beneficiary* who signs this deed separately and every two or more of them jointly.

The singular includes the plural and vice versa.

A reference to:

- a document or agreement includes any variation or replacement of it;
- law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- any thing includes the whole and each part of it;
- the Corporations Act means the Corporations Act 2001 (Cth).

Signing pages

Executed as a deed

Signed sealed and delivered on behalf of **How Heavenly Pty Ltd** by:

Secretary/Director

Print name

Director

Print name

Signed sealed and delivered on behalf of **Mews Bowral Pty Ltd** by:

Secretary/Director

Print name

Director

Print name

Signed sealed and delivered by **Andrew Robert Pierce** in their capacity as **Director of SMSF Trustee, SMSF Beneficiary and Director of the Security Custodian** in the presence of:

Witness

Print name

Print address

Andrew Robert Pierce

Signed sealed and delivered by **Heather Lynne Byrne** in their capacity as **Director of SMSF Trustee, SMSF Beneficiary and Director of the Security Custodian** in the presence of:

Witness

Print name

Print address

Heather Lynne Byrne

<p>I certify that the Attorney for the Lender, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.</p>	<p>Signed sealed and delivered by as attorney for Westpac Banking Corporation under power of attorney registered Book 4299 No 332</p>
<p>..... Signature of Witness</p>	<p>.....</p>
<p>..... Name of Witness</p>	<p>Signature</p>
<p>..... Address of Witness</p>	<p>By executing this instrument the attorney states that the attorney has received no notice of the revocation of the power of attorney.</p>