



4 March 2015

Our Ref: JH: 1529827

The Trustee  
The HB and AP Superannuation Fund  
C/- Ms Heather Byrne  
Heather Byrne Accountant  
PO BOX 832  
BOWRAL NSW 2576

**by email only:** [heatherbyrne@bigpond.com](mailto:heatherbyrne@bigpond.com)

Dear Trustee

## THE HB AND AP SUPERANNUATION FUND – SUPER GEARING DOCUMENTS

<b>Name of Fund:</b>	The HB and AP Superannuation Fund
<b>ABN of Fund:</b>	64 675 349 412
<b>Name of Fund Trustee:</b>	How Heavenly Pty Ltd ACN 169 433 587
<b>Name of Holding Trustee:</b>	Mews Bowral Pty Ltd ACN 603 671 487
<b>Address of Property:</b>	8/11 Bundaroo Street, Bowral NSW (Folio Identifier 8/SP49134)
<b>Name of Vendors:</b>	Anthony Philip Glenn and Julie Ann Glenn as trustees for Glenn Superannuation Fund
<b>Name of Lender:</b>	Westpac Banking Corporation

### 1. Instructions

- 1.1 Thank you for your instructions to assist the Fund by providing the superannuation documents necessary to enable the Fund to acquire the Property using a limited recourse borrowing.
- 1.2 We understand that the Property is located in New South Wales. If this is not the case, please let us know.

### 2. Enclosures

- 2.1 We now enclose the following documents:
  - (a) Fund Trustee resolutions;
  - (b) Holding Trustee resolutions;
  - (c) Holding Trust Deed in compliance with s 67A of the *Superannuation Industry (Supervision) Act 1993* (Cth) ("SIS Act");
  - (d) transaction advice letter; and
  - (e) guide to the conveyancer.

### 3. Updating Superfund Lookup Registration

- 3.1 Please note that in addition to the documents provided; you will also need to complete and lodge a NAT 3036 'Change of details for superannuation entities' form with the ATO to amend the Fund name as linked to the ABN. The ABN currently shows the Fund name as "HB and AP Superannuation Fund" instead of "The HB and AP Superannuation Fund".

#### **4. Checklist**

- 4.1 To give full and appropriate effect to these documents and to ensure appropriate stamp duty treatment the steps set out in the attached checklist should be carried out strictly in the order they are listed.

#### **5. Signing the resolutions**

- 5.1 Please arrange for the Fund Trustee resolutions and the Holding Trustee resolutions to be signed and then insert the dates of signing. Please note that the dates should be prior to the date of the contract for the purchase of the Property. Once signed the resolutions should be kept with the Fund's records and the Holding Trustee's records respectively.

#### **6. The purchase contract**

- 6.1 Please ensure that the Holding Trustee is listed as the purchaser of the Property in the purchase contract, even though it is the Fund which is borrowing to purchase the Property. The description of the Holding Trustee as the purchaser should not mention the Holding Trust or the Fund as to do so may have detrimental duty consequences.
- 6.2 Once the contract for the purchase of the Property has been exchanged you should arrange for the Holding Trust Deed to be executed by the Fund Trustee and the Holding Trustee (Step 4 in the Checklist).

#### **7. Duty**

- 7.1 The conveyance of the Property from the Vendor to the Holding Trustee will be fully dutiable at ad valorem rates calculated on the value of the Property. The Fund's conveyancer will advise on the amount and timing for payment of that duty.
- 7.2 A future conveyance by the Holding Trustee to the Fund Trustee, after the loan by the Fund has been repaid, is also potentially, and would usually be, fully dutiable. However, concessional relief from duty is available if the Holding Trustee purchases the Property using only money provided by the Fund or the Fund's Lender (or a combination of both).
- 7.3 Duty on the Holding Trust Deed will be \$50 for the first original and \$10 for each other original as the Holding Trust Deed does not refer to the name of the Fund. If the Holding Trust Deed refers to the name of the Fund the stamp duty will be \$500. Please note that the Holding Trust Deed must be stamped within 3 months of signing otherwise additional duty may be imposed. We recommend that the Holding Trust Deed be stamped as soon as possible after settlement (but not on or before settlement).
- 7.4 We recommend that you have three originals of the Holding Trust Deed signed so that each party can retain a signed original and there is a spare original (or counterpart) for you to supply to the Lender, the ATO or any other interested third party.
- 7.5 To prove that the Holding Trustee purchased the Property using only money provided by the Fund and to ensure that the transfer back to the Fund Trustee on repayment of the loan is liable to concessional nominal duty only the Fund will need to produce to the state revenue authority:
- a copy of the Fund's bank statement showing the payment of the deposit and other payments made in respect of the purchase from the Fund's bank account;
  - a copy of the loan agreement or loan approval showing the amount the Lender has provided or agreed to provide (note: the loan must be made to the Fund not the Holding Trustee); and
  - a copy of those pages of the purchase contract showing the details of the sale, the signatures of the parties and that the purchase contract has been duly stamped.
- 7.6 We note that you have also instructed us to prepare the stamping and lease compliance documents packages. These documents have been prepared and provided to you separately.

- 7.7 Eventually when the loan is repaid and the transfer from the Holding Trustee to the Fund Trustee needs to be stamped, all the Fund will need to do is present the stamped Holding Trust Deed to be granted the concessional duty on that transfer.

**8. Our tax invoice**

- 8.1 We enclose our tax invoice for the preparation of the enclosed documents which we note is to be paid at the time of delivery of these documents to you.

**9. Further unnecessary requirements of the banks**

- 9.1 The major banks have varied requirements when it comes to the drafting of the Holding Trust Deed. Some banks even have different requirements between various regional administrations. As a result their assessment of gearing documents is often inconsistent and sometimes ill-informed.
- 9.2 Unfortunately we must advise that if your bank requires any amendments to any of the documents we have submitted, and we do not consider such amendments to be necessary, a further charge will need to be levied to discuss with the bank and or to make the amendments.

**10. The requirement to make a payment - important note on the Holding Trust Deed**

- 10.1 Some of the Banks seek the inclusion of a clause in the Holding Trust Deed which requires the Fund Trustee to agree to make one or more payments in respect of the Property prior to requesting the Holding Trustee to transfer legal ownership of the Property to the Fund Trustee. As a result we have included such a clause in your Holding Trust Deed.
- 10.2 We do not recommend the inclusion of the clause and take no responsibility for any detrimental effects to the Fund as a result of the inclusion of the clause. We are concerned that by including the relevant clause in your Holding Trust Deed the Holding Trust may not be a bare trust. If the Holding Trust is not a bare trust for tax purposes then the taxation 'look through' provisions do not apply and the Holding Trustee will be a taxable entity. This would complicate the Holding Trust administration dramatically and have the effect of making the borrowing by the Fund untenable.
- 10.3 We recommend you seek the Bank's agreement to delete the clause. If the Bank agrees then you can delete the wording prior to signing the Holding Trust Deed. All those signing on behalf of the Fund Trustee and the Holding Trustee must initial next to the deletion in the left hand margin.
- 10.4 If the Bank refuses to agree to delete the clause then we recommend that you make a payment under the loan as soon as possible. This may have the effect of converting the trust back into a bare trust.

Thank you for your instructions. We would of course be happy to answer any queries you have in respect of these documents or the transaction generally. Otherwise we await any further instructions you may have for us.

Yours faithfully,  
**TOWNSENDS BUSINESS & CORPORATE LAWYERS**



**JULIE HARTLEY**  
BInst LLB GRAD DIP LEG PRAC  
Solicitor

## SMSF Limited Recourse Borrowing Checklist

STEP	DESCRIPTION	COMPLETED (TICK)
<b>Step One</b>	Dating and signing of the enclosed Fund Trustee resolutions by all Directors of the Fund Trustee company.	
<b>Step Two</b>	Dating and signing of the enclosed Holding Trustee resolutions by all Directors of the Holding Trustee company.	
<b>Step Three</b>	Exchange and dating of the purchase contract for the Holding Trustee to purchase the Property.	
<b>Step Four</b>	Dating and signing of the Holding Trust Deed by both the Fund Trustee and Holding Trustee.	
<b>Step Five</b>	Dating and signing of loan documents and mortgage.	
<b>Step Six</b>	Completion of purchase and dating, stamping and registering the transfer from Vendor to Holding Trustee.	
<b>Step Seven</b>	Preparing and signing statutory declaration with necessary copy attachments for application for concessional duty on the Holding Trust Deed.	
<b>Step Eight</b>	Application to State Revenue Authority for the concessional stamping of the Holding Trust Deed.	
<b>Step Nine</b>	Dating and signing lease compliance documents and lease.	