
S & C Haslam Pty Ltd ACN 621 788 654

AND

C & S Haslam Superannuation Pty Ltd ACN 622 202 671

CUSTODIAN DEED

GARDEN & MONTGOMERIE

Solicitors
14 Kendal Street
COWRA NSW 2794
(DX 4601 COWRA)
Tel: (02) 6342 1622
Fax: (02) 6342 3501
Ref: GBC.LSP.040294

Table of contents

1. Definitions and interpretation 3

2. Recourse against the trustee limited to rights relating to the specified property .5

3. Trustee's right to acquire legal ownership of the specified property5

4. Powers and responsibilities of custodian5

5. Terms of appointment of custodian6

6. Extent of liability.....8

7. Costs9

8. Governing law.....9

9. General.....9

SCHEDULE 11

Execution page..... 12

THIS DEED is made on 31 day of October 2017

BETWEEN S & C Haslam Pty Ltd ACN 621 788 654 of 18 Redfern Street, Cowra
NSW 2794 (**Current Trustee**)

AND C & S Haslam Superannuation Pty Ltd ACN 622 202 671 of 18
Redfern Street, Cowra NSW 2794 (**Initial Custodian**)

RECITALS

NEW SOUTH WALES DUTY
14-02-2018 0009284693-001
SECTION 62B (1)
DUTY \$ *****500.00
NO SURCHARGE DUTY PAYABLE

- A. The current trustee wishes to borrow funds so as to acquire the asset under a limited recourse borrowing arrangement pursuant to sections 67A and 67B of the Superannuation Industry Supervision Act.
- B. As part of this limited recourse borrowing arrangement the current trustee has requested the initial custodian purchase the asset on behalf of the current trustee in the name of the initial custodian and, amongst other things, upon the basis that the current trustee will provide or cause to be provided all of the amounts necessary to pay for the purchase of the asset including incidental costs in relation to that purchase such as legal fees and stamp duty.
- C. The current trustee and the initial custodian have agreed to enter into this deed so as to record the arrangements between the trustee on the one hand and the custodian on the other regarding the basis upon which the initial custodian will purchase the asset on behalf of the current trustee.

OPERATIVE PART

1. Definitions and interpretation

(a) Definitions

In this deed, unless the context otherwise requires:

- (i) Asset means the asset set out in Item 1 of the Schedule;
- (ii) Custodian means the person for the time being who is the legal owner of the specified property (other than the trustee) which person as at the date of the acquisition of the asset is intended to be the Initial custodian;
- (iii) Deed means this document as amended from time to time;
- (iv) Discretion means a right or power to act in accordance with one's judgement;

-
- (v) Government authority means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;
 - (vi) Non-Superannuation fund property means real and/or personal property which is not, at the relevant time, an asset of the superannuation fund;
 - (vii) Previous custodian means a person who has been the custodian but has ceased to be a custodian as defined below;
 - (viii) Replacement asset has the same meaning as outlined in section 67B of the Superannuation Industry Supervision Act;
 - (ix) SIS Act means the Superannuation Industry (Supervision) Act 1993 (Cth);
 - (x) Specified property means the asset or another asset that:
 - (1) is a replacement asset; and
 - (2) is not an asset the trustee is prohibited by the SIS Act or any other law from acquiring;
 - (xi) Superannuation fund means the superannuation fund referred to in Item 2 of the Schedule;
 - (xii) Taxes includes any present or future tax, levy, impost, deduction, charge, rate, duty or withholding (together with any related interest, penalty, fine or expense in connection with any of them) which is assessed, levied, imposed or collected by a government authority;
 - (xiii) Trust deed means such documents (including but not limited to agreements, deeds and documents which set out rules in relation to the superannuation fund) as for the time being setting out the provisions and rules, if any, governing the superannuation fund;
 - (xiv) Trustee means the trustee for the time being of the superannuation fund in its capacity as trustee of the superannuation fund and as at the date of this deed means the current trustee in its capacity as trustee of the superannuation fund.

(b) General

In this deed, unless the context otherwise requires:

- (i) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under, that legislation or legislative provision;
- (ii) the singular includes the plural and vice versa;
- (iii) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;

-
- (iv) a reference to a recital, clause, schedule or annexure is to a recital, clause, schedule or annexure of or to this deed;
 - (v) a reference to an Item is to an item referred to in the schedule to this deed;
 - (vi) a recital, schedule or annexure forms part of this deed;
 - (vii) a reference to any party to this deed or any other document includes that party's executors, administrators, substitutes, successors and permitted assigns;

2. Recourse against the trustee limited to rights relating to the specified property

Despite anything else contained or implied in this deed, any other documents, any actual or implied right or otherwise, the liability, arising by reason of default by the trustee in its capacity as trustee of the superannuation fund (and for the avoidance of doubt, the liability of the superannuation fund to the custodian arising by reason of default by the trustee in its capacity as trustee of the superannuation fund) is limited to rights relating to the specified property only.

3. Trustee's right to acquire legal ownership of the specified property

Despite anything else contained or implied in this deed or any other documents, it is agreed that the trustee in its capacity as trustee of the superannuation fund has the right to acquire legal ownership of the specified property by making one or more payments after acquiring the beneficial interest.

4. Powers and responsibilities of custodian

(a) Custodian's limitations on dealing with the Specified Property

Each of the custodian and the trustee agree and acknowledge one to the other that the custodian must, subject to this deed, receive and get in, hold and deal with the specified property in accordance with a written notice from the trustee.

(b) Custodian's undertakings

The custodian undertakes to:

- (i) act honestly and in good faith in the performance of its obligations and the exercise of its powers and discretions under this deed, and to show the degree of care and diligence required of a trustee having regard to the extent of its obligations, powers and discretions under this deed;
- (ii) act continuously as the legal owner of the specified property until it ceases to do so in accordance with this deed; and

-
- (iii) hold, and account for, the specified property separately from all other assets or property owned or administered by it.

(c) **Custodian's powers**

Subject to the other provisions of this deed, the custodian has, in relation to the specified property, the powers of a natural person and the powers and authorities conferred by law upon a trustee and any other powers which are incidental to those powers and authorities or necessary or desirable in connection with any of them.

5. Terms of appointment of custodian

(a) **Authority and extent of responsibility**

- (i) It is acknowledged that the custodian holds the specified property on a resulting trust for the trustee in the trustee's capacity as trustee of the superannuation fund and that the custodian does not have and will not have any beneficial interest in the specified property. Accordingly, the custodian has no duties in its capacity as such trustee other than those expressly set out in this deed and the custodian will not incur any liability to the trustee or any other person for the non-performance of any duty which might otherwise be implied or imposed upon a trustee except to the extent to which such non-performance concerns a duty of the custodian expressly set out in this deed.
- (ii) The custodian:
 - (1) has the powers and discretions, and is entitled to the indemnities and protections, conferred on trustees by applicable law except to the extent that this deed expressly provides otherwise;
 - (2) may exercise its rights and perform its duties either personally or through agents selected by it with reasonable care, and is not liable for any default, wilful misconduct or negligence of any such agent;
 - (3) may engage such legal, accounting and other advisers as it considers necessary or desirable and may rely in good faith on advice which it receives from them;
 - (4) may assume without investigation that any document or information provided to it is genuine and accurate if it believes in good faith that this is the case;
 - (5) **(not personally liable)** is not responsible for any loss, liability, cost or expense which may be incurred as a result of the performance or non-performance by it of its obligations or the exercise or non-exercise by it of its powers or discretions under this deed except to the extent contemplated by this deed; and
 - (6) may enter, despite its role as contemplated by this deed (and its duties arising therefrom), into other transactions with the trustee

or any other party as if it had not undertaken that role and did not have those duties, and need not account to any person for any profits which it may derive from any such transactions.

- (iii) Despite any other provision to the contrary set out in this deed, the exercise of any discretion by the custodian as conferred under this deed requires the consent of the trustee in all instances.

(b) Limitation on custodian's obligation to act

The custodian is not obliged to take any step contemplated by this deed:

- (i) if prevented from doing so by applicable law;
- (ii) if it considers that to do so would constitute a breach of trust; or
- (iii) unless it has first been indemnified to its satisfaction.

(c) Remuneration

The custodian is entitled to such remuneration as it agrees in writing with the trustee.

(d) Cessation as custodian

- (i) The custodian may cease to be the registered owner of the specified property by giving not less than 30 days' prior written notice to the trustee. Despite such written notice, such cessation takes effect on the later to occur of:
- (1) the cessation date specified in the written notice; and
 - (2) the execution by the custodian and the replacement custodian of the document(s) of transfer of (or other document(s) necessary to effect the transfer of) the specified property from the custodian to the replacement custodian, though where such document(s) is capable of registration then it must be in registrable form.
- (ii) The custodian must cease to be the legal owner of the specified property if it receives a written notice to that effect from the trustee which notice specifies the name of the replacement custodian (which replacement custodian is not the trustee) and the trustee has paid to the custodian the amount payable by reason of this deed.
- (iii) The cessation of the custodian as the registered owner of the specified property takes effect on the earliest to occur of:
- (1) if the ownership of the specified property is registered on a public register – on the date of registration of the document(s) referred to in this deed;
 - (2) if the ownership of the specified property is registered on a private register - on the date of registration of the document(s) referred to in this deed;

-
- (3) in any other case – on the date on which the last person required to execute the document(s) referred to in this deed executes that document(s).

(e) Transfer of specified property and records to new custodian

A person or entity, upon ceasing to be the registered owner of the specified property as contemplated by this deed:

- (i) do, sign, execute and deliver all deeds, documents, instruments and acts necessary to transfer the legal title in the specified property to the new custodian; and
- (ii) deliver to the new custodian all books, records, documents, certificates of title and other matters in its possession relating to the specified property.

The trustee must pay any reasonable costs, charges and expenses incurred by a retiring custodian or new custodian under this clause.

6. Extent of liability

(a) Limitation of custodian's liability

- (i) Each liability incurred or action taken by the custodian in relation to this deed is incurred or taken by it solely in its capacity as the legal owner of the specified property.
- (ii) Despite anything expressed or implied in this deed or any other document, recourse may only be had to the custodian to the extent of the interest of the custodian in the specified property and not to any other extent and for the avoidance of doubt not to the custodian personally or to any other asset of which the custodian may have an interest.
- (iii) Notwithstanding the limitations set out below, the custodian will be personally liable for any liability incurred to the extent that it is incurred as a result of the custodian's:
 - (1) fraud, wilful misconduct or gross negligence; or
 - (2) breach of trust, where it fails to show the degree of care and diligence required of it as a trustee having regard to its powers, authorities or discretions under this deed.

(b) Limitation of trustee's liability

- (i) Each liability incurred or action taken by the trustee in relation to this deed is incurred or taken by it solely in its capacity as trustee of the superannuation fund.
- (ii) Despite anything expressed or implied in this deed or any other document, recourse may only be had to the trustee to the extent to which the trustee is actually able to obtain reimbursement from the assets of the superannuation fund and not to any other extent and for

the avoidance of doubt not to the trustee personally or to any non-superannuation fund property.

(iii) Notwithstanding the limitations of the trustee's liability as set out above, the trustee will be personally liable for any liability incurred to the extent that it is incurred as a result of the trustee's:

- (1) fraud, wilful misconduct or gross negligence; or
- (2) breach of trust, where it fails to show the degree of care and diligence required of it as a trustee having regard to its powers, authorities or discretions under the trust deed.

(c) Replacement of trustee

The trustee has entered into this deed in its capacity as trustee of the superannuation fund and so as to bind all trustees for the time being of the superannuation fund. If the trustee is replaced as trustee of the superannuation fund, then from the date of such replacement this deed is to be construed and is to take effect as if the replacement trustee had executed this deed on that date and any reference to the trustee will be from that date a reference to the replacement trustee to the exclusion of the party which has been replaced.

7. Costs

The trustee indemnifies the custodian and each previous custodian against, and must pay the custodian and each previous custodian on demand the amount of, all losses, liabilities, costs and expenses (including, without limitation, legal expenses on a full indemnity basis) and taxes in connection with:

- (a) the negotiation, preparation, execution, stamping and registration of this deed;
- (b) the administration, enforcement or attempted enforcement or preservation or attempted preservation of any rights, or the performance or attempted performance of any obligations, under or in relation to this deed;
- (c) any amendment to, or any consent, approval, waiver, release or discharge of or under, this deed; and
- (d) the document(s) of transfer of the specified property from the custodian to a new custodian as referred to in this deed.

8. Governing law

This deed is governed by the law in force in the state of New South Wales.

9. General

- (a) **Waiver**

The non-exercise of or delay in exercising any power or right of a party to this deed does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to this deed to be bound by the waiver.

(b) **Assignment**

No party to this deed may assign or transfer all or any part of its rights or obligations under this deed unless it obtains the prior consent of each other party to this deed.

(c) **Severability**

Any provision in this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

(d) **Counterparts**

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

SCHEDULE

ITEM 1

(Asset):

51 Kendal Street, Cowra NSW 2794 being Lot
2 in DP17754

ITEM 2

(Superannuation Fund):

S & C Haslam Superfund

Execution page

EXECUTED AS A DEED

Executed by **S & C HASLAM PTY LTD ACN 621 788 654**
in accordance with s 127 of the *Corporations Act 2001*



.....
Signature of Stephen John Haslam – Director/Company Secretary



.....
Signature of Christine Rhonda Haslam – Director

Executed by **C & S HASLAM SUPERANUATION PTY LTD ACN 622 202 671**
in accordance with s 127 of the *Corporations Act 2001*



.....
Signature of Stephen John Haslam – Director



.....
Signature of Christine Rhonda Haslam – Director