

# Hayborne Superfund

SMSF Trust Deed

Prepared by:

**hunt & hunt**

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Sydney NSW 2000

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## TRUST DEED

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**THIS DEED** is made on the date specified in the Schedule by the person or persons named in the Schedule to this Deed.

### RECITALS

The Trustees wish to establish a self-managed superannuation fund for the benefit of those people who become Members of the Fund on the terms and conditions set out in this Deed.

#### **A Establishment**

The Trustee by this Deed establishes the Fund as a Self Managed Superannuation Fund. The Fund will be vested in the Trustees and will at all times be held, controlled and managed by the Trustees subject to the trusts, powers and provisions of this Deed and the Rules.

The Fund was established on the date specified in the Schedule.

#### **B Trustee**

The Trustee consent to act as trustees of the Fund with effect from the date specified in the Schedule and acknowledge by execution of this Deed that they have read and agree to be bound by this Deed and the Rules.

#### **C Fund Details**

The Fund will be in existence from the date specified in the Schedule and will be known by the name in the Schedule or such other name as the Trustees might in writing determine.

#### **D Fund Deed and Rules**

This Deed includes the Rules. The Rules are those attached to this Deed as amended from time to time.

#### **E Purpose of the Fund**

The Fund is to be maintained for the sole purpose of providing superannuation benefits for its Members and their Dependants.

#### **F Compliance**

The Trustee must ensure that the Fund, from the date of creation, continues its status as a Complying Self Managed Superannuation Fund as defined by and for the purposes of the *Superannuation Industry (Supervision) Act 1993*.

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## SCHEDULE

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Creation date:

19, 6, 09

Fund name:

Hayborne Superfund

Meeting address:

218 Coke Street Hay NSW 2711

### Trustees:

Name:

Victoria Nina Mabon

Colin Edward Mabon

### Members:

Name:

Victoria Nina Mabon

Colin Edward Mabon

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**SIGNED SEALED and DELIVERED** by the  
said **Victoria Nina Mabon** as Trustee

in the presence of:

LISA RICHARDS

Please Print Name of Witness

**SIGNED SEALED and DELIVERED** by the  
said **Colin Edward Mabon** as Trustee

in the presence of:

LISA RICHARDS

Please Print Name of Witness

V. Mabon  
Victoria Nina Mabon

Richards  
Signature of Witness

Colin  
Colin Edward Mabon

Richards  
Signature of Witness

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## 1. DEFINITIONS

In this Deed the following words or expressions have the meaning thereafter ascribed to them:

<b>Act</b>	The <i>SIS Act 1993</i> , the <i>Tax Act</i> , the <i>Corporations Act 2001 (Cth)</i> , the <i>Family Law Act 1975 (Part VIII B)</i> , the <i>Social Security Act 1991</i> , the <i>Veterans' Entitlements Act 1986</i> , any successor acts and all regulations made pursuant to the foregoing acts.
<b>Ancillary Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> including the purpose of providing such benefits as the Regulator approves in writing.
<b>Application Form</b>	An application form provided by the Trustees for prospective members to complete and submit to the Trustees.
<b>Associate</b>	Has the meaning given by the Act.
<b>Auditor</b>	An auditor who is an Approved Auditor as defined in section 10(1) of the <i>SIS Act</i> or any successor Act or otherwise determined by the Regulator.
<b>Asset</b>	Means any asset that the Trustees hold for the purposes of the Fund.
<b>Benefit</b>	An entitlement payable or distributable by the Fund which may include a Pension or lump sum payment.
<b>Benefit Arrangement</b>	Means any fund or arrangement established to receive superannuation contributions or amounts arising from such contributions. For example, it includes a superannuation fund, approved deposit fund, retirement savings account and the Superannuation Holding Accounts Special Account established under the <i>Small Superannuation Accounts Act 1995 (Cth)</i> .
<b>Beneficiary</b>	Includes Members and any person entitled at the relevant time to receive a payment from the Fund in respect of a Member and any other person who is a Beneficiary for the purposes of the Act.
<b>Binding Death Benefit Nomination</b>	A direction given to the Trustees by a Member in accordance with and subject to Rule 19 in such form and manner as the Trustees may from time to time specify which is a binding direction for the purposes of the Act as to payment of the Member's Death Benefit in the event of the Member's death.
<b>Child</b>	Includes an adopted child, a step child, an ex-nuptial child, a child of the Spouse of the Member and a child of the Member within the meaning of the <i>Family Law Act 1975 (Cth)</i> .
<b>Complying Superannuation Fund</b>	A Self Managed Superannuation Fund which is compliant with Section 42A of the <i>SIS Act</i> .
<b>Constitutional Corporation</b>	A body corporate which is a trading or non-trading entity or financial corporation which is formed within the meaning of paragraph 51(xx) of the <i>Constitution of the Commonwealth of Australia</i> and to include a company incorporated under the provisions of the <i>Corporations Act 2001</i> .

<b>Contributions</b>	Amounts paid or property transferred to the Trustees for the benefit of a Member or Members.
<b>Core Purposes</b>	Those purposes as defined in section 62 of the <i>SIS Act</i> .
<b>Death Benefit</b>	Means a benefit payable on a Member's death.
<b>Deed</b>	The deed establishing the Fund as amended from time to time.
<b>Dependant</b>	Includes a person who is the Spouse or Child of the Member or any other person with whom the Member has an Interdependency Relationship
<b>Earnings</b>	Includes any income received and accrued, realised and unrealised gains and any other amount the Trustees believe should form part of the earnings.
<b>Eligible Rollover Fund</b>	A fund defined by regulation 10.01 of the SIS Regulations as an eligible rollover fund.
<b>Employer</b>	A person who engages an "employee" or "employees" for the purposes of section 17A of the <i>SIS Act</i> .
<b>Excess Contributions Tax</b>	Any tax imposed by reason of the Superannuation ( <i>Excess Concessional Contributions Tax</i> ) Act 2007 or the Superannuation ( <i>Excess Non- Concessional Contributions Tax</i> ) Act 2006 or successor legislation.
<b>Financial Year</b>	A year ended 30 June or that period of twelve months adopted by the Trustees as the Fund's financial year.
<b>Fund</b>	Means the fund referred to in the Schedule and established by this Deed.
<b>Gainful Employment</b>	That activity in which a person is engaged for gain or reward in any business, trade, profession, vocation, calling or occupation or if the Act prescribes a different meaning.
<b>Interdependency Relationship</b>	Has the meaning given in the Act.
<b>Legal Personal Representative (LPR)</b>	The executor of the will or administrator of the estate of a deceased Member, the Trustee of the estate of a Member under a legal disability or a person who holds an enduring power of attorney granted by a Member.
<b>Manager</b>	The person or entity appointed by the Trustees to manage the Fund.
<b>Market Value</b>	The amount a willing buyer of an asset could reasonably be expected to pay to acquire the asset from a willing seller if the following assumptions were made: <ul style="list-style-type: none"> <li>(a) that the buyer and the seller dealt with each other at arm's length in relation to the sale;</li> <li>(b) the sale occurred after proper marketing of the asset; and</li> </ul> the buyer and seller acted knowledgeably and prudently in relation to the sale.



<b>Member</b>	Any person accepted by the Trustees as a member of the Fund and who has not ceased to be a Member and includes a person in receipt of a pension from the Fund.
<b>Member's Account</b>	An account established and maintained by the Trustees on behalf of a Member in accordance with Rule 17.
<b>Member's Accumulation Account</b>	A Member's Account established by the Trustees, to accumulate the investments and earnings of the Member.
<b>Member's Pension Account</b>	A Member's Account established by the Trustees from which the payment of a Pension will be debited.
<b>Non-Binding Death Benefit Nomination</b>	A nomination given to the Trustees by a Member in such form and manner as the Trustees may from time to time specify the direction of which the Trustees can but are not bound to follow in the event of the Member's death.
<b>Old age pensions</b>	Has the meaning given by the Act.
<b>Payment Split</b>	Has the meaning given to that term in Part VIII B of the <i>Family Law Act 1975</i> (Cth).
<b>Pension</b>	Means a benefit taken to be a pension payable by the Fund in accordance with the <i>SIS Act</i> .
<b>Pension Dependants</b>	Those entitled recipients specified in reg 6.21 (2A) and (2B) of the SIS Regulations.
<b>Permanent Incapacity</b>	In relation to a Member means ill health (whether physical or mental) where the Trustees are reasonably satisfied that the Member is unlikely, because of the ill health, to engage in Gainful Employment for which the Member is reasonably qualified by education, training or experience.
<b>Policy</b>	Means an insurance policy arranged by the Trustees in accordance with Rule 24.
<b>Product Disclosure Statement (PDS)</b>	A statement which provides a description of the features and benefits of the Fund.
<b>Preserved Benefits</b>	Means any part of an amount held in the Fund in respect of the Member that the Act requires to be retained in the Fund or another complying Benefit Arrangement until the Member has retired from the work force and attained the age specified by the Act, or until such other circumstances as the Act permits.
<b>Regulated Superannuation Fund</b>	A superannuation fund that is regulated as defined within section 19 of the <i>SIS Act</i> .
<b>Regulator</b>	The Commissioner of Taxation or any person or entity appointed to regulate the Fund as defined in section 10(1) of the <i>SIS Act</i> .
<b>Relative</b>	Has the meaning given by s17A(9) of the <i>SIS Act</i> .
<b>Reserve Account</b>	Means the Account referred to in Rule 23.

<b>Rules</b>	Means such one or more rules of the Fund.
<b>Self Managed Superannuation Fund</b>	A fund as defined in section 17A of the <i>SIS Act</i> .
<b>SIS Act</b>	The <i>Superannuation Industry (Supervision) Act 1993</i> (Cth).
<b>SIS Regulations</b>	The <i>Superannuation Industry (Supervision) Regulations 1994</i>
<b>Splittable Contributions</b>	An amount that has the meaning for the purposes of Part 6 of the SIS Regulations.
<b>Spouse</b>	In relation to a person includes: <ul style="list-style-type: none"> <li>(a) a person, who whether or not legally married to the Member or who lives with the Member on a genuine domestic basis as the husband or wife of the Member;</li> <li>(b) any other person who is accepted by the Trustees as being the Member's Spouse for the purposes of the Act; and</li> <li>(c) another person (whether of the same sex or a different sex) with whom the person is or was in a relationship that was registered under a law of a State or a Territory prescribed for the purposes of Section 22B of the <i>Acts Interpretation Act 1901</i> (Cth) as a kind of relationship prescribed for the purposes of that section.</li> </ul>
<b>Superannuation Entity</b>	<ul style="list-style-type: none"> <li>(a) a Regulated Superannuation Fund, or</li> <li>(b) an approved deposit fund, or</li> <li>(c) retirement savings account; or</li> <li>(d) eligible rollover fund</li> </ul> <p>or any other arrangement which the Trustees determined should be treated for the purposes of the Fund as a Superannuation Entity.</p>
<b>Superannuation Interest</b>	In relation to a Member means an interest in the Fund or such other interest as defined in section 995-1(1) of the Tax Act as determined by the Trustees with reference to section 307-200 of the Tax Act and relevant Regulations.
<b>Superannuation Law</b>	<ul style="list-style-type: none"> <li>(a) the <i>SIS Act</i></li> <li>(b) the Tax Act;</li> <li>(c) the Family Law Legislation;</li> <li>(d) the <i>Corporations Act 2001</i> (Cth);</li> <li>(e) the <i>Bankruptcy Act 1966</i> (Cth);</li> <li>(f) the <i>Anti-Money Laundering and Counter-Terrorist Financing Act 2006</i> (Cth);</li> <li>(g) any replacement or additional Commonwealth or State law; and</li> </ul>



(h) any other present, future or proposed legal requirements with which the Trustees:

(1) are legally obliged to comply; or

(2) must comply to obtain the maximum Tax concessions available to the Fund.

**Tax** Includes all actual or anticipated tax, Surcharge, levy or impost on income, capital gains and superannuation contributions, stamp, financial institutions, registration and other duties, bank accounts debits tax, goods and services tax and other taxes, levies, imposts, deductions and charges together with interest, fines and penalties (if any) and charges, fees or other amounts made or payable in respect of them

**Tax Act** Either or both of the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (as the case may be including any replacement, modification or supplement to those Acts).

**Taxable Component** Has the meaning given by section 995-1(1) of the *Tax Act*.

**Temporary Incapacity** In relation to a Member, who has ceased to be gainfully employed (including a Member who has ceased temporarily to receive any gain or reward under a continuing arrangement for the Member to be gainfully employed) means ill-health (whether physical or mental) that caused the Member to cease to be gainfully employed but does not constitute Permanent Incapacity)

**Termination Date** The date on which the Fund terminates.

**Trustee** A person or company that has been appointed a trustee of the Fund. Where there is more than one trustee it refers to each trustee for the time being of the Fund. The expression also includes replacement or additional trustees.

## **2. PURPOSE OF THE FUND**

**2.1** The Trustees must ensure that the Fund is maintained for one or more of the Core Purposes or for one or more of the Core Purposes and for one or more of the Ancillary Purposes permitted under the SIS Act and for no other purpose.

**2.2** If the Trustee is not a company the sole or primary purpose of the Fund is the provision of old age pensions.

**2.3** The Trustees must cause the Fund at all times to be a Regulated Superannuation Fund.

## **3. TRUSTEES**

### **Who may be a Trustee**

**3.1** A Trustee may be a natural person or a company.

**3.2** An individual may only be a Trustee if the individual is a Member.

**3.3** A company may only be a Trustee if all the directors of the company are Members.

- 3.4 Notwithstanding the above rules if there is only one person who is a Member then:
- (a) that Member or a LPR of that Member and one other natural person who is a Relative of the Member or is a person who is not an Employer of the Member may be the Trustee; and
  - (b) a company may be the Trustee the sole director of which is the Member or a LPR of the Member or the company may have two directors one of which is the Member or the LPR of the Member and another person who is a Relative of the Member or is a person who is not an Employer of the Member.
- 3.5 A member cannot be appointed as Trustee if they have a legal disability but a LPR of that Member can be appointed as a Trustee on their behalf.
- 3.6 A Regulator may appoint a person or company as Trustee.
- 3.7 A Trustee will comply with all requirements under the Act in relation to their appointment.

**Who may not be a Trustee**

- 3.8 A person cannot be a Trustee if that person is a disqualified person under the SIS Act.
- 3.9 A body corporate cannot be a Trustee if that body corporate is a disqualified person under the SIS Act:
- (a) the company knows, or has reasonable grounds to suspect, that a director is a disqualified person under the SIS Act and the disqualification has not been waived or revoked;
  - (b) an administrator or provisional liquidator has been appointed;
  - (c) a receiver, or a receiver and manager has been appointed over the property beneficially owned by the company; and
  - (d) the company has begun to be wound up.

**4. COMPLIANCE WITH SUPERANNUATION LAW**

**4.1 The provisions of this clause 4 override any other provisions of this Deed**

The Trustees must comply with the requirements of the Superannuation Law and is fully empowered (without being obliged) to comply with any provision or standard of the Superannuation Law which is not a requirement.

**4.2 Power to comply with the Superannuation Law**

- (a) The Trustees may:
  - (1) do anything that the Trustees are required to do or that the Trustees consider necessary, expedient or desirable to comply with any requirement of the Superannuation Law (including expending monies of the Fund); and
  - (2) refrain from doing anything (including, without limitation, delaying or refusing any request or transaction in connection with a Beneficiary's interest in the Fund) that would result in a breach of, or the Trustees breaching, a requirement of the Superannuation Law.



- (b) The Trustees may rely on anything (including any statutory presumptions available to it) in the Superannuation Law, to the extent that the Trustees are entitled to do so in their capacity as trustee of the Fund.
- (c) The Trustees are entitled to be indemnified out of the assets of the Fund for any Liabilities that the Trustees properly incur pursuant to this clause.

#### **4.3 Deemed compliance**

The Trustees are deemed to comply with the Superannuation Law and this Deed if the Regulator:

- (a) is satisfied that the Trustees have complied with the Superannuation Law;
- (b) determines that the Fund will be treated as if it had complied with the Superannuation Law; or
- (c) has advised the Trustees that it will not take action against the Trustees or the Fund in respect of a failure to comply with the Superannuation Law.

#### **4.4 Conflict with the Superannuation Law**

- (a) To the extent that any provision, or part of a provision, of this Deed conflicts with the Superannuation Law or is invalid for any other reason whatsoever:
  - (1) that provision, or part, must be read down, changed, construed or severed to avoid such conflict or invalidity; and
  - (2) to the extent that such conflict or invalidity cannot be avoided, the provision or part of the Superannuation Law shall prevail to the extent of the conflict or invalidity only and the provision, or part, will be of no effect and will not affect the remainder of this Deed.
- (b) If a provision of this Deed would otherwise be void under the Superannuation Law because it:
  - (1) subjects the Trustees to direction by another person; or
  - (2) permits a person to exercise a discretion without the consent of the Trustees,

other than in the circumstances permitted by the Superannuation Law, the Trustee's consent is required for the giving of the direction or the exercise of the discretion.

### **5. TRUSTEE APPOINTMENT**

**5.1** Upon establishment of the Fund a person is appointed as Trustee provided that the person:

- (a) has agreed to their appointment as Trustee by execution of the Deed;
  - (1) has consented in writing to become a Member or is a LPR on behalf of a person and has consented in writing to that person becoming a Member; and
  - (2) if the Fund has only one Member, is a Relative of the Member or is a person who is not an Employer of the Member;

- (b) has read and understood the PDS and agrees to be bound by the Deed and the Rules of the Fund; and
- (c) is not a disqualified person under the SIS Act.

5.2 Upon establishment of the Fund a company is appointed as Trustee provided that the:

- (a) the company and its directors have agreed to its appointment as Trustee by execution of the Deed;
- (b) all directors have consented to become Members or they are the LPR of a person and have agreed in writing to that person becoming a Member;
- (c) if the Fund has only one Member and two directors, the director that is not a Member is a Relative of the Member or is a person who is not an Employer of the Member;
- (d) the company and its directors have read and understood the PDS and agree to be bound by the Rules of the Fund; and
- (e) the company or its directors are not a disqualified company or person under the SIS Act.

5.3 Subject to the provisions of these Rules, where the Trustees accept a person as a Member that person or a LPR of that person is appointed as a Trustee unless that person or a LPR of that person becomes a director of a company which is the Trustee.

5.4 On retirement of a Trustee one of the following is appointed Trustee in place of the Trustee who has retired (provided the person or company is not already a Trustee):

- (a) if the retiring Trustee is a person, another person who is a Member or a LPR of that Member or a company of which that Member or LPR of that member is a director; and
- (b) if the retiring Trustee is a company, a company all the directors of which are Members or are the LPR's of Members.

## 6. TRUSTEE REMOVAL

6.1 A Trustee will hold office until:

- (a) the Trustee retires in accordance with this Rule
- (b) being a Constitutional Corporation, it goes into liquidation or has a receiver appointed or enters into administration;
- (c) the Trustee is removed, or ceases to be eligible to act as Trustee under the Act; or
- (d) being a natural person, the Trustee dies

A Trustee may retire at any time.

6.2 If the Fund has only one Member, a person who is not a Member and who is a Trustee may retire as a Trustee provided that another person who is a Relative of the Member or is a person who is not an employer of the Member is appointed as a Trustee.



- 6.3 A company may retire as a Trustee provided:
- (a) all the directors of that company are appointed as Trustees; or
  - (b) another company is appointed as a Trustee where all directors of the resigning company are also directors of the company being appointed as Trustee.
- 6.4 A Trustee may retire as Trustee of the Fund so long as a new Trustee has first been appointed as a Trustee of the Fund;
- 6.5 A person or company is removed as Trustee:
- (a) if a Member is the Trustee, when that person ceases to be a Member;
  - (b) if a Member is the Trustee, when that person is incapable of acting as Trustee unless a LPR of the Member is appointed as Trustee in place of the Member;
  - (c) if the Trustee is a company, on the date four months from the time one or all directors of the company cease to be Members or the LPRs of the Members;
  - (d) on the date the Trustee is prohibited from being a Trustee under the Rules or the Act; and
  - (e) if the continued appointment of the Trustee will result in the Fund losing its status as a Complying Superannuation Fund.

## **7. TRUSTEE REMUNERATION AND INDEMNIFICATION**

- 7.1 No Trustee of the Fund will receive any salary or remuneration from the Fund for acting as Trustee.
- 7.2 The Trustees and, where the Trustee is a corporation, its directors and officers are entitled, to the maximum extent permitted by the Act, and by law, to be indemnified from the Fund against all liabilities incurred by each of them in connection with execution, attempted execution, or in respect of non-execution of the Trustee's powers and discretions under this Deed.
- 7.3 Subject to the Act, the Trustee and its directors and officers may recover from the Fund amounts necessary:
- (a) to meet the indemnities referred to in Rule 7.2; and
  - (b) to meet all liabilities whatsoever in connection with the Fund and the exercise of their powers and duties under or in connection with this Deed.

To this end, to the maximum extent permitted by the Act, the Trustee and its directors and officers have, and may exercise, a lien over the Fund.

- 7.4 If liabilities are incurred by a Trustee or former Trustee in the management, administration, maintenance, or operation of the Fund, then the Trustee may apply the assets of the Fund in indemnification of itself or a former Trustee provided all actions performed by the Trustee or the former Trustee in respect of which indemnification is sought were honest or the required degree of care and diligence was exercised.



## **8. TRUSTEE MEETINGS**

- 8.1 (a) The Trustees may meet as and when required to make decisions in performance of their obligations as Trustees of the Fund under the provisions of this Deed, the Rules or the Act. Reasonable notice of such meetings is required in the manner set out in clause 8.2.
- (b) The Trustees may adjourn and regulate their meetings as they see fit.
- (c) If there is more than one Trustee, the Trustee must meet if Members, whose account balances combined equal or exceed fifty percent of the Fund's cumulative account balance, serve notice of meeting on the Trustee requiring the Trustee to make a decision regarding an issue relating to the Fund, its administration or management. 14 days notice of such meetings is required in the manner set out in clause 8.2.
- 8.2 Written notice of meetings must be given to each Trustee at their last nominated mail, facsimile or email address stating the:
- (a) place, date and time for the meeting; and
- (b) the general reason for the meeting.
- 8.3 If a Trustee is able to attend the meeting through a communication link established by telephone, audio or audio-visual communication or other approved device, all proceedings will be valid and effective as if that person were physically present.
- 8.4 At any meeting of Trustees a quorum will be formed with the presence of those Trustees who represent Members, the balance of whose Member's Accounts in aggregation exceeds one half of the aggregated amount of all Member's Account balances.
- 8.5 Each Trustee will be entitled to cast the number of votes nearest to the number of whole dollars of that Member's Account the Trustee represents and any amounts in Reserve that an actuary has determined might be transferred to the Member's Account to pay a Pension, but no less than one vote each.
- 8.6 A resolution will be passed by a majority of votes of those who are present at the meeting and who are entitled to vote.
- 8.7 A person may appoint, in writing, another person to act as that person's proxy at any Trustee meeting.
- 8.8 If a written resolution has been signed by all persons entitled to attend a Trustee meeting, the resolution in the terms stated will be deemed as passed at the time and date which the document was last signed by any such person. More than one identical written resolution, each of which has been signed by one or more persons, will constitute one document.

## **9. TRUSTEE RECORDS AND REGISTERS**

The Trustee must create and keep such records and registers of the Fund and decisions made as are required by this Deed and the Act.