



ASIC
Australian Securities &
Investments Commission

**Australian Securities
and Investments Commission**

Level 20, 240 Queen Street,
Brisbane QLD 4000
GPO Box 9827,
Brisbane QLD 4001
DX 322 Brisbane

Tel: +61 1300 935 075

Fax: +61 1300 729 000

www.asic.gov.au

Our Reference: 12540/20
Your Reference: SDP/PN36410

20 May 2020

Lithgow City Council
Att: Sandra Politi

Sent via email only to sandra.politi@lithgow.nsw.gov.au

Dear Ms Politi

**Macquarie Gardens Pty Ltd ACN 000 336 907 (Deregistered) (the company)
Transfer of Musket Laneway (the property) from ASIC to Council**

I refer to your email dated 19 May 2020.

Effect of deregistration

I confirm the company was deregistered on 15 December 2002.

Ordinarily as a result of deregistration:

- a) all property the company held on trust at deregistration belongs to the Commonwealth
- b) all non-trust property the company owned at deregistration belongs to ASIC
- c) ASIC is the only party legally able to deal with the company's property.¹

Transfer to Council

ASIC understands the property is used for a public purpose i.e. as a laneway. Thus it appears to be in the public interest for the property to be in Council's name rather than remain in the company's name and vested with the corporate regulator. To facilitate this ASIC is prepared to transfer the property to Council for nil consideration if Council is prepared to provide ASIC with the following:

1. A copy of:

Written confirmation that:

- the property is used as a laneway
- the property is not rated by Council and
- Council maintains the property.

¹ There are exceptions e.g. secured parties are entitled (under their security) and Land Titles Registrars have some powers (under their State legislation), to deal with the company's property despite deregistration.

2. An indemnity

The indemnity protects ASIC against claims brought against ASIC due to it transferring the property. Please ensure the authority by which the person is executing on behalf of Council, is clearly specified on the indemnity (e.g. power of attorney). A draft is attached for your convenience.

3. Original transfer for ASIC to sign

Council is responsible for preparing and submitting to ASIC, the original transfer. If the Delegate approves the transfer ASIC will return the executed transfer to you. Council will be responsible for lodging the executed transfer with the Titles Office and for paying any registration/lodgement fees, stamp duty and other associated costs.

The following clauses are to be inserted in the Transfer before submitting to ASIC:

Representative clause: (description/name of transferor)	"The Australian Securities and Investments Commission acting under s601AE(2) of the <i>Corporations Act 2001</i> in relation to property of MACQUARIE GARDENS PTY LTD ACN 000 336 907, a company deregistered on 15 December 2002."
Sealing clause: (where transferor signs)	<p>"The Common Seal of the Australian Securities and Investments Commission is affixed under s601AE(2) of the <i>Corporations Act 2001</i></p> <p>.....</p> <p>An Authorised Officer of the Australian Securities and Investments Commission</p> <p>Witness:.....</p> <p>Solicitor, ASIC Level 20, 240 Queen St, BRISBANE QLD 4001"</p>

Please advise whether Council is prepared to accept a transfer of the property and satisfy all the above conditions.

I look forward to hearing from you further.

Yours sincerely



Fay Meadowfair
Lawyer
Property Law Group
Tel: 07 3867 4912 / Email: fay.meadowfair@asic.gov.au

NOTE: You are encouraged to seek your own legal advice before signing this indemnity

DEED POLL INDEMNITY

THIS DEED POLL is made on the _____ day of _____ 20____

BY **[INSERT NAME OF TRANSFEREE]** of **[INSERT STREET ADDRESS OF TRANSFEREE]**

RECITALS:

- A. The Australian Securities and Investments Commission (**ASIC**) acting pursuant to section 601AE(2) of the *Corporations Act 2001* will execute a transfer in favour of **[insert full name of transferee]** of the Property which is registered in the name of **MACQUARIE GARDENS PTY LTD ACN 000 336 907 (the company)** a company deregistered on 15 December 2002.
- B. We have agreed to assume responsibility for all Financial Obligations and to provide an indemnity to ASIC and each of its members, staff members and agents in the following terms.

NOW THIS DEED WITNESSES:

1. Definitions

For the purposes of this Deed:

"Financial Obligations" means a liability imposed on the Property and includes, without limitation, a liability that arises under a law that imposes rates, taxes or other charges and any other levies or fees for the Property.

[NOTE: Examples of Financial Obligations include outstanding council rates, water charges, land tax and body corporate/owners corporation fees]

"Losses" means Financial Obligations, liabilities, losses, suits, damages, demands, expenses, costs and claims and includes, without limitation, legal costs on a full indemnity basis whether incurred by or awarded against a party and claims of creditors of the company.

"Property" means the property more particularly set out in the schedule below.

"Transfer" means the transfer of the Property described in Recital A above.

2. Responsibility for Financial Obligations

We hereby assume full responsibility for all Financial Obligations whether they be outstanding as at or after the date of the Transfer.

3. Indemnity

3.1 We will at all times indemnify, hold harmless and defend ASIC and each of its members, staff members and agents from and against any and all Losses that any of them directly or indirectly sustain or incur arising out of or as a consequence of or in relation to the Transfer.

3.2 The right of each of ASIC, its members, staff members and agents to be indemnified under clause 3.1 is in addition to, and not exclusive of, any other right, power or remedy provided by statute, common law, equity or otherwise.

4. Enforcing right of indemnity

We acknowledge and agree that it is not necessary for ASIC to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

5. Governing Law

This Deed shall be governed by the law of [the Australian State or Territory in which the Council, Statutory Authority is located] and each person making this Deed submits to the non-exclusive jurisdiction of the courts of that place.

The Schedule

[Insert full description of the property to be transferred]

SIGNED SEALED AND DELIVERED as a Deed for the benefit of the Australian Securities and Investments Commission and each of its members, staff members and agents

[INSERT NAME OF TRANSFEREE]:

_____ (signature of witness)

_____ (name of witness – please print)

_____ (capacity of witness – e.g. Justice of the Peace, Solicitor)

NOTE: a witness must not be a party to this Deed Poll