



## Securities Act (Airedale Developments (Auckland) Limited) Exemption Notice 2004

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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### Notice

- Title**

This notice is the Securities Act (Airedale Developments (Auckland) Limited) Exemption Notice 2004.
- Commencement**

This notice comes into force on the day after the date of its notification in the *Gazette*.
- Expiry**

This notice expires on the close of 25 June 2009.
- Interpretation**

(1) In this notice, unless the context otherwise requires,—

**accommodation unit** means 1 of the following units on the unit plan (which are listed inclusively and include any accessory units that comprise part of any of these units):

- (a) units 100 to 112:
- (b) units 200 to 212:
- (c) units 300 to 312:
- (d) units 400 to 412:
- (e) units 500 to 512:
- (f) units 600 to 612:
- (g) units 700 to 712:
- (h) units 800 to 812:
- (i) units P1 to P9

**Act** means the Securities Act 1978

**ADAL** means Airedale Developments (Auckland) Limited

**certificate of title** means a certificate of title or a computer unit title register, as appropriate, issued under the Unit Titles Act 1972

**key event** means the providing of a registrable transfer instrument to a subscriber in accordance with clause 6(a)(i)

**proportionate ownership scheme** means a contributory scheme that involves the investment of money in circumstances where—

- (a) each subscriber for specified participatory securities will acquire a stratum estate in an accommodation unit or units; and
- (b) there is a separate certificate of title for each accommodation unit

**registered valuer** means a person who is a registered valuer within the meaning of the Valuers Act 1948

**registrable transfer instrument** means a transfer instrument that may be used for the purpose of registering the transfer of any land or estate or interest in land in accordance with section 90 of the Land Transfer Act 1952

**Regulations** means the Securities Regulations 1983

**relevant accommodation units** has the meaning set out in clause 4 of Schedule 2

**specified participatory securities** means participatory securities issued by ADAL in respect of the proportionate ownership scheme

**stratum estate** means a stratum estate in freehold

**subscription contract** means a contract entered into between each subscriber for specified participatory securities and ADAL for the subscription and allotment of specified participatory securities

**unit plan** means Deposited Plan 203156 (North Auckland Registry).

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
- (a) that registered valuer and any director of ADAL are relatives, one being the spouse of the other or being the parent, brother, sister, or child of the other or of the spouse of the other; or
  - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the independent valuer's report,—
    - (i) a shareholder or director of ADAL; or
    - (ii) a shareholder or director of any company that is a holding company or a subsidiary of ADAL or that is a partner or joint venturer with ADAL; or
  - (c) there is any other relationship or interest between the registered valuer and ADAL that is likely to influence the judgment of the registered valuer.
- (3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

## **5 Exemption from sections 33(3), 37, 37A, and 51 to 54 of Act**

ADAL and every person acting on ADAL's behalf are exempted from sections 33(3), 37, 37A, and 51 to 54 of the Act in respect of specified participatory securities.

## **6 Conditions of exemption**

The exemption in clause 5 is subject to the following conditions:

- Each subscriber must receive registrable transfer instrument (key event) and audited financial statements*
- (a) that it is a term of each subscription contract that—
- (i) each subscriber for specified participatory securities will be provided (on the settlement by the subscriber of the purchase of the accommodation unit) with a registrable transfer instrument that enables that subscriber to be registered as the proprietor of the stratum estate for that accommodation unit; and
  - (ii) each subscriber for specified participatory securities will receive a copy of audited annual financial statements in respect of the performance, financial position, and cash flows of the proportionate ownership scheme, being financial statements that comply with the Financial Reporting Act 1993, no later than 5 months after each balance date of the proportionate ownership scheme:
- (b) that no subscriptions for specified participatory securities will be received by, or on behalf of, ADAL unless a subscription contract with the terms referred to in paragraph (a) has been entered into with the relevant subscriber:
- Subscriptions must be held in trust*
- (c) that all subscriptions for specified participatory securities and any interest on those subscriptions are held in trust and must, immediately after each of them is received, be paid into a trust account:
- (d) that no subscription is paid out of the trust account referred to in paragraph (c) unless it is paid—
- (i) to ADAL after—
    - (A) the key event has occurred for the relevant subscriber; and
    - (B) all conditions relating to the receipt of subscriptions by ADAL contained in the relevant subscription contract have been satisfied; or
  - (ii) to—
    - (A) ADAL in satisfaction of ADAL's right to forfeit and retain the part of a subscription

- that forms a deposit in accordance with the relevant subscription contract; and
- (B) the relevant subscriber, to the extent that any of the relevant subscription remains after the deposit referred to in subsub-paragraph (A) has been retained:
- (e) that the trust account referred to in paragraph (c) is maintained by a solicitor of the High Court of New Zealand and is subject to the Solicitors' Trust Account Regulations 1998 and the money held in the trust account is money to which section 169A(3)(c) of the Law Practitioners Act 1982 applies:  
*Each subscriber must receive written statement from ADAL and independent registered valuer's report*
- (f) that each subscriber for specified participatory securities has, before entering into the subscription contract, received a copy of a written statement that—
- (i) sets out the matters referred to in Schedule 1; and
- (ii) is signed by the directors of ADAL; and
- (iii) is dated not more than 2 months before the subscriber's receipt of the written statement:
- (g) that ADAL's written statement contains, or has attached, a copy of a report by an independent registered valuer that—
- (i) sets out the matters referred to in Schedule 2; and
- (ii) is signed by the registered valuer; and
- (iii) is dated not more than 4 months before the date of ADAL's written statement:  
*Subscriptions must be returned and no participatory securities allotted if key event does not occur within settlement period*
- (h) that, if the key event has not occurred for a subscriber within 36 months of a subscription being received by, or on behalf of, ADAL (the **settlement period**), no specified participatory securities may be allotted to the relevant subscriber in relation to that subscription and that subscription must promptly be returned to the relevant subscriber, unless, before the end of the settlement period,—
- (i) ADAL has given the relevant subscriber written notice that the key event will not occur before the

- end of the settlement period and that the subscriber is entitled to have that subscription returned at the end of the settlement period; and
- (ii) the subscriber and ADAL have both signed a written agreement that clearly states that the settlement period is to be extended and specifies the period of time by which the settlement period is to be extended:
- (i) that, if a subscriber signs a written agreement in accordance with paragraph (h)(ii) and the key event has not occurred within the extended period of time specified in that agreement, no specified participatory securities may be allotted to that subscriber in relation to his or her or its subscription and that subscription must promptly be returned to that subscriber.

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cl 6(f)

**Schedule 1**  
**Matters to be specified or contained in**  
**ADAL's statement**

**1 Date of ADAL's statement**

In a prominent place, the date as at which ADAL's statement is prepared.

*Important information for investors*

**2 Information at front of ADAL's statement**

A statement in the following form (to be set out at the front of ADAL's statement):

**“IMPORTANT INFORMATION**

(The information in this section is required under the Securities Act (Airedale Developments (Auckland) Limited) Exemption Notice 2004 (being a notice given under the Securities Act 1978).)

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

## **Warning**

This offer is exempt under the Securities Act (Airedale Developments (Auckland) Limited) Exemption Notice 2004 from the legal requirement to register a prospectus for this scheme and to appoint an independent supervisor to monitor the interests of subscribers. Your attention is drawn to the absence of these statutory protections.

## **Choosing an investment**

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

*What sort of investment is this?*

*Who is involved in providing it for me?*

*How much do I pay?*

*What are the charges?*

*What returns will I get?*

*What are my risks?*

*Can the investment be altered?*

*How do I cash in my investment?*

*Who do I contact with enquiries about my investment?*

*Is there anyone to whom I can complain if I have problems with the investment?*

*What other information can I obtain about this investment?*

## **Choosing an investment adviser**

You have the right to request from any investment adviser a written disclosure statement stating his or her experience and qualifications to give advice. That document will tell you—

- (a) whether the adviser gives advice only about particular types of investments; and
- (b) whether the advice is limited to the investments offered by 1 or more particular financial organisations; and
- (c) whether the adviser will receive a commission or other benefit from advising you.

You are strongly encouraged to request that statement. An investment adviser commits an offence if he or she does not provide you with a written disclosure statement within 5 working days of your request. You must make the request at

the time the advice is given or within 1 month of receiving the advice.

In addition,—

- (a) if an investment adviser has any conviction for dishonesty or has been adjudged bankrupt, he or she must tell you this in writing; and
- (b) if an investment adviser receives any money or assets on your behalf, he or she must tell you in writing the methods employed for this purpose.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes.”

*What sort of investment is this?*

**3 Description of proportionate ownership scheme**

A description of the proportionate ownership scheme, the interests in the proportionate ownership scheme being offered, and how long the scheme has been in operation.

**4 Description of accommodation units on unit plan**

A description of the accommodation units to be purchased in accordance with the proportionate ownership scheme and a statement that other accommodation units shown on the unit plan may subsequently be included in the proportionate ownership scheme if the owners of those accommodation units wish to join the scheme.

**5 Covenants, etc, in respect of accommodation units and common property on unit plan**

A description of any covenants, conditions, restrictions, and easements in respect of the accommodation units (whether or not they are registered on the certificates of title for the accommodation units) and the common property shown on the unit plan.

**6 Options, etc, in respect of accommodation units on unit plan**

A description of any option, buyback, or similar arrangement, and of any rental guarantees in relation to the accommodation units.

**7 Material details concerning rights of occupation of accommodation units on unit plan**

- (1) Material details concerning any rights of occupation to which the accommodation units are subject, whether by lease, licence, or otherwise, including—
- (a) the term of the agreement; and
  - (b) any rights of renewal; and
  - (c) any rent reviews; and
  - (d) the financial standing of tenants or occupiers; and
  - (e) any guarantees or other special provisions.
- (2) A statement—
- (a) of the place where copies of any agreement relating to those rights of occupation may be inspected free of charge; and
  - (b) whether or not any existing occupant of an accommodation unit has failed to meet any material obligations under the terms of any agreement that confers a right of occupation.

*Who is involved in providing it for me?*

**8 Information about persons associated with proportionate ownership scheme**

The names and addresses of the following persons associated with the proportionate ownership scheme and a description of their role in the scheme:

- (a) ADAL and its directors; and
- (b) the manager of the scheme and, if that person was not the person first appointed as the manager of the scheme, the person first appointed as the manager of the scheme; and
- (c) the solicitor referred to in clause 6(e) of this notice; and
- (d) the sales organisation (if any) through which the offer of specified participatory securities is to be made to the subscribers; and

- (e) the names and addresses of any promoters.

**9 Qualifications and experience of manager of proportionate ownership scheme**

The qualifications and experience of the manager of the proportionate ownership scheme.

**10 Management agreements relating to accommodation units on unit plan**

- (1) Material details of any management agreement that has been, or is proposed to be, entered into for the management of the accommodation units, including—
  - (a) the term of the agreement; and
  - (b) the management fee; and
  - (c) the procedures for making decisions that may affect the interests of subscribers for specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

**11 Interests of ADAL, manager, promoter, and others**

- (1) This clause applies if ADAL, the manager of the proportionate ownership scheme, any promoter of the proportionate ownership scheme, or any shareholder, director, or employee of ADAL or of the manager or of the promoter—
  - (a) is a party to, or will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the accommodation units; or
  - (b) has a material financial interest in another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the accommodation units; or
  - (c) is a director, officer, or trustee of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the accommodation units; or
  - (d) is the parent, child, or spouse of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the accommodation units; or

- (e) is otherwise directly or indirectly materially interested in any transaction relating to the proportionate ownership scheme or the accommodation units.
- (2) The following information if this clause applies:
  - (a) the names of the parties to the transaction and the date of the transaction; and
  - (b) a brief description of the material terms of the transaction; and
  - (c) the nature of the interest in the transaction.

*How much do I pay?*

**12 Purchase price**

The purchase price to be paid by a subscriber for his or her or its accommodation unit.

*What are the charges?*

**13 Types of charges**

- (1) A statement as to which of the following types of charges are or may be payable to ADAL or a promoter, to an associated person of ADAL or of a promoter, or to the proportionate ownership scheme by a subscriber (whether directly or indirectly, including by deduction):
  - (a) entry charges:
  - (b) trustee, administration, or management charges:
  - (c) expenses or overhead charges:
  - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:
  - (e) early termination charges:
  - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
  - (g) alteration charges:
  - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by ADAL, or from the proportionate ownership scheme, to a promoter or administration manager or investment manager, or to an associated person of ADAL or of the promoter or of the administration

manager or of the investment manager, being charges that will or may affect the amount of the returns to subscribers.

- (3) A brief description of any practices of ADAL or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of ADAL or any other person to alter any of the charges applicable to the specified participatory securities.

#### **14 Amount of charges**

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 13(1) can, at the date of ADAL's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 13(1) cannot, at the date of ADAL's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

#### **15 Remuneration of ADAL relating to proportionate ownership scheme**

The remuneration and other benefits ADAL or any associate of ADAL will receive in connection with the proportionate ownership scheme and the manner in which this remuneration and other benefits are to be paid or provided.

*What returns will I get?*

#### **16 Income and expenses relating to proportionate ownership scheme**

Material details concerning the manner in which all income and expenses relating to the proportionate ownership scheme are to be accounted for and the basis upon which profits are to be distributed.

*What are my risks?*

**17 Liabilities relating to proportionate ownership scheme**

A description and, if practicable, quantification of all liabilities (including contingent liabilities) that a subscriber for specified participatory securities will or may incur as a holder of specified participatory securities.

*Can the investment be altered?*

**18 Alteration of securities**

A brief description of any right of a subscriber, ADAL, or any other person to alter the terms of a subscriber's interest in the proportionate ownership scheme.

*How do I cash in my investment?*

**19 Early termination**

A brief description of any right of ADAL, a subscriber, or any other person to terminate a subscriber's interest in the proportionate ownership scheme.

**20 Right to sell security**

- (1) A statement as to whether or not a subscriber is entitled to sell his or her interest in the proportionate ownership scheme to another person and, if so, whether in the opinion of ADAL there is an established market for those sales.
- (2) If any charges are payable by a subscriber on a sale, a brief description of those charges.

*Who do I contact with enquiries about my investment?*

**21 Enquiries about proportionate ownership scheme**

The names or descriptions of officers, employees, or agents of ADAL to whom enquiries about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.

*Is there anyone to whom I can complain if I have problems with the investment?*

**22 Complaints about proportionate ownership scheme**

- (1) The names or descriptions of officers, employees, or agents of ADAL to whom complaints about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.
- (2) If complaints about the proportionate ownership scheme can be made to a trustee or an industry body, a statement to this effect and the addresses and business telephone numbers of those people.
- (3) A statement as to whether or not complaints about the proportionate ownership scheme can be made to an Ombudsman and, if so, the address and business telephone number of the Ombudsman.

*What other information can I obtain about this investment?*

**23 Annual information**

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by ADAL.

**24 On request information**

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from ADAL; and
- (b) explaining how the request should be made; and
- (c) of whether any charge may be made for that information and the amount of the charge.

*Other information*

**25 Other material information**

Any other information that would be material to a prospective subscriber's decision to invest in the proportionate ownership scheme.

cl 6(g)

## **Schedule 2**

### **Matters to be specified in independent registered valuer's report**

- 1 Name and address of registered valuer**  
The name and address of the registered valuer and a brief description of that registered valuer's qualifications.
- 2 Statement by registered valuer**  
A statement that the valuation report is made by the registered valuer as an independent registered valuer.
- 3 Purpose of report**  
A statement that the registered valuer is making the valuation report for the purposes of the proportionate ownership scheme and for use by prospective subscribers for specified participatory securities.
- 4 Description of relevant accommodation units**  
A description of the accommodation units that form part of the proportionate ownership scheme at the date of the registered valuer's report (the **relevant accommodation units**), including where they are situated on the unit plan, and confirmation that those accommodation units have been inspected by the registered valuer.
- 5 Covenants, etc, in respect of relevant accommodation units**  
A list of any covenants, conditions, restrictions, easements, and any other estates or interests that appear on the certificate of title in respect of the relevant accommodation units as at the date of the registered valuer's report.
- 6 Present use of relevant accommodation units**  
The present use of the relevant accommodation units.
- 7 Compliance with regional or district plan rules**
  - (1) The nature of any regional or district plan rules, existing use rights, resource consents, or other statutory requirements relating to the relevant accommodation units.

- (2) Whether or not the intended use of the relevant accommodation units for the purposes of the proportionate ownership scheme complies with the rules, rights, consents, or other statutory requirements referred to in subclause (1).

**8 Rateable value of relevant accommodation units**

The rateable value of each of the relevant accommodation units.

**9 Leasehold interests or tenancy arrangements in respect of relevant accommodation units**

- (1) Current rental payable for each relevant accommodation unit, and a statement as to whether or not that rental is being paid in each case, in respect of any existing leasehold interest in the relevant accommodation units or any existing tenancy arrangement relating to the relevant accommodation units.
- (2) Other material matters concerning any leasehold interests or tenancy arrangements.

**10 Registered valuer's opinion as to capital value of relevant accommodation units**

The opinion of the registered valuer as to the capital value of each of the relevant accommodation units, free of charges, and the date of, and basis for, that capital value.

**11 Basis of valuation**

The basis upon which the registered valuer's valuation of the relevant accommodation units is made and any assumptions used in making the valuation.

**12 Income from relevant accommodation units**

The amount of income that each of the relevant accommodation units can reasonably be expected to produce on an annual basis under the conditions prevailing at the date of the registered valuer's report.

**13 Other material matters relating to relevant accommodation units**

Any other matters concerning the relevant accommodation units that the registered valuer considers to be material according to the standards usually applied by registered valuers in conducting valuations of real property.

**14 Consent to distribution of report**

A statement that the registered valuer has consented to the distribution of the registered valuer's report to prospective subscribers for specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 28th day of June 2004.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

J. Diplock,  
Chairperson.

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**Statement of reasons**

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 25 June 2009.

The notice applies to offers by Airedale Developments (Auckland) Limited of participatory securities in a contributory scheme for ownership interests in accommodation units (which are real property).

The notice exempts those offers, subject to conditions, from sections 33(3), 37, 37A, and 51 to 54 of the Securities Act 1978 (which include the prospectus and investment statement requirements).

These conditions include a requirement for investors to be supplied with a written statement containing the information specified in Schedule 1 and with a report by a registered valuer that contains the information specified in Schedule 2. It must be a term of each

**Securities Act (Airedale Developments  
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Notice 2004**

2004/197

Statement  
of reasons

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subscription contract that the subscriber receives a registrable transfer instrument (and so the certificate of title) for each accommodation unit.

The Securities Commission considers that it is appropriate to grant this exemption because—

- the detailed disclosure provisions of the Securities Act 1978 and the Securities Regulations 1983 are not ideally suited to offers of real property; and
- the exemption recognises the protection afforded to investors by the receipt of a certificate of title for each unit under the Unit Titles Act 1972 and provides extended valuation information that provides the most relevant information to investors; and
- the exemption is consistent with the Commission's previous exemptions for similar offers of securities relating to interests in real property.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 29 June 2004.  
This notice is administered by the Securities Commission.

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