



Takeovers Code (Kingsgate International Corporation Limited) Exemption Notice 2004

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

1 Title

This notice is the Takeovers Code (Kingsgate International Corporation Limited) Exemption Notice 2004.

2 Application

This notice applies to acts or omissions occurring on or after 3 June 2004.

3 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210))

excluded provisions means the provisions of the valuation reports that are described in the Schedule

independent adviser's report means the report dated 1 June 2004 prepared by Grant Samuel & Associates Limited in relation to the offer and forming part of the target company statement

Kingsgate means Kingsgate International Corporation Limited

offer means the full takeover offer for all of the equity securities in Kingsgate made by KIN Holdings Limited on 21 May 2004

target company statement means the statement referred to in rule 46 of the Code that Kingsgate on 4 June 2004 sent to offerees in relation to the offer

valuation reports means the 4 valuation reports dated 31 December 2003 prepared by CB Richard Ellis Limited relating to properties owned by Kingsgate and referred to in the independent adviser's report.

- (2) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

4 Exemption from clause 20(b) of Schedule 2 of Code

Kingsgate is exempted from making available, in accordance with clause 20(b) of Schedule 2 of the Code, the valuation reports.

5 Conditions of exemption in clause 4

The exemption in clause 4 is subject to the conditions that—

- (a) Kingsgate makes available, in accordance with clause 20(b) of Schedule 2 of the Code, the valuation reports without the excluded provisions; and
- (b) the valuation reports made available under subclause (a) are complete, except for the excluded provisions; and
- (c) the offerees are notified—
 - (i) that information has been deleted from the valuation reports; and
 - (ii) of the general reasons why the information has been deleted; and

- (iii) of the general nature of the material information that has been deleted; and
- (iv) that the directors of Kingsgate warrant to shareholders that non-disclosure of the excluded provisions does not make the valuations misleading in any material particular.

Schedule

cl 3(1)

Excluded provisions in valuation reports

Valuation report

A valuation report by CB Richard Ellis Limited prepared for Birkenhead Investments Pty Limited of Birkenhead Point Outlet Centre and Marine, Roseby St, Drummoyne, NSW 2047, dated 31 December 2003

Excluded provisions

Executive Summary:

- page v: the Moving Annual Turnover table;
- page v: the gross figures in the Tenancy Profile table.

Clause 3.3:

- the table on page 25, excluding the row that refers to Total Capital Expenditure.

Clause 4.2:

- all the text and content and content after the words “cash flow period is additionally included” on page 26 to the end of page 30.

Clause 4.3:

- the whole of page 31.

Clause 4.3.1:

- all the text and content beginning after the words “component of the complex” on page 32.

Clause 4.3.2:

- all the text beginning after the words “dominating the special mix” on page 33.

Clause 4.3.3:

- all the text and content up to but not including the words “Appropriate leasing up” on page 34;
- the table on page 35;
- all the text and content beginning after the words “relating to the existing tenancies.” on page 35 to the end of page 40.

Clause 5.1.1:

- the table on page 41;
- all the text and content up to but not including the words “Comparison of specialty trader” on page 42;
- all the text and content beginning after the words “within the subject complex” on page 42 up to but not including the words “we have additionally considered the issue” on page 43;

Valuation report

Excluded provisions

- all the text and content beginning after the words “the gross occupancy cost ratio” up to but not including the words “Based on a broad analysis” on page 43:
- all the text beginning after the words “within the subject complex” up to but not including the words “is slightly above the JHD average” on page 43.

Clause 5.1.2:

- all the text and content up to but not including the words “comparisons with last year” on page 44:
- all the text beginning after the words “spend per visitor” up to but not including the words “is reasonable for” on page 44.

Clause 5.2:

- both tables on page 45:
- all the text beginning after the words “within the subject complex” on page 45.

Clause 5.3:

- the table on page 46.

Clause 5.4:

- all the text beginning after the words “is additionally included” on page 46:
- the table and graph on page 47.

Clause 5.5:

- the table on page 48:
- all the text after the words beginning “an overall rate” up to but not including the words “which is considered” on page 48.

Clause 6.1.1:

- in the item for “Marina Cost” on page 49, all the text after the words beginning “rebuilt in 2002.” up to but not including the words “This cost has”:
- in the item for “Marina Income” on page 49, all the text after the words beginning “past 3 years” up to but not including “A number of berths”:
- in the item for “Cash Flow Forecast” on page 51, all the text beginning after the words “at CPI forecast.”:
- all the tables on pages 50–52.

Clause 9.3:

- the whole of the section headed “Capital Adjustments” under the table on page 67:
- the table on page 68.

Clause 9.4:

- all the tables on pages 69 and 71.

Clause 9.5:

- the table on page 72:
- all the text beginning after the words “term of licence.” up to but not including “Accordingly, we have” on page 73:

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Schedule

Valuation report

A valuation report by CB Richard Ellis Limited prepared for Kingsgate Investments Pty Limited of 2B-14 Kings Cross Road, Potts Point, NSW 2011, dated 31 December 2003

Excluded provisions

— on page 74, Method 2 in the table up to but not including the words “Indicated Value”.

Appendix 1:

— all the text beginning after the words “completed by 16 January 2003” up to but not including “our invoice will be presented upon” on pages 1-2.

Clause 3.2:

— all the text and content beginning after the words “the consent is to operate” on page 17 up to and including the table on page 20.

Clause 3.2.2:

— the whole of clause 3.2.2 on pages 20-21.

Clause 3.2.3:

— all the text beginning after the words “the Sydney CBD” up to but not including the words “The retail tenancy will possess” on page 21.

Clause 3.2.4:

— all the text and content beginning on page 22 up to but not including the words “We have assumed that” on page 24.

Clause 3.2.5:

— the whole of clause 3.2.5.

Clause 3.3.1:

— all the text beginning after the words “Kingsgate Investments Pty Ltd” up to but not including the words “relating to the proposed development” on page 24:

— all the text beginning after the words “prepared for this property” on page 24 up to but not including the words “For the purposes of this valuation” on page 25.

Clause 3.3.2:

— all the text beginning after the words “within the Council area.” on page 25.

Clause 8.2:

— in the table on page 62, the columns for Total Likely Realisation and Average Realisation, excluding the totals.

Schedule of units:

— the 2 charts after clause 8.2 on the unnumbered pages between pages 62 and 63.

Clause 8.3:

— the table of Development Cashflow and the Valuation Summary on the unnumbered pages between pages 64 and 65.

Appendix VI:

— the whole of page 2 in the Notice of Determination.

Appendix VII:

— the whole of the following plans:

Proposed Plan Basement 1:

Proposed Plan Basement 2:

Proposed Plan Ground Floor:

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Valuation report

A valuation report by CB Richard Ellis Limited prepared for Kingsgate Investments Pty Limited of 82–94 Darlinghurst Road, Potts Point, NSW 2011, dated 31 December 2003

Excluded provisions

- Proposed Plan Level 1:
- Proposed Plan Levels 2 to 13:
- Proposed Plan Level 14:
- Proposed Plan Level 15.

Clause 3.3.1:

- all the text, beginning after the words “the proposed development” up to but not including the words “we should stress that” on page 28.

Clause 3.3.2:

- the whole of clause 3.3.2.

Clause 9.1.1:

- the table on page 68.

Clause 9.1.2:

- all the text beginning after the words “have sold in the area.” on page 68.

Clause 9.1.3:

- all the text beginning after the words “current vacancies have been deducted” in the first bullet point on page 69, and ending at the end of that bullet point:
- all the text beginning after the words “allowance of 6 months is deducted” in the second bullet point on page 69 and ending at the end of that bullet point:
- all the text beginning after the words “have been deducted,” in the third bullet point on page 69 and ending at the end of that bullet point:
- all the text beginning after the words “The mid-point of this range is rounded to \$13,350,000” on page 69 up to but not including the words “By way of comparables noted above” on page 69:
- in the table on page 69, the last named property title in the column (below Suite 2/106 Darlinghurst Road, Darlinghurst) and its corresponding dollar rate per square metre:
- the table on page 70, up to but not including the row for Adopted Capital Value.

Clause 9.3:

- in the table on page 71, the columns for Total Likely Realisation and Average Realisation, excluding totals.

Clause 9.4:

- in paragraph (iii) on page 72, all the text beginning after the words “is in operation” up to but not including the words “This adjustment is discussed”:
- in paragraph (vi) on page 73, all the text beginning after the words “construction costs”:
- in paragraph (vii) on page 73, all the text beginning after the words “construction costs” up to but not including the words “in respect of the buildings”.

Valuation report

A valuation report by CB Richard Ellis Limited prepared for Kingsgate Investments Pty Limited, and its financier ANZ Bank, of Kingsgate Shopping Centre, Top of Williams Street, Kings Cross, NSW 2011, dated 31 December 2003

Excluded provisions

Clause 9.4.1:

- in the second paragraph on page 74, the figure after the words “reflects a rate of”:
- in the third paragraph on page 74, the figure after the words “reflects a rate of”:
- in the fourth paragraph on page 74, the figure after the words “reflects a rate of”.

Clause 9.5:

- the 4 dollar figures in the last paragraph on page 75:
- the whole of the 4 unnumbered pages immediately following page 75.

Executive Summary:

- page v: in the Rental Analysis table, the dollars per square metre figures, including totals:
- page v: the Moving Annual Turnover chart:
- page v: the gross figures in the Tenancy Profile table.

Clause 3.2.2:

- all the text beginning after the words “or Baywater Road” on page 15 up to but not including the words “The layout of the subject complex” on page 16.

Clause 3.2.6:

- all the text beginning after the words “having cultural significance” on page 18.

Clause 3.3:

- on page 18, all the text beginning after the words “clean and well maintained” up to but not including the words “Shopping centres by their very nature”.

Clause 3.4:

- all the text in the second paragraph beginning after the words “profitable retailing environment” on page 19.

Clause 3.5:

- all the text beginning after the words “planned and commenced.” on page 19.

Clause 4.2:

- all the text beginning after the words “additionally included” on page 20 and the whole of page 21.

Clause 4.3.1:

- all the text beginning after the words “the operator of the signage.” on page 22.

Clause 4.3.2:

- all the text beginning after the words “proprietor of the subject property.” on page 22.

Clause 4.3.3:

- on pages 22–23, all the text beginning after the words “for their advertising purposes”:
- the table on page 24.

Valuation report

Excluded provisions

Clause 4.4:

- in the first paragraph, all the text beginning from the words “Based on the tenancy information” up to but not including the words “The following table summarises” on page 25:
- the table summarising the current specialty tenant profile on page 25:
- all the text beginning after the words “common form of lease” on page 25 up to and including the words “against uncontrollable expenses.” on page 26.

Clause 4.4.1:

- on page 26, all the text and content beginning after the words “component of the complex.”

Clause 4.4.2:

- all the text beginning from the words “The following graph illustrates the overall tenancy profile” up to and including the second graph headed “Tenancy Mix Comparison” on page 27.

Clause 4.4.3:

- all the text and content beginning from the words “We set out below details of the existing vacancies” up to and including the first table detailing the existing vacancies/market rental levels on page 28:
- all the text and content beginning from the words “The following table details the existing monthly tenants” up to and including the second table detailing the monthly tenants/market rental levels on page 28:
- all the text beginning from the words “We have requested information in respect” up to and including the words “advice provided herein will require revision.” on page 29:
- the table on page 30.

Clause 5.1.1:

- all the text and content beginning after the words “for the Coles supermarket,” and ending after the table on turnover figures on page 31.

Clause 5.2.1:

- all the text and content beginning with the words “The following table outlines our opinion of market rentals” up to and including the first table on page 32:
- all the text and content beginning with the words “The following table summarises the gross rentals” up to and including the second table on page 32.

Clause 5.2.2:

- all the text beginning with the words “Our research indicates that” on page 33.

Clause 5.3:

- the table on page 33.

Valuation report

Excluded provisions

Clause 5.4:

— the table and graph on page 34.

Clause 5.5:

— the table on page 35:

— all the text beginning after the words “demonstrates an overall rate” up to but not including the words “which is considered to be within market parameters” on page 35.

Clause 8.2:

— all the text beginning with the words “The lease profile for specialty tenants” up to and including the words “vacant areas and monthly tenancies.” on page 51:

— all the text beginning after the word “However” up to but not including the words “we have adopted a capitalisation” on page 52:

— in the last paragraph on page 52, all the text under the heading “Investment”.

Clause 8.3:

— the table on page 54, excluding the row for Capitalised Value:

— the table on page 55.

Clause 8.4:

— the table on page 56:

— all the tables on page 58.

Appendix 1:

— the Fee Basis on the first page.

Dated at Wellington this 22nd day of June 2004.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 3 June 2004.

The Takeovers Panel has granted an exemption to Kingsgate International Corporation Limited (**Kingsgate**), subject to conditions, from clause 20(b) of Schedule 2 of the Takeovers Code (the **Code**) in so far as Kingsgate is required to make available, in accordance

with that clause, the valuation reports referred to in Kingsgate's target company statement sent to offerees in relation to a takeover offer by KIN Holdings Limited.

The Panel considers that it is appropriate to grant the exemption in this case because compliance with clause 20(b) of Schedule 2 would require Kingsgate to make available confidential and commercially sensitive information, which it is not in the interests of Kingsgate or its shareholders to provide.

The Panel considers that the exemption is consistent with the objectives of the Code because—

- a condition of the exemption ensures that the form of the valuations that will be made available has been approved by the Panel; and
- the exemption maintains a proper relation between the costs of compliance with the Code and the benefits arising from it; and
- Kingsgate's shareholders who request them will be provided with copies of the valuations, with the commercially sensitive information removed.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 24 June 2004.

This notice is administered by the Takeovers Panel.
