

ASX ANNOUNCEMENT

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ALH Appeals Judgment and Orders in Relation to Vale Hotel

Highlights

- ALH is appealing the whole of the judgment and orders of Justice Judd made on 23 April 2010 in relation to the lease over the Vale Hotel in Mulgrave, Victoria
- ALE is confident that it will succeed in having ALH's appeal dismissed and looks forward to the Victorian Court of Appeal confirming the position. The appeal is expected to be heard in late calendar 2010

Appeal In Relation to Vale Hotel

ALE Property Group (ALE) (ASX: LEP) advises that its tenant, Australian Leisure and Hospitality Group Limited (ALH), has served on ALE a Notice of Appeal:

- appealing the whole of the judgment and orders of Justice Judd made on 23 April 2010 in relation to the lease over the Vale Hotel in Mulgrave, Victoria; and
- seeking that the Court of Appeal set these aside and make contrary declarations and orders.

The proceedings were commenced by ALH in February 2008. The background to the dispute is set out in ALE's ASX Announcement No. 02/08 of 25 February 2008. On 16 December 2009, Justice Judd of the Victorian Supreme Court delivered judgment in the proceedings which endorsed ALE's interpretation of the relevant provisions of the lease. Justice Judd's findings are set out in ALE's ASX Announcement No. 60/09 of 16 December 2009.

On 23 April 2010, Justice Judd delivered judgment on and made orders reflecting the findings set out in the judgment of 16 December 2009 (see ASX announcement of the same day), including an order that ALH pay ALE's costs. It is from this 23 April 2010 judgment and these orders (as set out in Attachment A) which ALH is now appealing to the Victorian Court of Appeal.

Background

ALE's leases to ALH have a remaining average term of around 18.5 years. The rent increases annually by CPI with a market rent review in 2018 subject to a 10% cap and floor. There is also a full market review due in 2028 upon ALH exercising the first of four 10 year lease extension options. Market rent reviews are also activated upon approval by ALE of any property development proposal submitted by ALH.

The rent at each of the properties was set between ALH and ALE in 2003, and ALE understands that the subsequent growth in the majority of the pub portfolio's earnings has materially exceeded the annual CPI increases in the portfolio's rent. As market rentals for pubs are currently assessed on a percentage of earnings basis, this positive difference in growth has the potential to give rise to significant increases in rent at each of the future market rent review dates.

While any development application from ALH may give rise to an increase or decrease in the applicable rent at specific properties, ALH are in all cases required to make ALE whole (ALE is to be in no worse position after the development is implemented). ALE is not obliged to approve any proposal that would disadvantage ALE's security holders.

ALE is confident that it will succeed in having ALH's appeal dismissed and looks forward to the Victorian Court of Appeal confirming the position. For completeness, ALE note that the Court's ultimate determination may have a positive or negative impact on ALE stapled security holders' interests in respect of the Vale Hotel.

As the terms of the Vale Hotel lease are the same as almost all of ALE's other leases with ALH, the orders made at first instance were potentially relevant to all of those leases. The decision of the Court of Appeal may have a similar significance.

- Ends -

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Attachment A

1. The development rights conferred upon the plaintiff under cl 2.1(a) of Schedule 3 of the lease of the Vale Hotel situated at 2277 Princes Highway, Mulgrave, Victoria, dated 4 November 2003 (the Lease), did not permit the plaintiff to require the subdivision and transfer of a Balance Lot in the absence of a proposal which includes details of the proposed development on, and the use or proposed use of, the Balance Lot following subdivision and transfer to the Tenant or its nominee.
2. The overriding provisions of cl 2.6 of Schedule 3 of the Lease will only operate in respect of an Approved Development Proposal which is a Final Development Proposal approved by the Landlord under cl 2.4 of Schedule 3.
3. The plaintiff's development proposal dated 24 July 2007, described by it as a Final Development Proposal, was not one to which cl 2.6 applied.
4. Valuations to be made under cl 2.3(e)(v)(C) of Schedule 3 of the Lease are to be made by a Valuer as defined in cl 1 of Schedule 3 of the Lease.
5. The valuation prepared by Lunney Watts & Associates, dated 19 July 2007, which accompanied the plaintiff's development proposal, dated 24 July 2007, was not a valuation of Market Rent or Market Value of the Premises for the purpose of cl 2.3(e)(v)(C) of Schedule 3 of the Lease.
6. A Valuer of the Premises required to assess the Market Rent of the Premises under cl 2.3(e)(v)(C) of Schedule 3 of the Lease is required to take into account the business conducted on the Premises as a going concern, but is to ignore or put to one side and make no allowance for any value attributable to a Gaming Licence or Liquor Licence as defined in cl 1.1 of the Lease.
7. The plaintiff pay the defendant's costs and in default of agreement to be taxed on a party/party basis.

NB: In these orders "The plaintiff" is ALH and "the defendant" and "the Landlord" is ALE".