

## ASX ANNOUNCEMENT

16 December 2011

**Announcement No. 31/11**  
**The Manager**  
**Corporate Announcements Office**  
**Australian Securities Exchange**

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### **Vale Hotel - ALH Appeal Dismissed**

#### **Highlights**

- Subdivision of land at the Vale Hotel in Mulgrave, Melbourne has been subject to various court processes with ALH, the property's tenant
- On 11 May 2010 ALH appealed the whole of the Supreme Court judgment and orders of Justice Judd made in relation to the lease over the hotel
- The matter was recently heard in the Victorian Court of Appeal before Justices Redlich, Mandie and Robson and yesterday the three unanimously dismissed the appeal by ALH and awarded costs to ALE.

#### **Appeal Dismissed**

ALE Property Group (ALE) (ASX: LEP) previously advised that its tenant, Australian Leisure and Hospitality Group Limited (ALH), appealed the whole of the judgment and orders of Justice Judd made on 23 April 2010 in relation to the lease over ALE's Vale Hotel property in Mulgrave, Melbourne. The appeal was heard on 1 August 2011.

The three Judges in the Victorian Court of Appeal yesterday unanimously dismissed the appeal and awarded costs to ALE.

#### **Background**

The proceedings were commenced by ALH in February 2008. The background to the dispute is set out in ALE's ASX Announcement 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 of 16 December 2009.

On 23 April 2010, Justice Judd 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 this 23 April 2010 judgment and these orders (as set out in Attachment A) which on 11 May 2010 ALH appealed to the Victorian Court of Appeal.

ALE's leases to ALH have a remaining average term of around 17 years. The rent increases annually by CPI except any CPI decreases do not reduce the rent but will be offset against future CPI increases. There is a market rent review in 2018 subject to a 10% cap and floor and 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 final 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 ALH 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 any 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 (i.e. in no worse position after the development is implemented). ALE is not obliged to approve any proposal that would disadvantage ALE and its securityholders.

ALE is pleased with the outcome of the appeal as it creates more certainty for ALE's stapled securityholders' 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 decision of the Court of Appeal is potentially relevant to all of those leases.

*ALE's Managing Director, Andrew Wilkinson said, "Throughout this process ALE has continued to enjoy a constructive operational relationship with ALH's management. ALE is pleased that the Courts have now clarified the interpretation of the lease and ALE looks forward to being able to continue its support of ALH's development of ALE's properties. It is expected that this will further enhance ALH's already very profitable operations".*

- Ends -

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**Webpage on Vale Hotel Matter**

*[http://www.alegroup.com.au/irm/content/reports\\_asx.html](http://www.alegroup.com.au/irm/content/reports_asx.html)*  
(Select Vale Hotel Announcement Category)

## **Attachment A - Details of Supreme Court Judgment and Orders**

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, Melbourne, 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".