

THE AMP DIVERSIFIED PROPERTY TRUST

**APPLICATION FOR EXEMPTION UNDER
SECTION 81 OF THE ELECTRICITY INDUSTRY
REFORM ACT 1998**

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Date of Application

1. 2003.

Applicant

2. The applicant is the AMP Diversified Property Trust ("**ADP Trust**") and the other entities specified in this application and referred to in Diagrams A, B and C forming Appendix 1 to this application (collectively referred to as "**ADP**").

Introduction

3. The ADP Trust is a widely held Australian listed trust. In September 2002, the ADP Trust, through a wholly owned sub-trust, the AMP Diversified Property (NZ) Trust ("**ADP NZ Trust**"), and AMP Henderson Global Investors Limited (acting in its capacity as trustee of the ADP NZ Trust and in its capacities as responsible entity and trustee of the ADP Trust), completed the acquisition ("**Transaction**") of a one half share in the following shopping centres from AMP NZ Property Retail Limited ("**AMP Retail**") (a wholly owned subsidiary of Perpetual Trust Limited acting in its capacity as trustee of the AMP New Zealand Property Fund ("**APF**"), the ultimate beneficial owner of the Transaction properties at the time of sale):

- (a) LynnMall Centre, Great North Road, New Lynn, Auckland ("**LynnMall**");
- (b) Botany Town Centre, Corner Te Irirangi Drive and Rakau Drive, Pakuranga, Auckland ("**Botany**"); and
- (c) Manukau Supa Centa, Cavendish Drive, Manukau, Auckland ("**Manukau**"),

(collectively referred to as "**Properties**").

4. AMP Retail retained ownership of the other one half share in the Properties.

Application

5. Pursuant to section 81 of the Electricity Industry Reform Act 1998 ("**EIR Act**"), application is hereby made to the Commerce Commission for an exemption from the application of the EIR Act, in particular the ownership separation provisions of the EIR Act, as described in this application.

6. This application:

- (a) refers to the Commission's Decision No. 373 and explains its relevance;

- (b) sets out the background to ADP's business and the Transaction;
- (c) identifies the extent of ADP's business for which an exemption is sought;
- (d) explains the relationship of the EIR Act to ADP's business;
- (e) identifies the extent of the exemption sought;
- (f) specifies the conditions on which ADP will conduct its business if the exemption is granted.

Confidentiality

7. Confidentiality is sought for the information contained in this application in Schedules 1 and 2 forming Appendix 2. This is due to the commercial sensitivity of this information, which if released could unreasonably prejudice ADP vis-à-vis their business competitors. Confidentiality is sought for 20 working days after the determination of this application (pursuant to section 100 of the Commerce Act 1986). For the same reasons, ADP would also like the Commission to note that the information should be confidential thereafter on the basis of section 9(2)(b) of the Official Information Act 1992.

Commerce Commission's Decision No. 373 dated 29 September 1999 ("Decision No. 373")

8. We refer to Decision No. 373 and the exemption granted therein in favour AMP Asset Management New Zealand Limited and certain other entities forming part of the AMP Group (collectively referred to as "**AMP**") from the application of sections 17, 18 and 30 of the EIR Act in relation to certain (then) current and potential property investment and management activities.
9. Decision No. 373 referred specifically to LynnMall (therein described "Lynn Mall Shopping Centre") and Botany (therein described "Botany Downs Shopping Centre").
10. ADP wishes to obtain an exemption in substantially the same terms as that granted in favour of AMP, in relation to:
 - (a) LynnMall and Botany;
 - (b) any future property investment and management activities that ADP might undertake; and
 - (c) Manukau but only in the event that the Commission disagrees with the terms of this application in relation to Manukau or in the event that circumstances

change in the future so that ADP supplies electricity directly to the Manukau tenants.

11. No exemption is sought by ADP in relation to Manukau because ADP does not currently supply electricity to the Manukau tenants (except for providing electricity for common services).

Interim Exemption

12. In terms of section 29 of the EIR Act, ADP is exempt from the ownership separation rules until the earlier to occur of the close of 31 December 2003 and the date on which ADP complies with the ownership separation rules.

Nature of ADP's Business

13. The ADP Trust was established in 1972 and is listed on the Australian Stock Exchange. The ADP Trust was initially named the Darling Property Fund, managed by Darling & Co. The trust changed its name to Schroder Darling Property Fund in October 1980 and then to Shroders Property Fund in 1986. AMP Henderson acquired the management of Schrodgers Property Fund in August 1999 and changed the trust's name to the ADP Trust in October 1999. The ADP Trust is a diversified property investment trust whose major sectorial exposure is to the office and retail markets. The investment strategy of the ADP Trust is to invest in the office, retail and industrial property sectors. Prior to the Transaction taking place, all properties owned by the ADP Trust were located in Australia. The Transaction was the first property acquisition in New Zealand by the ADP Trust.
14. AMP Henderson Global Investors Limited ("**AMP Henderson**") is both the ADP Trust's responsible entity (manager) and its trustee. AMP Henderson is a wholly owned subsidiary of AMP Limited, which is the ultimate controlling entity in the AMP Group. AMP Limited is listed on the Australian and New Zealand Stock Exchanges. Diagram A in Appendix 1 is a structure diagram of the relevant companies forming part of the AMP Group. AMP Henderson invests and manages the ADP Trust's assets in commercial properties on behalf of the ADP Trust. AMP Henderson holds the ADP Trust's assets for the benefit of the unit holders. The units do not confer an interest in any asset of the ADP Trust. The process for removal of the responsible entity and trustee of the ADP Trust is by way of a resolution of the unit holders of the ADP Trust each holding at least 5% of the votes which may be cast on a resolution (in terms of the Australian Corporations and Securities legislation referred to in the ADP Trust deed). Given that no one unit holder has a controlling share in the units of the ADP Trust, no unit holder

has the right in itself to remove the responsible entity or trustee or appoint a new responsible entity or trustee.

15. The ADP Trust is a widely held trust whose beneficiaries are a multiplicity of persons. AMP Limited and Colonial First State Investments Limited (another Australian company) both hold over 10% of the units in the ADP Trust.
16. AMP Henderson has invested in the Properties on behalf of the ADP Trust through a 100% owned sub-trust, the ADP NZ Trust. The ADP NZ Trust's trustee is AMP Henderson Global Investors Limited ("**ADP NZ**"). ADP NZ holds the ADP NZ Trust's assets as trustee for the benefit of the unit holders. The units do not confer an interest in any asset of the ADP NZ Trust. The sole beneficiary of the ADP NZ Trust is the ADP Trust.
17. Diagrams B and C in Appendix 1 are structure diagrams of the ADP NZ Trust and the ADP Trust.

Position prior to the Transaction

18. Prior to the Transaction taking place APF beneficially owned the whole interest in the Properties through AMP Retail. AMP Henderson Global Investors (New Zealand) Limited ("**APF Manager**") is the investment manager of APF. The APF Manager is a wholly owned subsidiary of AMP Limited. AMP Retail was previously named Botany Downs Investment Limited. The APF Manager was previously named AMP Asset Management New Zealand Limited. Decision No. 373 specifically refers to APF, Botany Downs Investment Limited, Perpetual Trust Limited and AMP Asset Management New Zealand Limited.
19. The entities described in paragraph 18 above were, along with certain other entities, exempted from the application of the EIR Act in relation to LynnMall, Botany and any future property investment and management activities pursuant to the terms of Decision No. 373.

The Transaction

20. The Transaction involved an Agreement for Sale and Purchase between AMP Retail, ADP NZ and certain other persons for each of the Properties ("**Agreement**") and certain other agreements.
21. In terms of an Asset Management Agreement, AMP Henderson Global Investors (New Zealand) Limited ("**Asset Manager**") was appointed asset manager to manage and provide certain services in relation to the Properties on behalf of both AMP Retail and

ADP NZ (together referred to as "**Co-Owners**"). Such services include certain asset management services, property management services, future development services and sales and acquisitions services.

22. In terms of a Co-Owners' Deed, ADP NZ was required to endeavour to obtain an exemption under section 81 of the EIR Act from the application of sections 17, 18 and 30 of the EIR Act on the same or substantially the same terms as that obtained by APF in terms of Decision No. 373.
23. In terms of the Asset Management Agreement, the Asset Manager was required to appoint a property manager to assist the Asset Manager in providing certain property management services. The Asset Manager appointed AMP Shopping Centres Pty Limited ("**Property Manager**"). The Property Manager is a wholly owned subsidiary of AMP Henderson Global Investors Limited.
24. As part of the Transaction, the APF Manager assigned to ADP NZ a one half share in certain electricity supply agreements with electricity retailers for the electricity supplied to the Properties. The Co-Owners or the Asset Manager on behalf of the Co-Owners will enter into any future electricity supply agreements.
25. The Co-Owners lease the Properties to a variety of tenants. Where tenants take their electricity supply from the Co-Owners, the Co-Owners or the Asset Manager on behalf of the Co-Owners enter into electricity supply contracts with the tenants. The Property Manager administers the electricity supply at the Properties for the Asset Manager.

Extent of the Application

26. The exemption sought in terms of this application relates to ADP NZ's one half share in LynnMall and Botany and the related entities forming ADP only. ADP is a separate entity from APF. This application is not made in respect of APF's one half share in the Properties. It is our understanding that the exemption granted in terms of Decision No. 373 will continue to apply to the interests of APF, AMP Retail and the other entities defined as AMP in Decision No. 373. Accordingly, we make no further reference to their remaining one half interest in LynnMall and Botany in this application, except to the extent that such reference is necessary for explanatory purposes.

Electricity supply

27. ADP NZ in its capacity as a Co-Owner, supplies electricity to tenants at LynnMall and Botany but not at Manukau. The electricity supplied to the tenants at LynnMall and Botany exceeds 2.5 GWh per annum in both cases.

28. The tenants at Manukau each arrange their own electricity supply directly with an electricity retailer.

Common Services

29. ADP NZ or the Asset Manager on behalf of ADP NZ purchases electricity to run the common services at the Properties such as lighting common areas and running central air conditioning systems. The cost of this electricity, along with general running expenditure (such as cleaning common areas), is recovered by the Asset Manager and/or the Property Manager (for ADP NZ) from the tenants as part of the operating expenditure charge.
30. Schedule 1 in Appendix 2 details the quantities of electricity consumed at LynnMall and Botany during 2002 by the tenants and in respect of common services (and the total).
31. Schedule 2 in Appendix 2 details the estimated quantity of electricity consumed at Manukau during 2002 in respect of common services.

Lease Clauses and Arrangements Relating to Electricity Supply

32. The leases in respect of the Properties contain clauses that relate to the supply of electricity (and, in some cases, other utilities). The different types of lease clauses relating to electricity are set out in the Schedules of Lease Clauses forming Appendix 3.
33. Most of those clauses give the tenant the option whether to be supplied with electricity by the landlord (in particular, the Botany leases). Some clauses provide that the landlord has the option of choosing whether or not it will supply the tenant with electricity. Yet other clauses, usually from older leases, refer to the "proper Authority" as the supplier.
34. We refer to the terms of paragraph 29 of the application preceding and referred to in Decision No. 373. Whatever the situation in terms of lease clauses, the APF Manager's practice at the time the APF Manager first entered into arrangements to on sell electricity, was to give tenants the choice about buying electricity from the landlord.
35. We also refer to the terms of paragraphs numbered 30 to 33 (inclusive) of APF's application preceding Decision No. 373 which provide additional background details of electricity supply contracts with tenants.
36. The Asset Manager's policy with tenants is to continue to act fairly and reasonably and provide the best service possible. The Asset Manager believes it is offering the best

service it can to tenants by negotiating with electricity retailers for lower electricity prices, and then passing on these savings to its tenants.

Application of the EIR Act

Electricity Lines Businesses

37. Section 4 provides that:

- (1) For the purposes of this Act, "electricity lines business":
 - (a) means a business that conveys electricity by line in New Zealand; and
 - (b) includes the ownership or operation, directly or indirectly, of lines in New Zealand or any other core assets of an electricity lines business.
- (2) None of the following activities brings a person within subsection (1):
 - (a) conveying, together with its associates (if any), less than 2.5 GWh per annum; ...

38. The following entities are electricity lines businesses under section 4 of the EIR Act:

- (a) The ADP NZ Trust (and ADP NZ, in its capacity as trustee of the ADP NZ Trust) because the ADP NZ Trust:
 - (i) owns, directly, lines that convey electricity in New Zealand, being the embedded electrical wiring systems in LynnMall and Botany (section 4(1)(a) and(b)); and
 - (ii) is not exempt from the meaning of "electricity lines business" through section 4(2).
- (b) The ADP Trust because it:
 - (i) owns, indirectly through the ADP NZ Trust, lines that convey electricity in New Zealand (section 4(1)(a) and (b)); and
 - (ii) is not exempted from the meaning of "electricity lines business" through section 4(2).
- (c) The Asset Manager because, as the manager and agent of ADP NZ, it:

- (i) operates lines that convey electricity in New Zealand, being the embedded electrical wiring systems within the buildings owned by the ADP NZ Trust (section 4(1)(a) and (b)); and
- (ii) is not exempted from the meaning of "electricity lines business" through section 4(2).

39. Section 7 provides that:

- (1) For the purposes of this Act, a person is involved in an electricity business if the person:
 - (a) carries on that business, either alone or together with its associates and either on its own or another's behalf; or
 - (b) exceeds the 10% threshold in section 8 in respect of that business; or
 - (c) has material influence over the business;

and "involvement" has a corresponding meaning.

40. The electricity lines businesses identified in paragraph 38 above are involved for the purposes of section 7 of the EIR Act because they:

- (a) carry on their electricity lines businesses, either alone or together with their associates and either on their own or another's behalf (section 7(1)(a));
- (b) exceed the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights in their electricity lines businesses (in the case of the ADP NZ Trust, ADP NZ in its capacity as trustee of the ADP NZ Trust, and the ADP Trust only) (section 7(1)(b));
- (c) have material influence over their electricity lines businesses (in the case of the ADP NZ Trust, ADP NZ in its capacity as trustee of the ADP NZ Trust and the ADP Trust only) (section 7(1)(c)).

41. The following entities are also involved in the above electricity lines businesses:

- (a) The Property Manager because, as it assists the Asset Manager with the management of Properties, it carries on an electricity lines business as an associate of the Asset Manager (section 7(1)(a));

- (b) AMP Henderson because, as the ADP Trust's responsible entity and trustee, it is an associate carrying on the ADP NZ Trust's electricity lines businesses with them (section 7(1)(a)), and, under section 11(1)(a) and (f), it also has a material influence over the ADP Trust (section 7(1)(c));
- (c) AMP Henderson Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over the Asset Manager and AMP Henderson (section 7(1)(c));
- (d) AMP Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Henderson Holdings Limited (section 7(1)(c));
- (e) AMP Group Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Holdings Limited and AMP Group Services Limited (section 7(1)(c));
- (f) AMP Services Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Holdings Limited (section 7(1)(c));
- (g) AMP Services Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Services Holdings Limited (section 7(1)(c));
- (h) AMP Group Services Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity retain rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Services Limited (section 7(1)(c));
- (i) AMP Limited because:
 - (i) it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Group Holdings Limited (section 7(1)(c)); and

- (ii) as a unitholder of more than 10% of the issued units in the ADP Trust, it exceeds the 10% threshold in section 8 of the EIR Act (section 7(1)(b));
- (j) Colonial First State Investments Limited because as a unitholder of more than 10% of the issued units in the ADP Trust, it exceeds the 10% threshold in section 8 of the EIR Act (section 7(1)(b)).

Electricity Supply Businesses

42. Section 5 provides that:

- (1) For the purposes of this Act, "electricity supply business":
 - (a) means a business that:
 - (i) sells electricity in New Zealand ...
 - (c) includes the ownership or operation, directly or indirectly, of any core assets of an electricity retail business, which include:
 - (i) the customer data base relating to and used for the purposes of an electricity retail or electricity trading business; and
 - (ii) the benefit of a contract to sell electricity; ...
- (2) None of the following activities brings a person within subsection (1):
 - (a) selling or generating less than 2.5 GWh per annum;
 - (b) generating or selling electricity solely for its own consumption or for the consumption of its associates: ...

43. The following entities are electricity supply businesses under section 5 of the EIR Act:

- (a) the ADP NZ Trust (and ADP NZ, in its capacity as trustee of the ADP NZ Trust) because, through the actions of the Asset Manager, they:
 - (i) sell electricity in New Zealand (section 5(1)(a)(i));
 - (ii) own, directly, a customer data base relating to and used for the purposes of an electricity retail business (section 5(1)(c)(i)); and

- (iii) own, directly, the benefit of a contract to sell electricity (section 5(1)(c)(ii)); and
 - (iv) are not exempted from the meaning of "electricity supply business" through section 5(2);
 - (b) The ADP Trust because it:
 - (i) owns, indirectly through the ADP NZ Trust, the core assets of an electricity retail business (section 5(1)(c)(i) and (ii)); and
 - (ii) is not exempted from the meaning of "electricity supply business" through section 5(2);
 - (c) The Asset Manager because, as the manager and agent of ADP NZ, it directly operates the core assets of an electricity retail business being the customer data bases relating to and used for the purposes of electricity retail businesses (section 5(1)(c)(i)) and the benefits of contracts to sell electricity (section 5(1)(c)(ii)).
- 44. The electricity supply businesses identified in paragraph 43 above are involved for the purposes of section 7 of the EIR Act because they:
 - (a) carry on their electricity supply businesses, either alone or together with their associates and either on their own or another's behalf (section 7(1)(a));
 - (b) exceed the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights in their electricity supply businesses (in the case of the ADP Trust, ADP NZ in its capacity as trustee of the ADP NZ Trust and the ADP Trust only) (section 7(1)(b));
 - (c) have material influence over their electricity supply businesses (in the case of the ADP Trust, ADP NZ in its capacity as trustee of the ADP NZ Trust and the ADP Trust only) (section 7(1)(c)).
- 45. The following entities are also involved in the above electricity supply businesses:
 - (a) the Property Manager because, as it assists the Asset Manager with the management of properties by, amongst other things, administering the electricity supply, it carries on an electricity supply business as an associate of the Asset Manager (section 7(1)(a));

- (b) AMP Henderson because, as the ADP Trust's responsible entity and trustee, it is an associate carrying on the ADP Trust's electricity lines businesses with them (section 7(1)(a)), and, under section 11(1)(a) and (f), it also has a material influence over the ADP Trust (section 7(1)(c));
- (c) AMP Henderson Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over the Asset Manager and AMP Henderson (section 7(1)(c));
- (d) AMP Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Henderson Holdings Limited (section 7(1)(c));
- (e) AMP Group Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Holdings Limited and AMP Group Services Limited (section 7(1)(c));
- (f) AMP Services Holdings Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Holdings Limited (section 7(1)(c));
- (g) AMP Services Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Services Holdings Limited (section 7(1)(c));
- (h) AMP Group Services Limited because it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Services Limited (section 7(1)(c));
- (i) AMP Limited because:
 - (i) it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)), and, under section 11(2), has a material influence over AMP Group Holdings Limited (section 7(1)(c)); and

- (ii) as a unitholder of more than 10% of the ADP Trust, it exceeds the 10% threshold in section 8 of the EIR Act (section 7(1)(b));
- (j) Colonial First State Investments Limited because as a unitholder of more than 10% of the issued units in the ADP Trust, it exceeds the 10% threshold in section 8 of the EIR Act (section 7(1)(b)).

Summary

Prohibited Cross-Involvements

46. Accordingly ADP seeks an exemption from the application of section 17 of the EIR Act in respect of the following entities with prohibited cross-involvements in relation to LynnMall and Botany:

- (a) the ADP NZ Trust;
- (b) ADP NZ;
- (c) the ADP Trust;
- (d) AMP Henderson;
- (e) the Asset Manager;
- (f) the Property Manager;
- (g) AMP Henderson Holdings Limited;
- (h) AMP Holdings Limited;
- (i) AMP Group Holdings Limited;
- (j) AMP Services Holdings Limited;
- (k) AMP Services Limited;
- (l) AMP Group Services Limited;
- (m) AMP Limited; and
- (n) Colonial First State Investments Limited.

Manukau Supa Centre

47. No exemption is sought in relation to Manukau. In respect of the Manukau there is no prohibited cross-involvement because, although there is an electricity lines business due to there being embedded electrical wiring systems in the property, it is not an electricity supply business because ADP does not supply electricity to the tenants.

Common Services

48. ADP is not seeking an exemption in respect of electricity that is consumed in providing common services and charged to tenants by way of operating expenses at the Properties. ADP does not consider that the purchase of electricity to run common services (the cost of which is recovered as part of the operating expense charge) constitutes an electricity supply business for the purposes of the EIR Act.¹ ADP relies on the Commission's determination in Decision No. 373.

Scope of the Application for Exemption

Part A: Permanent Exemption

49. Following the Commission's determination in Decision No. 373, ADP does not seek a short term exemption under section 81 of the EIR Act from the application of section 17 of the EIR Act until such time as the Commission determines the substantive grounds for a permanent exemption.
50. Pursuant to section 81 of the EIR Act, ADP seeks a permanent exemption from the application of section 17 of the EIR Act.
51. In considering applications for an exemption under section 81 of the EIR Act, the Commission has stated that it will consider the following three questions. We address each question.

Question 1: Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to inhibit competition in the electricity industry?

52. ADP makes the following points (being the same ones that AMP made in their application preceding and referred to in Decision No. 373, and which apply to this application):

(a) The relevant market is the national electricity retail market.²

¹ See page 4 of the Commission's final decision (351A) on the application by Trans Tasman Properties.
² See the Commission's decision 351A.

- (b) If the Commission is prepared to grant the application for exemption, ADP accepts that it should be on the same conditions as those contained in Decision No. 373, namely:
- (i) That ADP or any other persons do not introduce a charge to any person for the use of, or in connection with, any electricity lines business in relation to the supply of electricity to tenants of ADP's properties.
 - (ii) That ADP or any other persons do not prevent access to any embedded electrical wiring systems owned or operated in relation to ADP's property investment activities, by any competing electricity supply business wanting to supply electricity to any of ADP's tenants.
 - (iii) That ADP or any other persons do not at any time enforce any of the existing lease clauses which allow the option of supplying electricity to any of ADP's tenants, so that ADP's tenants are free to choose their electricity supplier.
 - (iv) That ADP or any of the cross-involved entities provide all tenants of ADP's properties to whom they supply electricity with relevant electricity consumption and billing information, on a timely basis, to enable the tenants to assess competitive options for the supply of their electricity.

These steps will ensure that there is no opportunity for ADP to inhibit competition in the relevant electricity retail market. As tenants will be free to choose their supplier, competition is promoted between electricity suppliers, for the right to supply the tenants.³

- (c) Granting an exemption will also not create any real incentive for ADP to inhibit competition in the electricity retail market. Any perceived incentives are either extremely minimal and/or theoretical. The nature of competition in the commercial properties market is such that ADP is, and will continue to be, motivated to keep tenants' electricity costs as low as possible. ADP will want to promote competition which generally leads to lower prices. ADP also has a policy of acting fairly and reasonably in relation to its tenants and to inhibit competition is not in accordance with that policy.

³

ADP relies on the Commission's reasoning in decision number 351A.

- (d) ADP competes with other property owners for tenants. Due to this competition for tenants the total cost that ADP can charge any tenant (ie rent plus all other costs) is capped by the market. It is in the interests of ADP as property owners and managers to ensure that rent makes up as much of the total cost for any tenant as is possible because the amount of rent received from tenants directly affects the value that the market gives to a building. Therefore, ADP is strongly motivated to ensure that all other costs that are included in the total costs to the tenant, including electricity costs and ADP's margins on electricity, are reduced to the lowest possible level.

Question 2: Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to cross-subsidise generation activities from electricity lines businesses?

53. There is no threat of this occurring, because ADP is not involved in any generation activities. The same point was made by AMP in their application preceding and referred to in Decision No. 373.

Question 3: Would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between an electricity lines business and an electricity supply business which is not at arms length?

54. ADP accepts that if an exemption is granted the relationship between the electricity supply businesses and the electricity lines businesses will not be at arms length. ADP considers that if the Commission grants the application on the terms mentioned above, no anti-competitive consequences will arise from the absence of an arms length relationship because of the conditions that would form part of the exemption and the strong incentive on ADP as a property owner to minimise its costs to tenants. The same point was made by AMP in their application preceding and referred to in Decision No. 373.

Part B: Three month exemption to comply with ownership separation rules

55. If the application for a permanent exemption is declined prior to 30 September 2003, ADP has until 31 December 2003 to comply with the ownership separation rules of the EIR Act.
56. If the application for a permanent exemption is declined after 30 September 2003, ADP applies for a three month exemption from the application of section 17 of the EIR Act

(from the date of the Commission's decision to decline Part A of this application) to enable ADP to comply with the ownership separation rules of the EIR Act.

57. In order for ADP to cease being involved in either the electricity supply business or the electricity lines business, it will need time in which to:
- (a) restructure its current arrangements with electricity retailers and tenants so that it does not breach any relevant contracts;
 - (b) ensure that the tenants or new electricity retailers alter the relevant electricity supply equipment if necessary (such as meters) to accommodate the change in electricity operations; and
 - (c) obtain the agreement of AMP Retail because it owns a one half share in the Properties and enjoys an exemption from the relevant provisions of the EIR on substantially the same terms sought in this application.
58. ADP expects that it will take three months to carry out these actions from the date of the Commission's decision to decline Part A of this application.
59. The points made in paragraphs 57(a) and (b) and 58 above were made by AMP in its application preceding and referred to in Decision No. 373.

Part C: Future Business

60. ADP's property investment business involves the ongoing sale and purchase of properties and/or companies owning properties.
61. Section 30 of the EIR Act prohibits a person from increasing its involvement in an electricity business, which includes the lines and supply businesses. So, each time ADP acquires a new property and/or company it will increase its involvement in an electricity lines business. In some circumstances ADP, by acquiring a new property and/or company, may also be in breach of section 18 of the EIR Act (20% aggregate cross-ownership prohibition).
62. Secondly, if the newly acquired property and/or company sells more than 2.5 GWh of electricity per annum, ADP will have increased its involvement in the electricity supply business.
63. In either scenario ADP would need to seek an exemption from the Commission each time it acquires another building, large or small.

64. ADP wishes to avoid having to seek an exemption each time it purchases a new property and/or company because of the compliance costs involved, and potential transactional delays, which could result otherwise.
65. The points made in paragraphs 60 to 64 inclusive above were also made by AMP in its application preceding and referred to in Decision No. 373.
66. ADP also wishes to avoid having to seek an exemption in relation to Manukau in the event that circumstances change in the future so that ADP supplies electricity directly to the Manukau tenants.
67. So, ADP seeks an exemption in respect of any business or involvement or interest in relation to any future property investment and management activities that ADP might undertake and also in respect of Manukau in the event that circumstances change in the future so that ADP supplies electricity directly to the Manukau tenants. If the Commission is prepared to grant the application for exemption, ADP accepts that it should be on the same conditions as those contained in Decision No. 373, namely:
- (a) the terms and conditions as set out in paragraphs 52(b)(i)-(iv) above in relation to the exemption given to the cross-involved entities; and
 - (b) that ADP informs the Commission of the details of any future property investment and/or management activity, within 20 working days (as that term is defined in the Commerce Act 1986) from the day following the day it undertakes the activity, that is likely to breach the EIR Act and for which ADP and/or any other persons are likely to rely on the exemption.

Further Information

68. If the Commission requires any further information in relation to this application for exemption please contact either Russell McVeagh or ADP. The relevant contact details are listed below.

69. **Russell McVeagh contact details**

Solicitor acting:	Greg Thompson/Richard Whyte
Telephone:	(09) 367 8083/(09) 367 8378
Facsimile:	(09) 367 8459
Email:	greg.thompson@russellmcveagh.com/ richard.whyte@russellmcveagh.com

Postal address: Royal & SunAlliance Centre
48 Shortland Street
P O Box 8
Auckland

70. **ADP contact details**

Contact: Colin McGowan, Trust Manager, AMP Henderson
Global Investors Limited

Telephone: (00612) 9257 6115

Facsimile: (00612) 9257 7696

Email: colin_mcgowan@amp.com.au

Postal address: AMP Centre
50 Bridge Street
Sydney, NSW
Australia

Russell McVeagh
2003

DECLARATION

THIS APPLICATION is made by AMP Henderson Global Investors Limited (in its capacity as trustee of AMP Diversified Property (NZ) Trust and in its capacities as responsible entity and trustee of the AMP Diversified Property Trust).

The company hereby confirms that:

- (a) all information requested by the Commerce Commission has been supplied;
- (b) all information known to the applicant(s) which is relevant to the consideration of this application has been supplied to the Commerce Commission; and
- (c) all information supplied by the applicant(s) to the Commerce Commission is correct as at the date of this application.

The company undertakes to advise the Commerce Commission immediately of any material change in circumstances relating to the application.

Date: 2003

Signed by: **AMP Henderson Global Investors Limited**

Director/Chief Executive Officer/Other (specify)

I am a Director/Officer of the company and am duly authorised to make this application

**APPENDIX 1
DIAGRAM A
The relevant AMP Group companies**

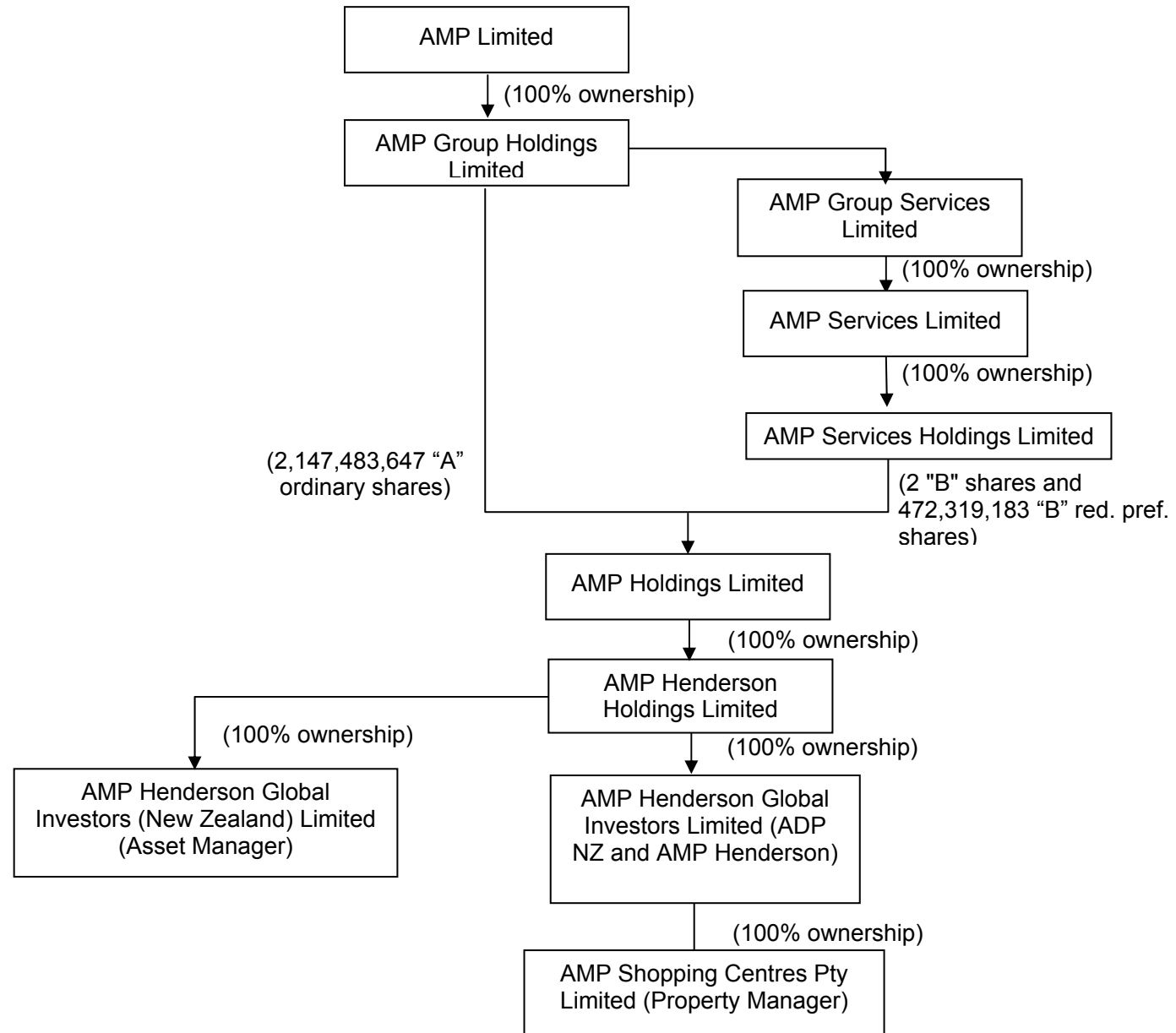


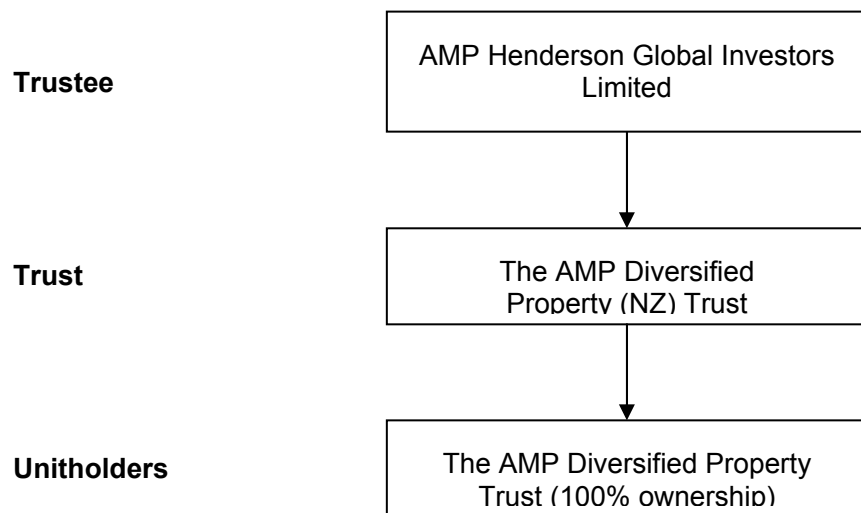
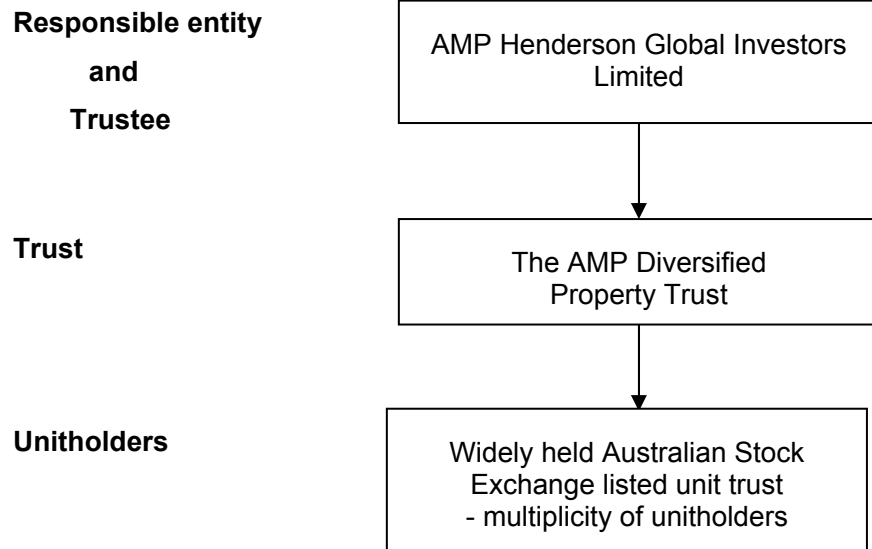
DIAGRAM B**The ADP NZ Trust**

DIAGRAM C

The ADP Trust



APPENDIX 2

Schedule 1

Property	GWh per annum (tenants)	GWh per annum (common services)	GWh per annum (whole property)
LynnMall Shopping Centre			
Botany Downs Shopping Centre			

Schedule 2

Property	GWh per annum (property - common services)
Manukau Supa Centa	

**APPENDIX 3
SCHEDULES OF LEASE CLAUSES**

Schedule 1

Botany Downs Town Centre

Specialty Lease

- 7.2 The Lessee must pay for all Utilities provided to or used at the Premises.
- 7.3 The Lessor may arrange the purchase of supply on a bulk purchase basis for onward supply by the Lessor to the Lessee of all electricity the Lessee may consume on the Premises. If the Lessor provides this service and the Lessee chooses to be supplied with electricity by the Lessor then the following will apply:
- (a) The Lessee will purchase its total electricity requirement for the Premises from the Lessor.
 - (b) So far as it is possible to do so, the Lessor will supply the Lessee all the Lessee's reasonable requirements of electricity subject to the provisions of this clause.
 - (c) The Lessor will render electricity invoices to the Lessee that include the terms upon which the Lessor supplies electricity and information on the Lessee's electricity consumption.
 - (d) The Lessee will pay the electricity invoices within 7 days of receipt of each electricity invoice. Any electricity invoice is deemed to be received on the second business day following the date of the invoice.
 - (e) If the Lessee defaults in payment of any electricity invoice the Lessor, at its discretion, may disconnect the electricity supply. Any sum outstanding for electricity supplied to the Lessee (including any default or penalty interest) will be recoverable by the Lessor in the same manner as rent arrears.
 - (f) If the terms of the electricity invoice are inconsistent with the terms of this clause, then this clause will prevail.
 - (g) The Lessor will not be responsible for any failure of the supply of that electricity arising from any cause or for any failure of the electrical system in the Centre due to breakdown, repairs, maintenance or any other cause other than the Lessor's negligence.
 - (h) The Lessor or the Lessee can terminate any arrangement for the supply of electricity between them on providing one month's notice to the other party.
- 7.4 In any case where the Lessor does not supply electricity to the Lessee, where the Lessee utilises the Lessor's electrical power supply lines within the Centre, the Lessee in such case must pay to the Lessor, if demanded, a reasonable charge for such utilisation.

Bulk Retail Lease

- 17.1 The Landlord may arrange the purchase or supply on a bulk purchase basis for onward supply by the Landlord to the Tenant of all electricity the Tenant may consume on the Premises. If the Landlord provides this service and the Tenant chooses to be supplied with electricity by the Landlord then the following will apply:

[sub-clauses (a) -(h) are the same as clauses 7.3(a)-(h) contained in the specialty lease above]

- 17.3 In any case where the Landlord does not supply electricity to the Tenant, where the Tenant utilises the Landlord's electrical power supply lines within the Centre, the Tenant in such case must pay to the Landlord, if demanded, a reasonable charge for such utilisation.

Major Lease - FARMERS

- 3.5 The Lessor may arrange the purchase or supply on a bulk purchase basis for onward supply by the Lessor to the Lessee of all electricity the Lessee may consume on the Premises. If the Lessor provides this service and if the Lessee chooses to be supplied with electricity by the Lessor then the following provisions will apply. The Lessee shall be entitled at all times during the term of this lease to purchase its required electricity direct from its own supplier under any national power contract it may hold.

[sub-clauses 3.5 (b) - (h) are the same as clauses 7.3(b)-(h) contained in the specialty lease above.]

Foodstuffs**Payment of Utility Charges by Lessee**

- 8.06 The Lessee shall pay to the proper Authorities all charges for water, electricity, gas, telephone and all utilities and other services connected to the Premises and should the Lessee make default in payment of such charges the Lessor may pay the same and forthwith recover the amount paid as if the same were rent in arrears and payable by the Lessee AND FURTHER if the Premises shall be separately assessed the Lessee will also pay all rates taxes charges an assessments which may be assessed or levied now or hereafter during the Term in respect of against the Premises or upon any lessee or occupier on account of the Premises.

Schedule 2

LynnMall Centre

Standard Lease provision

8.09 The Lessee shall pay to all proper Authorities all charges for water, electricity, gas, telephone and other services connected to the Premises (if separately metered) and should the Lessee make default in payment the Lessor may pay the charges and recover same as if Rent in arrear.

8.10A The Lessor may arrange the purchase of supply on a bulk purchase basis for onward supply by the Lessor to the Lessee of all electricity the Lessee may consume on the Premises. If the Lessor provides this service and the Lessee chooses to be supplied with electricity by the Lessor then the following will apply:

[sub-clauses (a) to (h) are the same as clauses 7.3(a) to (h) contained in the Botany Downs Town Centre specialty lease]

Farmers

4.01 (a) The Lessor may at its option supply to the Lessee from the bulk supply (if any) of electricity, gas or water purchased generated or otherwise made available by the Lessor such electricity, gas or water as may be consumed on the Premises and in such case the following provisions shall apply:

[subclauses (i) to (vi) are the same as clauses 7.3(a)-(h) contained in the Botany Downs Town Centre specialty lease]

4.01 (b) Should the Lessor not supply the Lessee from the Lessor's supply of electricity, gas or water the Lessee shall pay to the appropriate Authority all charges for electricity, gas and water consumed on the Premises in accordance with this Lease.

Schedule 3

Manukau Supa Centa

Standard Lease provision

- 17.1 The Landlord may arrange the purchase or supply on a bulk purchase basis for onward supply by the Landlord to the Tenant of all electricity the Tenant may consume on the Premises. If the Landlord provides this service and the Tenant chooses to be supplied with electricity by the Landlord then the following will apply:

[sub-clauses (a) -(i) are the same as clauses 7.3(a)-(h) contained in the Botany Downs Town Centre specialty lease]

- 17.3 In any case where the Landlord does not supply electricity to the Tenant, where the Tenant utilises the Landlord's electrical power supply lines within the Centre, the Tenant in such case must pay to the Landlord, if demanded, a reasonable charge for such utilisation.