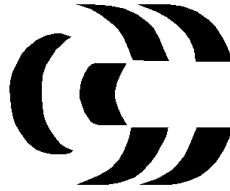


# PUBLIC VERSION



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## COMMERCE COMMISSION

### Decision No. 373

Determination pursuant to the Electricity Industry Reform Act 1998 (“the EIR Act”), in the matter of an application for exemption of an involvement in an electricity lines business and electricity supply business from the application of the EIR Act. The application is made by:

#### **AMP ASSET MANAGEMENT NEW ZEALAND LIMITED**

**The Commission:** K M Brown  
E M Coutts

**Commission Staff:** M E Dingle  
A Mladenovic

**Summary of Application:** AMP Limited, certain subsidiaries of AMP Limited and certain other persons which, in relation to certain property investment and management activities, are, or could in future be, involved in both electricity lines businesses and electricity supply businesses, and which in future could acquire involvements or increase the level of their involvements in electricity businesses, seek an exemption, pursuant to section 81 of the EIR Act, from the application of the EIR Act.

**Determination:** The Commission, pursuant to section 81 of the EIR Act, exempts AMP Limited, certain subsidiaries of AMP Limited and certain other persons from the application of sections 17, 18 and 30 of the EIR Act in relation to certain current and potential property investment and management activities. The exemption is subject to the terms and conditions stated in this decision.

**Date of Determination:** 29 September 1999.

**Date of Exemption:** *On publication of the Notice of Exemption in the New Zealand Gazette*

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## **INTRODUCTION**

- 1 On 20 August 1999 the Commerce Commission (“the Commission”) received an application under section 81 of the Electricity Industry Reform Act 1998 (“the EIR Act”) made by AMP Asset Management New Zealand Limited (“the Application”). The Application has been made on behalf of AMP. AMP includes those companies listed in the Application in Diagram A. A copy of Diagram A is contained in Appendix 1.
- 2 AMP Asset Management New Zealand Limited and certain other persons specified in the Application seek an exemption from the application of the EIR Act in respect of their current and potential “cross-involvements” (as that term is defined in the EIR Act) arising in relation to certain property investment and management activities.
- 3 Section 81 of the EIR Act specifies the Commission’s powers to exempt any businesses, involvements or interests from the application of the EIR Act, or exempt any persons from compliance with any provisions of any regulations made under the EIR Act.

## **THE ENTITIES**

### **AMP**

- 4 AMP is part of the AMP Group which operates a financial services business in Australia, New Zealand and the United Kingdom.
- 5 As part of its operations AMP carries on a property investment business. That business is conducted through three trusts. They are AMP New Zealand Office Trust, AMP New Zealand Property Fund and Orion Property Fund (“the Funds”). The structure of the Funds is contained in the Application in Diagram B. A copy of Diagram B is contained in Appendix 2.

### **AMP Asset Management New Zealand Limited**

- 6 AMP Asset Management New Zealand Limited (“AMPAM”) is the Funds’ Investment Manager. AMPAM invests part of the Funds’ assets in commercial properties on behalf of the Funds. This is usually undertaken through single asset companies which are wholly-owned by the Funds (“the Lessors”).
- 7 AMPAM is appointed by the Lessors to manage the properties owned by the Lessors, and AMPAM directors or officers are directors of the Lessors. The management of the properties by AMPAM is undertaken with the assistance of two facility management companies, Resolve Limited (“Resolve”) and Serco Limited (“Serco”). These companies provide maintenance and related services to AMPAM. Resolve is a wholly-owned subsidiary of AMP Asset Management Australia Limited. Serco is not part of AMP and is not included in the Application for the purpose of seeking an exemption for Serco from the application of the EIR Act.
- 8 In addition to managing the assets of the Funds, AMPAM manages:
  - the assets of non-property investing AMP funds (e.g., Global Retirement Trust);

- properties owned by AMP but which are not part of the Funds' assets; and
  - the assets of a number of non-AMP trusts (e.g., Carter Holt Harvey Employee Benefit Scheme).
- 9 In respect of properties owned by AMP but which are not part of the Funds' assets, the tenants of those properties comprise both companies/entities owned by AMP ("AMP tenants") and businesses not owned by AMP ("non-AMP tenants"). All non-AMP tenants source their electricity directly from an electricity retailer. AMPAM does, however, supply AMP tenants with electricity.
- 10 On the basis that there are no prohibited cross-involvements (in terms of section 17 of the EIR Act) in relation to the AMP properties which are not part of the Funds' assets, AMP has not sought an exemption from the application of section 17 of the EIR Act in respect of those properties.
- 11 The assets of non-AMP trust funds managed by AMPAM include property investments. These are managed by AMPAM in separate portfolios called the independently managed portfolios ("the IMPs"). The properties are owned by the non-AMP trust funds through Lessors ("the IMP Lessors"). Apart from managing the properties of the IMP Lessors, AMPAM has no involvement with the IMP Lessors.
- 12 The tenants of the properties owned by the IMP Lessors arrange their electricity supply directly with an electricity retailer. AMP is not involved in any electricity supply in respect of the IMP Lessors. Accordingly, AMP has not sought an exemption from the application of section 17 of the EIR Act in respect of the properties owned by the IMP Lessors and managed by AMPAM.

## **The Funds**

### *AMP New Zealand Office Trust*

- 13 AMP New Zealand Office Trust ("ANZO") is a trust fund that is listed on the New Zealand Stock Exchange and the Listing Rules apply to ANZO. The beneficiaries of ANZO are the holders of units and notes that are convertible to units (the "holders"). The largest holders are National Provident Fund (39.5%), AMP New Zealand Property Fund (33%) and BT Australia (19.5%). Other public shareholders make up the remaining 8% of holders.
- 14 Under ANZO's trust deed of 13 November 1997 ("the ANZO deed"), the parties are Perpetual Trust Limited ("Perpetual") as the trustee and AMPAM as the manager of the trust. Perpetual (formerly known as AMP Perpetual Trustee Company N.Z. Limited) is no longer part of the AMP Group.
- 15 The ANZO deed provides that AMPAM may transfer its office of manager to any other member of the AMP Group, upon giving written notice to Perpetual. Perpetual is entitled to remove the manager in certain situations and may appoint a new or temporary manager. Perpetual owns the assets of ANZO as if it was the beneficial owner. The holders of ANZO may not exercise any rights over the assets of ANZO or otherwise claim any interest in any asset.

- 16 ANZO invests in Central Business District office buildings in Auckland and Wellington. Single asset companies which are wholly-owned by ANZO (“the ANZO Lessors”) own the buildings. The ANZO Lessors and related office buildings are listed in the Application in Diagram C. A copy of Diagram C is contained in Appendix 3.

*AMP New Zealand Property Fund*

- 17 AMP New Zealand Property Fund (“APF”) is a trust fund whose beneficiaries are the registered unitholders. They are AMP Life Limited (“AMP Life”) (73%), AMP Superannuation Investment Trust (16%), AMP Investment Property Fund (8%) and Global Retirement Trust (3%). Three other AMP fund companies have negligible holdings of 100 units each.
- 18 AMPAM and AMP Life (formerly known as the Australian Mutual Provident Society) established APF. Under APF’s trust deed of 5 November 1991 (“the APF deed”), the parties are Perpetual as the trustee, AMPAM as the manager of the trust and AMP Life. The APF deed provides that AMP Life can remove AMPAM from the office of manager and Perpetual from the office of trustee. AMP Life also has the right to appoint a new manager and trustee. Perpetual retains and holds the APF and its assets as trustee for the unitholders. The units held do not confer an interest in any asset of APF.
- 19 APF invests in commercial properties, mainly in Auckland and Wellington. Single asset companies which are wholly-owned by APF (“the APF Lessors”) own most of the properties. Three properties are owned directly by APF. The APF Lessors and related properties, and the three properties directly owned by APF are listed in the Application in Diagram C (see Appendix 3).
- 20 As noted above, APF holds 33% of the units in ANZO, and is the sole beneficiary in the Orion Property Fund (see below).

*Orion Property Fund*

- 21 Orion Property Fund (“Orion”), whose sole beneficiary is APF, is subject to a master trust deed dated 30 May 1997 (“the Orion deed”). The parties to the Orion deed are the Trustees Executors and Agency Company of New Zealand Limited (“TEA”) as the trustee and Cloud Investments Limited (“Cloud”) as the manager. Cloud is a wholly-owned subsidiary of AMPAM.
- 22 Under the Orion deed TEA has the power to delegate all or any of its powers to Cloud. Cloud, through AMPAM, manages Orion’s investments. Orion invests in properties through its wholly-owned companies (“the Orion Lessors”). The Orion Lessors own 11 properties.
- 23 All the tenants of the Orion Lessors arrange their electricity supply directly with an electricity retailer. As such, AMP is not seeking an exemption from the application of the EIR Act in relation to Orion or the Orion Lessors.

## SUPPLY OF ELECTRICITY

### Supply of Electricity to Tenants of the Lessors and APF

- 24 AMPAM enters into electricity supply agreements with electricity retailers for the electricity supplied by AMPAM to the properties owned through the Funds. AMPAM enters into these agreements as manager and agent of the owners of the properties (i.e., the Lessors and APF).
- 25 The Lessors and APF lease the properties to a variety of tenants. Where tenants take their electricity supply from any of the Lessors or APF, AMPAM enters into electricity supply contracts, on behalf of the Lessors or APF, with the tenants. Resolve and Serco administer the electricity supply at the properties for AMPAM.
- 26 AMPAM first entered into its own arrangements with electricity retailers in the early 1990s, when competitive electricity retailing was introduced to the New Zealand marketplace. Competitive electricity pricing was seen by AMPAM as a way to provide a better service to tenants by consolidating the electricity purchases for a property into a single bill, with the aim of reducing the price. AMPAM charged an administration fee and margin for this service where appropriate. Tenants chose these arrangements because their electricity was likely to cost less than if the tenants purchased their electricity directly from the retailer.
- 27 Schedules A and B of the Application list those properties owned by the ANZO Lessors where electricity is supplied to tenants of the properties by the owners. Schedule A shows the owners which each supply more than 2.5 GWh of electricity per annum to their tenants. Schedule B shows the owners which each supply less than 2.5 GWh per annum. Copies of Schedules A and B are contained in Appendix 4.
- 28 Schedules C and D of the Application list those properties owned by the APF Lessors and APF where electricity is supplied to tenants of the properties by the owners. Schedule C shows the owners which each supply more than 2.5 GWh of electricity per annum to their tenants. Schedule D shows the owners which each supply less than 2.5 GWh per annum to their tenants.<sup>1</sup> Copies of Schedules C and D are contained in Appendix 5.
- 29 The properties listed in the Application in Diagram C (see Appendix 3) which are not also listed in Schedules A to D of the Application are properties whose tenants are not supplied electricity by the owners of the properties. Tenants not related to AMP occupy all of the properties listed in Schedules A to D, with the exception of the AMP Centre in Schedule D which has two tenants related to AMP. The difference between the total quantity of electricity supplied to each building and the quantity of electricity supplied to the tenants of each property shown in Schedules A to D represents electricity supplied to each property for common building services.

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<sup>1</sup> In the case of Telecom Networks House, Downtown Convention Centre and Downtown Airline Terminal, electricity is not supplied by the owners of those properties to tenants. However, the owners are included in Schedule D because, through AMPAM, they supply electricity to those properties for the purposes of common building services.

- 30 Table 1, prepared from the information contained in Schedules A to D of the Application, shows the quantities of electricity supplied per annum by the ANZO Lessors, the APF Lessors and APF to the tenants of properties owned by them.

*Table 1: Electricity Supplied Per Annum by the ANZO Lessors, the AFL Lessors and APF to Tenants*

<b>Trust Fund</b>	<b>Owner of Property</b>	<b>Property</b>	<b>GWH (Per Annum)</b>
ANZO	AMP NZ Office 151 Queen Street Limited	151 Queen Street	[ ]
	AMP NZ Office Albert Street Limited	Coopers & Lybrand Tower	[ ]
	AMP NZ Office Quay Tower Limited	Quay Tower	[ ]
	AMP NZ Office Featherston Street Limited	IBM Centre/Wellington Parkroyal	[ ]
	AMP NZ Office No. 1 The Terrace Limited	No.'s 1 & 3 The Terrace	[ ]
APF	APF	Lynn Mall Shopping Centre	[ ]
	155 The Terrace Limited	Radio NZ House, 155 The Terrace	[ ]
	Lambie Drive Investment No. 1 Limited	Shortland Centre 1	[ ]
	226 Lambton Quay Limited	UDC Tower/Capital on the Quay	[ ]
	No. 1 Grey Street Limited	AMP Centre	[ ]
	109 Featherston Street Limited	AMP House	[ ]

- 31 A number of the tenants in the properties listed in Schedules A to D of the Application have lease clauses that relate to the supply of electricity (and, often, other utilities). The different types of lease clauses used by AMPAM on behalf of the owners of the properties are listed in Schedules A to D and the lease clauses are set out in full in the Application in the Schedule of Lease Clauses.
- 32 Many of these lease clauses provide the property owners with the option of choosing whether or not they will supply tenants with electricity. Should the owners exercise this option a number of conditions apply, including the condition that the tenants will purchase their electricity only from the owners.
- 33 Other lease clauses imply that the property owner may supply the tenant with the tenant's electricity needs. Yet other clauses, usually from older leases, refer to the "local body public utility or authority" as the supplier and address the situation where the building does not have individual tenant metering.
- 34 AMPAM's initial practice when first entering into arrangements to on-sell electricity was to offer tenants the choice of buying electricity from the property owners.

### **Supply of Electricity to Common Building Services**

- 35 AMPAM purchases electricity for the Lessors and APF in order to provide common building services to tenants of the Lessors and APF, 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 AMPAM (for the Lessors and APF) from the tenants as part of the monthly operating expenditure charge.

## **EMBEDDED ELECTRICAL WIRING SYSTEMS**

36 Electricity supplied to properties owned by the Lessors (i.e., the ANZO Lessors, the APF Lessors and the Orion Lessors), APF, AMP (i.e., properties which are not owned through the Funds) and the IMP Lessors, as described above, is conveyed by means of the existing embedded electrical wiring systems within the various buildings.

## **THE EXEMPTION SOUGHT BY AMP**

37 The Application lists a number of entities which have been assessed by AMP as currently having a “cross-involvement” (as that term is defined in the EIR Act), and for which an exemption is sought by AMP, pursuant to section 81 of the EIR Act, from the application of section 17 of the EIR Act. The entities are:

- AMP NZ Office 151 Queen Street Limited
- AMP NZ Office Albert Street Limited
- AMP NZ Office Quay Tower Limited
- 155 The Terrace Limited
- APF (as one of the trusts through which AMP conducts its property investment business and as owner of the Lynn Mall Shopping Centre)
- ANZO
- Perpetual (only in respect of its “involvement” (as that term is defined in the EIR Act) in the above electricity businesses)
- Certain of the beneficiaries of ANZO and APF (the “Beneficiaries”) being National Provident Fund, APF and BT Australia as unitholders of ANZO and AMP Life and AMP Superannuation Investment Trust as unitholders of APF (only in respect of the Beneficiaries’ “involvement” in the above electricity businesses)
- AMPAM
- AMP Life
- AMP Asset Management Holdings Limited
- AMP Limited

38 AMP considers that certain of the ANZO Lessors and the APF Lessors, being those listed in Schedules B and D of the Application (see Appendices 4 and 5) respectively, are not included within the meaning of “electricity supply business” (provided in section 5(1) of the EIR Act). This is because they individually sell less than 2.5 GWh of electricity per annum and section 5(2)(a) of the EIR Act exempts a person selling less than 2.5 GWh per annum from section 5(1). However, if the Commission disagrees with AMP’s analysis then, in addition to the above entities, AMP wishes for the following companies to be included in the exemption from the application of section 17 of the EIR Act:



- AMP NZ Office Featherston Street Limited
- AMP NZ Office No. 1 The Terrace Limited
- Lambie Drive Investment No. 1 Limited
- 226 Lambton Quay Limited
- No. 1 Grey Street Limited
- 109 Featherston Street Limited

39 As noted earlier, based on their assessment that there are no prohibited cross-involvements (in terms of section 17 of the EIR Act), AMP has not sought an exemption from the application of section 17 in respect of:

- Orion and the Orion Lessors, because all the tenants of the Orion Lessors arrange their electricity supply directly with an electricity retailer;
- properties owned by AMP but which are not part of the Funds' assets, because all non-AMP tenants arrange their electricity supply directly with an electricity retailer, and AMP tenants, who are supplied electricity by AMPAM, are "associates" (as that term is defined in the EIR Act) of AMPAM;
- properties owned by the IMP Lessors, which are managed by AMPAM in the IMPs, because the tenants of the IMP Lessors arrange their electricity supply directly with an electricity retailer.

40 In addition, AMP has not sought an exemption from the application of section 17 of the EIR Act in respect of electricity charged to tenants that is consumed in providing common building services and charged for by way of operating expenses. In accordance with the Commission's decision in respect of Trans Tasman Properties Limited ("the Trans Tasman Properties decision")<sup>2</sup>, AMPAM does not consider that the purchase and supply of electricity to run common building 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.

41 The scope of the exemption sought under section 81 of the EIR Act from the application of section 17 of the EIR Act in respect of the above-mentioned entities has been set out in the Application in two parts:

- Part A , short term exemption. The Commission has been requested to provide a short term exemption until such time as the Commission determines the substantive grounds for a permanent exemption; and
- Part B, permanent exemption. This refers to the Commission's substantive decision.

42 Following discussion between the Commission's staff and Simpson Grierson (solicitors for AMP), consideration of the application for a short term exemption was bypassed by the Commission, and the Commission proceeded directly towards its substantive decision.

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<sup>2</sup> Commerce Commission, Decision No. 351A, *Trans Tasman Properties Limited*, 6 May 1999.

- 43 If the Commission is prepared to grant the exemption sought, AMP accepts that it should be on the following terms (“AMP’s conditions”):
- AMP will continue with its current practice not to charge tenants (or anyone else) for its lines;
  - AMP will not prevent access to its lines by any competing electricity suppliers;
  - AMP will not enforce any of its existing lease clauses which allow the Lessors the option of supplying electricity to the tenants, so that tenants are free to choose their electricity supplier (AMP intends to introduce a new standard lease clause, which will be used in future leases, and will provide tenants with the right to choose their electricity supplier);
  - AMP will continue to provide consumption and billing information to the tenants in the form of the invoice attached to the Application, or any other information the Commission specifies, to the tenants.
- 44 The Application states that if a permanent exemption is declined by the Commission, then a three month exemption from the application of section 17 of the EIR Act is sought (from the date of the Commission’s decision to decline the permanent exemption) to enable compliance with the ownership separation rule of the EIR Act.
- 45 In addition to the current “cross-involvement” identified in the Application for which AMP seeks an exemption from the application of section 17 of the EIR Act, AMP has recognised that future property investment and management activities it might undertake would be in contravention of the EIR Act. AMP therefore also seeks exemption from the application of the EIR Act in respect of such activities, subject to AMP’s conditions.
- 46 The future property investment activities for which AMP seeks exemption have been specified in the Application in two parts. First, AMP is evaluating the development and long-term investment opportunity for a new shopping centre to be known as the Botany Downs Shopping Centre. It is intended that the Botany Downs Shopping Centre will be owned by Botany Downs Investment Limited (“Botany Downs Investment”), a subsidiary company of APF. Botany Downs Investment will be granting leases to tenants which will contain an electricity supply clause in the new form mentioned above as part of AMP’s conditions.
- 47 Botany Downs Investment will appoint AMPAM to manage the Botany Downs Shopping Centre and to purchase electricity for on-sale to the Botany Downs Shopping Centre tenants who choose Botany Downs Investment as their electricity supplier. The total electricity supplied by Botany Downs Investment will exceed 2.5 GWh per annum.
- 48 Second, AMP states that its property investment business involves the ongoing sale and purchase of property owning companies and/or properties. AMP recognises that each time it acquires a new property owning company and/or property it will increase its involvement in an electricity lines business in terms of the EIR Act. AMP notes that section 30 of the EIR Act prohibits a person from increasing its involvement in an electricity business, which includes an electricity lines and supply business. In addition, AMP notes that, in some circumstances, by acquiring a new property owning company and/or property it may also be in breach of section 18 of the EIR Act (i.e., 20% aggregate cross-ownership prohibition). Further, if the newly acquired property owning company

sells more than 2.5 GWh of electricity per annum, AMP will have increased its involvement in an electricity supply business in terms of the EIR Act.

- 49 AMP wishes to avoid having to seek an exemption each time it purchases a new property owning company and/or property because of the compliance costs involved, and potential transactional delays which could result.

## COMMISSION PROCEDURES

- 50 For the purpose of considering the Application, the Commission, pursuant to section 58 of the EIR Act, which applies section 105 of the Commerce Act 1986 to the EIR Act, has delegated its powers under section 81 of the EIR Act to K M Brown and E M Coutts.
- 51 The Commission's decision is based on an investigation conducted by its staff and their subsequent advice to the Commission.

## INVOLVEMENTS AND PROHIBITED CROSS-INVOLVEMENTS

- 52 Section 17 of the EIR Act provides:

**“17. Cross-ownership prohibition** – (1) No person involved in an electricity lines business may be involved in an electricity supply business.

(2) No person involved in an electricity supply business may be involved in an electricity lines business.”

- 53 It is necessary to consider in relation to the Application whether any persons are currently “involved” (as defined in section 7 of the EIR Act) in an “electricity lines business” and “electricity supply business” (as those terms are defined in sections 4 and 5 of the EIR Act respectively).
- 54 For the purpose of the Commission's following analysis of the relevance of section 17 of the EIR Act to the Application, the Commission has excluded the electricity related activities of:
- Orion and the Orion Lessors;
  - properties owned by AMP, which are managed by AMPAM, but which are not part of the Funds' assets; and
  - properties owned by the IMP Lessors, which are managed by AMPAM.
- 55 As noted earlier all non-AMP tenants of the properties owned by the Orion Lessors, AMP (but which are not part of the Funds' assets) and the IMP Lessors have their electricity supplied directly by electricity retailers. For the purpose of the Application, cross-involvement in terms of section 17 of the EIR Act does not arise as a result of electricity activities relating to those properties. In addition, “involvement” in those electricity activities is not material to establishing prohibited cross-involvement under section 17 for which exemption from the application of the EIR Act is sought by AMP, as set out in the Application.

56 The definition of “electricity lines business” appears in section 4(1) of the EIR Act. That provides as follows:

**“4. Meaning of ‘Electricity Lines Business’** – (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.”

57 There then follows in subsection (2) a number of exemptions:

“(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:
- (b) Conveying electricity solely for its own consumption or for the consumption of its associates:
- (c) Conveying electricity only from a generator to the national grid or from the national grid to a generator:
- (d) Conveying electricity (other than via the national grid) only from a generator to a local distribution network or from a local distribution network to a generator:
- (e) Conveying electricity by lines that are owned or operated by a business that also owns or operates a generator which generates electricity solely for the consumption of a local community, where both those lines and that generator are not connected, directly or indirectly, to the national grid:
- (f) Conveying electricity only by a line or lines that are mostly in competition with a line or lines operated by another electricity lines business that is not an associate of the person, provided that the competition is actual competition and not potential competition:
- (g) Owning or operating, directly or indirectly, lines referred to in any of paragraphs (a) to (f) or any other core assets of an electricity lines business used in connection with those lines.”

58 The definition of “electricity supply business” is contained in section 5(1) of the EIR Act which provides:

**“5. Meaning of ‘electricity supply business’** – (1) For the purposes of this Act, ‘electricity supply business’ –

- (a) Means a business that –
  - (i) Sells electricity in New Zealand:
  - (ii) Sells financial hedges for risks relating to the price of electricity in New Zealand:
    - (i) Generates electricity in New Zealand:
    - (ii) Trades in rights to sell or generate electricity in New Zealand; and
- (b) Includes the ownership or operation, directly or indirectly, of a generator in New Zealand or any other core generation assets; and
- (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; and
  - (iii) The benefit of an undertaking from any other electricity supply business not to compete with the business.”

59 Subsection (2) provides a number of exemptions from section 5(1):

- “(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;
  - (c) Generating electricity solely for the consumption of a local community, where -
    - (i) The generator is owned or operated by a business that also conveys electricity by line; and
    - (ii) Both those lines and that generator are not connected, directly or indirectly, to the national grid;
  - (d) Selling electricity that is generated at a generator referred to in paragraph (c) or subsection (3);
  - (e) Owning or operating, directly or indirectly, a generator referred to in any of paragraphs (b) to (d) or subsection (3) or any other core generation assets used in connection with those generators.”

60 Section 7(1) of the EIR Act contains the definition of “involved” which provides:

- “7. Meaning of ‘involved’** – (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.”

### **Electricity Lines Business and Involvements**

61 The Commission considered the application of the EIR Act in relation to investment properties in the Trans Tasman Properties decision. As a result of that decision, in respect of section 4(1) of the EIR Act, a business that conveys electricity by an embedded electrical wiring system within a building in New Zealand is considered by the Commission to be an “electricity lines business” (unless it is an activity exempted from the meaning of “electricity lines business” by section 4(2)). Under section 4(1)(b) an electricity lines business includes the ownership or operation, directly or indirectly, of an embedded electrical wiring system conveying electricity.

62 Accordingly, the Commission concludes in respect of the Application that the following entities, for which exemption from the application of the EIR Act is sought by AMP, are electricity lines businesses under section 4 of the EIR Act:

- (a) Certain of the ANZO Lessors and the APF Lessors, being those listed in Schedules A to D of the Application (see Appendices 4 and 5), because they:
  - own, directly, lines that convey electricity in New Zealand, being the embedded electrical wiring systems within the buildings they own (section 4(1)(a) and(b)); and
  - are not exempted from the meaning of “electricity lines business” by section 4(2)(a) because they convey, together with their associates, more than 2.5 GWh of electricity per annum (the definition of “associates” requires the electricity conveyed by lines by the ANZO Lessors and the APF Lessors to be aggregated); and

- are not exempted from the meaning of “electricity lines business” through any of sections 4(2)(b) to (g).
- (b) APF (and Perpetual, as the trustee of APF<sup>3</sup>) because APF:
- owns, directly, lines that convey electricity in New Zealand, being the embedded electrical wiring systems in the Lynn Mall Shopping Centre (section 4(1)(a) and (b)); and
  - is not exempted from the meaning of “electricity lines business” through section 4(2).
- (c) ANZO and APF (and Perpetual, as the trustee of ANZO and APF) because they:
- own, indirectly through the ANZO Lessors and the APF Lessors respectively, lines that convey electricity in New Zealand (section 4(1)(a) and (b)); and
  - are not exempted from the meaning of “electricity lines business” through section 4(2).
- (d) AMPAM because, as the manager and agent of the ANZO Lessors, the APF Lessors and APF (in respect of Lynn Mall Shopping Centre), it:
- operates lines that convey electricity in New Zealand, being the embedded electrical wiring systems within the buildings owned by the ANZO Lessors, the APF Lessors and APF (section 4(1)(a) and (b)); and
  - is not exempted from the meaning of “electricity lines business” through section 4(2).

AMP does not consider AMPAM to be an electricity lines business under the EIR Act. However, the Commission concludes that the business of AMPAM in relation to the properties owned by the ANZO Lessors, APF Lessors and APF is such that AMPAM operates (in terms of section 4(1)(b) of the EIR Act) the embedded electrical wiring systems within those properties. In the Commission’s view, AMPAM does not provide only maintenance and related services in respect of the embedded electrical wiring systems.

63 The Commission also concludes that the above electricity lines businesses are involved for the purposes of section 7 of the EIR Act because they:

- 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));
- 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 ANZO, APF and Perpetual, as the trustee of ANZO and APF, only) (section 7(1)(b));

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<sup>3</sup> Section 3 of the EIR Act defines “person” as including the trustees of a trust acting in that capacity.

- have material influence over their electricity lines businesses (in the case of ANZO, APF, Perpetual, as the trustee of ANZO and APF, and AMPAM only) (section 7(1)(c)).

64 In addition, the Commission concludes that the following entities are involved under section 7 of the EIR Act in electricity lines businesses identified above:

- (a) The Beneficiaries because they exceed the 10% threshold in section 8 (section 7(1)(b)) as follows:
  - (i) National Provident Fund as 39.5% unitholder of ANZO.
  - (ii) APF as 33% unitholder of ANZO.
  - (iii) BT Australia as 19.5% unitholder of ANZO.
  - (iv) AMP Life as 73% unitholder of APF.
  - (v) AMP Superannuation Investment Trust as 16% unitholder of APF;
- (b) AMP Asset Management 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) of the EIR Act, has material influence over AMPAM (section 7(1)(c));
- (c) AMP Life because, under section 11(1)(e) of the EIR Act, it has material influence over APF (section 7(1)(c));
- (d) AMP Limited because, under section 11(2) of the EIR Act, it has material influence over AMP Asset Management Holdings Limited and AMP Life (section 7(1)(c)).

### **Electricity Supply Business and Involvements**

65 The Commission concludes in respect of the Application that the following entities, for which an exemption from the application of the EIR Act is sought by AMP, are electricity supply businesses under section 5 of the EIR Act:

- (a) Certain of the ANZO Lessors and the APF Lessors, being those listed in Schedules A and C of the Application respectively, and APF (and Perpetual, as the trustee of APF) as the owner of Lynn Mall Shopping Centre (as listed in Schedule C) because, through their manager and agent, AMPAM, 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)).
  - (iii) own, directly, the benefit of a contract to sell electricity (section 5(1)(c)(ii)).
  - (iv) are not exempted from the meaning of “electricity supply business” through section 5(2);

- (b) ANZO and APF (and Perpetual, as the trustee of ANZO and APF) because they own, indirectly, a customer data base relating to and used for the purposes of an electricity retail business (section 5(1)(c)(i)) and the benefit of a contract to sell electricity (section 5(1)(c)(ii));
- (c) AMPAM because it operates, directly, 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)).

66 The Commission agrees with AMP's analysis in the Application and concludes that certain of the ANZO Lessors and the APF Lessors, being those listed in Schedules B and D of the Application respectively, are not electricity supply businesses in terms of section 5 of the EIR Act. Through their manager and agent, AMPAM, they:

- sell electricity in New Zealand (section 5(1)(a)(i));
- own, directly, a customer data base relating to and used for the purposes of an electricity retail business (section 5(1)(c)(i));
- own, directly, the benefit of a contract to sell electricity (section 5(1)(c)(ii));
- are exempted from the meaning of "electricity supply business" because they individually sell less than 2.5 GWh of electricity per annum (section 5(2)(a)).

67 The electricity supply businesses identified above are involved for the purposes of section 7 of the EIR Act because they:

- 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));
- 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 ANZO, APF and Perpetual, as the trustee of ANZO and APF, only) (section 7(1)(b));
- have material influence over their electricity supply businesses (in the case of ANZO, APF, Perpetual, as the trustee of ANZO and APF, and AMPAM only) (section 7(1)(c)).

68 The following entities are also involved in the above electricity supply businesses:

- (a) The Beneficiaries because they exceed the 10% threshold in section 8 of the EIR Act (section 7(1)(b));
- (b) Resolve because it assists AMPAM with the management of properties by, amongst other things, administering the electricity supply and therefore carries on an electricity supply business as an associate of AMPAM (section 7(1)(a));
- (c) AMP Asset Management 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) of the EIR Act, has material influence over AMPAM (section 7(1)(c));



- (d) AMP Life because, under section 11(1)(e) of the EIR Act, it has material influence over APF (section 7(1)(c));
- (e) AMP Limited because, under section 11(2) of the EIR Act, it has material influence over AMP Asset Management Holdings Limited and AMP Life (section 7(1)(c)).

69 The supply of electricity for the purpose of providing common building services does not constitute, in the Commission's view, an electricity supply business for the purposes of the EIR Act. In this respect, the Commission stated in Decision No. 351<sup>4</sup>, at paragraph 11:

"The purchase of such electricity by TTP is to enable it to provide and maintain rental properties to a standard required by tenants, rather than for the purpose of direct consumption by tenants. The electricity is consumed by assets owned by, and not leased from, TTP. The recovery of the cost of this electricity by TTP does not, in the Commission's view, represent selling electricity but is instead the recovery of the costs of various services provided by TTP which are integral to managing and operating its rental properties, and for which, in some instances, electricity is a necessary input."

### **Prohibited Cross-involvements**

70 Table 2 summarises the Commission's preceding conclusions as to whether or not the entities assessed above:

- are electricity lines businesses under sections 4 of the EIR Act; and/or
- are electricity supply businesses under section 5 of the EIR Act; and
- are involved in an electricity business under section 7 of the EIR Act; and
- have prohibited cross-involvements under section 17 of the EIR Act.

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<sup>4</sup> Commerce Commission, Decision No. 351, *Trans Tasman Properties Ltd*, 1 April 1999. This decision related to a limited time exemption from section 17 of the EIR Act pending the Commission's substantive determination (Decision No. 351A, referred to in footnote 2).

Table 2: Summary of Prohibited Cross-involvements

Entity	Electricity Lines Business?	Involved (Lines)?	Electricity Supply Business?	Involved (Supply)?	Prohibited Cross-involvement?
AMP NZ Office 151 Queen Street Limited	✓	✓	✓	✓	✓
AMP NZ Office Albert Street Limited	✓	✓	✓	✓	✓
AMP NZ Office Quay Tower Limited	✓	✓	✓	✓	✓
AMP NZ Office Featherston Street Limited	✓	✓	x	x	x
AMP NZ Office No. 1 The Terrace Limited	✓	✓	x	x	x
155 The Terrace Limited	✓	✓	✓	✓	✓
Lambie Drive Investment No. 1 Limited	✓	✓	x	x	x
226 Lambton Quay Limited	✓	✓	x	x	x
No. 1 Grey Street Limited	✓	✓	x	x	x
109 Featherston Street Limited	✓	✓	x	x	x
Jervois Quay Limited	✓	✓	x	x	x
Lower Albert Street Limited	✓	✓	x	x	x
86 Quay Street Limited	✓	✓	x	x	x
APF	✓	✓	✓	✓	✓
ANZO	✓	✓	✓	✓	✓
Perpetual	✓	✓	✓	✓	✓
National Provident Fund	x	✓	x	✓	✓
BT Australia	x	✓	x	✓	✓
AMP Superannuation Investment Trust	x	✓	x	✓	✓
AMPAM	✓	✓	✓	✓	✓
AMP Asset Management Holdings Limited	x	✓	x	✓	✓
AMP Life	x	✓	x	✓	✓
AMP Limited	x	✓	x	✓	✓
Resolve	x	x	x	✓	x

71 Accordingly, AMP seeks in the Application an exemption from the application of section 17 of the EIR Act for the following entities with prohibited cross-involvements (“the cross-involved entities”):

- AMP NZ Office 151 Queen Street Limited
- AMP NZ Office Albert Street Limited
- AMP NZ Office Quay Tower Limited
- 155 The Terrace Limited
- APF (as one of the trusts through which AMP conducts its property investment business and as owner of the Lynn Mall Shopping Centre)
- ANZO
- Perpetual (only in respect of its “involvement” in the above electricity businesses)
- Certain of the beneficiaries of ANZO and APF being National Provident Fund, APF and BT Australia as unitholders of ANZO and AMP Life and AMP Superannuation Investment Trust as unitholders of APF (i.e., the Beneficiaries) (only in respect of the Beneficiaries’ “involvement” in the above electricity businesses)
- AMPAM
- AMP Asset Management Holdings Limited
- AMP Life
- AMP Limited

## CRITERIA USED BY THE COMMISSION FOR EXEMPTION APPLICATIONS

72 The EIR Act gives the Commission wide powers of enforcement, extension and exemption. To provide assistance to parties affected by the EIR Act, the Commission has set out its role and processes in Practice Note No. 3<sup>5</sup>.

73 The Commission stated in Practice Note No. 3 that:

“The EIR Act provides for the Commission to make exemptions in terms of section 81 of the Act. In considering applications for exemptions, the Commission will have specific regard to the particular purpose of Parts 1 to 5 of the EIR Act as defined in section 2(2) of the Act. The Commission is likely to grant an exemption in respect of a business or involvement or interest only where doing so:

- (a) would not result in certain involvements in electricity lines businesses and electricity supply businesses which may create incentives or opportunities:
  - (i) to inhibit competition in the electricity industry; or
  - (ii) to cross-subsidise generation activities from electricity lines businesses; and
- (b) would not result in relationships between electricity lines businesses and electricity supply businesses which are not at arms length.

In determining exemptions, the Commission will also have regard to the overall purpose of the EIR Act as set out in section 2(1) of the Act. That is, the purpose of the EIR Act is to reform the electricity industry to better ensure that:

- (a) costs and prices in the electricity industry are subject to sustained downward pressure; and
- (b) the benefits of efficient electricity pricing flow through to all classes of consumers by –
- (c) effectively separating electricity distribution from generation and retail; and
- (d) promoting effective competition in electricity generation and retail.”<sup>6</sup>

74 The Commission noted in Practice Note No. 3:

“...that the EIR Act provides for maximum cross-ownership limits and specific structural and behavioural requirements to ensure that the purposes of the Act are met. Strict compliance with these limits and requirements is, other than in exceptional circumstances,<sup>7</sup> expected.”<sup>8</sup>

75 The Commission stated in Practice Note No. 3 that:

“On receipt of an application in the prescribed form, the Commission will determine whether granting an exemption would be contrary to any element of the particular purpose of Parts 1 to 5 of the EIR Act or the overall purpose of the Act.

The Commission’s tests would necessitate obtaining and evaluating objective answers to the following questions in relation to the particular purpose of Parts 1 to 5 of the Act:

- 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?

<sup>5</sup> Practice Note No. 3, *Electricity Industry Reform Act 1998 Commission’s Role and Processes*, September 1998 (Revised August 1999).

<sup>6</sup> Ibid. p. 12.

<sup>7</sup> “For example, of the types provided for in section 19 of the EIR Act.”

<sup>8</sup> Ibid. p. 13.

- 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?
- 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?

In relation to these questions, the Commission will consider factors such as:

- The relevant market(s)<sup>9</sup> within the electricity industry;
- The nature of any incentives or opportunities created;
- The temporal nature of any incentives or opportunities created;
- The nature of any relationship which is not at arms length; and
- The temporal nature of any relationship which is not at arms length.”<sup>10</sup>

## RELEVANT MARKET

76 In terms of the Commission’s criteria set down in Practice Note No. 3, the national electricity retail market is relevant to the facts stated in the Application.<sup>11</sup>

## EXAMINATION IN TERMS OF THE COMMISSION’S CRITERIA

### Incentives or Opportunities to Inhibit Competition in the Electricity Industry

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?

- 77 The question to consider is whether granting an exemption under section 81 of the EIR Act to the cross-involved entities and in respect of AMP’s future property investment and management activities would create incentives or opportunities to inhibit competition in the electricity industry.
- 78 The recent electricity sector reform through the EIR Act has necessitated the separation of electricity distribution functions (lines) and electricity retailing and generation functions (supply) in order to enhance competition and choice in respect of supply. The EIR Act recognises that the market power of an electricity lines business enables the use of various mechanisms to inhibit competition in electricity retailing. Such mechanisms include:
- charges to electricity retailers for access to lines and contract administration charges over and above line charges;
  - cross-subsidies from line charges to electricity retail charges;
  - delays in permitting electricity retailers to have access to lines through use-of-system contractual arrangements.

<sup>9</sup> “Defined using the same process as used for market definitions in respect of Commerce Act matters.”

<sup>10</sup> Ibid. p. 13.

<sup>11</sup> Other markets in the electricity industry, for example, the wholesale electricity market, the electrical construction and maintenance market, the market for the reticulation of new subdivisions, the local distribution market, and the national electricity generation market, do not appear to be relevant to the Application.

79 AMP has argued that granting an exemption from the application of section 17 of the EIR Act in respect of the prohibited cross-involvements identified in the Application would not create an incentive to inhibit competition in the electricity industry. At paragraph 54. of the Application, AMP has stated:

“(c) Granting an exemption will ... not create any real incentive for AMP 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 AMP is, and will continue to be, motivated to keep tenants’ electricity costs as low as possible. AMP will want to promote competition which generally leads to lower prices. AMP 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.

(d) AMP competes with other property owners for tenants. Due to this competition for tenants the total cost that AMP can charge any tenant (i.e., rent plus all other costs) is capped by the market. It is in the interests of AMP 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, AMP is strongly motivated to ensure that all other costs that are included in the total costs to the tenant, including electricity costs and AMP’s margins on electricity, are reduced to the lowest possible level.”

80 It is the Commission’s view that the cross-involved entities do have incentives and opportunities to inhibit competition in the supply of electricity to tenants. Competition can be inhibited; for example, by imposing unreasonable line charges and access terms in respect of the embedded electrical wiring systems within the relevant properties, or cross-subsidising electricity sales from line charges. The incentives relate to the ability to supply electricity to tenants without facing competition from electricity retailers.

81 AMP accepts that a decision by the Commission to grant an exemption for the cross-involved entities should include AMP’s conditions, which are consistent with the Commission’s terms and conditions in the Trans Tasman Properties decision, and subsequent other decisions under section 81 of the EIR Act. AMP’s conditions, i.e.,

- AMP will continue with its current practice not to charge tenants (or anyone else) for its lines;
- AMP will not prevent access to its lines by any competing electricity suppliers;
- AMP will not enforce any of its existing lease clauses which allow the Lessors the option of supplying electricity to the tenants, so that tenants are free to choose their electricity supplier (AMP intends to introduce a new standard lease clause, which will be used in future leases, and will provide tenants with the right to choose their electricity supplier);
- AMP will continue to provide consumption and billing information to the tenants in the form of the invoice attached to the Application, or any other information the Commission specifies, to the tenants,

will minimise the opportunity for AMP to inhibit competition in the national electricity retail market.

82 By including AMP’s conditions as part of an exemption from the Commission, AMP concludes in paragraph 54. of the Application:

“... that there is no opportunity for AMP 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.” (footnote omitted)

- 83 The Commission concurs with AMP. Any opportunities to defeat the purposes of the EIR Act by allowing the cross-involved entities to remain cross-involved would be significantly restricted if AMP’s conditions were adopted. Accordingly, the Commission considers that given AMP’s conditions the granting of an exemption from the application of section 17 of the EIR Act in respect of the cross-involved entities would not provide AMP with opportunities to inhibit competition in the national electricity retail market.
- 84 In addition to the current cross-involvements through the cross-involved entities, AMP now seeks an exemption from the application of the EIR Act for future property investment and management activities it might undertake. These future activities have been described in the Application as involving:
- the development of the Botany Downs Shopping Centre. This shopping centre is intended to be owned by Botany Downs Investment (a subsidiary of APF), which will grant leases to tenants that will provide tenants the freedom to choose their electricity supplier. AMPAM will be appointed to manage the Botany Downs Shopping Centre and sell electricity to any tenants who choose Botany Downs Investment as their electricity supplier. The amount of electricity supplied in this manner is expected to exceed 2.5 GWh per annum; and
  - the continuing purchase by AMP of property owning companies and/or properties.
- 85 In respect of any future property investments, AMP could be at risk under the following sections of the EIR Act:
- section 30 which puts a ban on any person with a cross-involvement acquiring an involvement or increasing the level of any of that person’s involvements, except in accordance with sections 31 to 35 of the EIR Act;
  - section 18 which prevents aggregate involvements of more than 20% by persons in either an electricity lines business or electricity supply business where those persons are involved under the EIR Act in the other type of business; and
  - section 17 because if a newly acquired property owning company sells more than 2.5 GWh of electricity per annum, AMP will have increased its involvement in an electricity supply business.
- 86 AMP states that by obtaining an exemption now for its future property investment activities, it will avoid having to seek an exemption each time it undertakes a new investment activity which is affected by the EIR Act, thus saving itself compliance costs and potential transactional delays.
- 87 If the Commission decides to grant AMP an exemption in respect of potential future property investment and management activities undertaken by it, AMP accepts that the exemption should include the requirement that AMP’s conditions (as proposed by AMP for the cross-involved entities) be adopted in respect of those activities.
- 88 The Commission considers that granting an exemption in this decision from the application of sections 17, 18 and 30 of the EIR Act in respect of any future property

investment and management activities that AMP might undertake (including the development of the Botany Downs Shopping Centre) will not provide AMP with opportunities to inhibit competition in the national electricity retail market, so long as AMP's conditions are adopted and the Commission is informed of the details of any future property investment activities that are likely to breach the EIR Act and for which AMP is relying on the exemption from the Commission.

### **Incentives or Opportunities to Cross-subsidise Generation Activities**

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?

- 89 None of the cross-involved entities or AMP's property investment activities are involved in electricity generation. Accordingly, this criterion is not relevant to the Commission's analysis in this decision.

### **A Relationship Not at Arms Length**

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?

- 90 By granting an exemption from the application of section 17 of the EIR Act to the cross-involved entities and in respect of potential cross-involvements which might arise as a result of AMP's future property investment and management activities, the Commission would be allowing relationships between electricity lines businesses and electricity supply businesses to not be at arms length.
- 91 However, the Commission considers that the potential effects of the relationships not being at arms length would be tempered by the fact that any exemption from the EIR Act would be subject to AMP's conditions being implemented and, in the case of any future property investment and management activities undertaken by AMP, the Commission being kept informed by AMP of any comparable activities for which AMP is relying on the exemption from the Commission. As a result, the Commission does not consider the potential effects of the relationships not being at arms length to be a material risk to the purposes of the EIR Act.

### **THE COMMISSION'S DECISION**

- 92 The Application passes two of the three criteria used by the Commission to decide upon exemptions from the EIR Act, assuming certain conditions are met. The third criterion is not applicable.
- 93 Accordingly, the Commission, under section 81 of the EIR Act, exempts:
- the cross-involved entities from the application of section 17 of the EIR Act; and

- any business or involvement or interest in relation only to any future property investment and management activities that AMP might undertake (including the development of the Botany Downs Shopping Centre) from the application of sections 17, 18 and 30 of the EIR Act, and in respect of which sections 17, 18 and/or 30 would apply.

94 The exemption is applicable to the specific businesses, involvements or interests listed, and is subject to the terms and conditions specified by the Commission, in the Notice of Exemption.

95 In making its decision the Commission notes that the facts revealed in the Application are particular to AMP's situation alone. The Commission also notes that section 81(5) of the EIR Act provides that the Commission may vary or revoke any exemption at any time.



## NOTICE OF EXEMPTION

The Notice of Exemption concerns an application received by the Commerce Commission (“the Commission”) on 20 August 1999 made by AMP Asset Management New Zealand Limited (“AMPAM”) on behalf of AMP (“the Application”). AMP includes those companies shown in the Application in Diagram A.

AMP seeks in the Application, under section 81 of the Electricity Industry Reform Act 1998 (“the EIR Act”), an exemption from the EIR Act.

The Commission, pursuant to section 81 of the EIR Act, exempts the following entities (“the cross-involved entities”) from the application of section 17 of the EIR Act in respect of their current “cross-involvement” (as that term is defined in the EIR Act):

- AMP NZ Office 151 Queen Street Limited
- AMP NZ Office Albert Street Limited
- AMP NZ Office Quay Tower Limited
- 155 The Terrace Limited
- AMP New Zealand Property Fund (“APF”) (as one of the trusts through which AMP conducts its property investment business and as owner of the Lynn Mall Shopping Centre)
- AMP New Zealand Office Trust (“ANZO”)
- Perpetual Trust Limited (only in respect of its “involvement” (as that term is defined in the EIR Act) in the above electricity businesses)
- Certain of the beneficiaries of ANZO and APF (the “Beneficiaries”) being National Provident Fund, APF and BT Australia as unitholders of ANZO and AMP Life Limited and AMP Superannuation Investment Trust as unitholders of APF (only in respect of the Beneficiaries’ “involvement” in the above electricity businesses)
- AMPAM
- AMP Life Limited
- AMP Asset Management Holdings Limited
- AMP Limited

The above exemption is given to the cross-involved entities subject to the following terms and conditions:

- (a) That AMP 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 AMP’s properties.
- (b) That AMP or any other persons do not prevent access to any embedded electrical wiring systems owned or operated in relation to AMP’s property investment activities, by any competing electricity supply business wanting to supply electricity to any of AMP’s tenants.

- (c) That AMP 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 AMP's tenants, so that AMP's tenants are free to choose their electricity supplier.
- (d) That AMP or any of the cross-involved entities provide all tenants of AMP'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.

In addition, the Commission, pursuant to section 81 of the EIR Act, exempts from the application of sections 17, 18 and 30 of the EIR Act any business or involvement or interest in relation only to any future property investment and management activities that AMP might undertake (including the development of the Botany Downs Shopping Centre), and in respect of which sections 17, 18 and/or 30 would apply.

The exemption to any business or involvement or interest in respect of any future property investment and management activities that AMP might undertake (including the development of the Botany Downs Shopping Centre) is given subject to the following terms and conditions being fully observed by the business or involvement or interest to which the exemption applies:

- (a) The terms and conditions as set out above in relation to the exemption given to the cross-involved entities.
- (b) That AMP 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 AMP and/or any other persons are likely to rely on this exemption.

The exemption takes effect from the date of publication of this notice in the *New Zealand Gazette*.

The Commission may vary or revoke this exemption at any time in accordance with section 81(5) of the EIR Act.

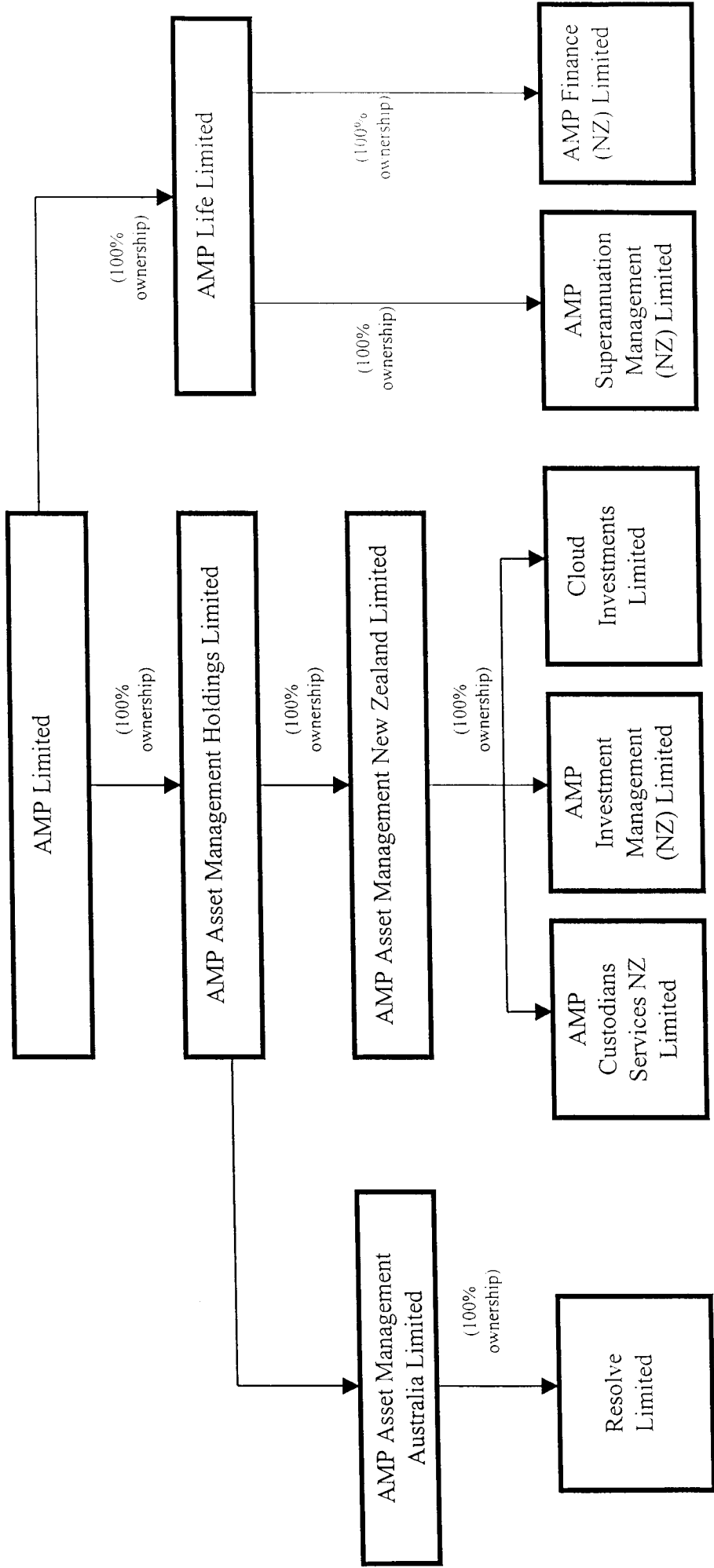
Dated this 29th day of September 1999

The Commission

# Appendix 1

# DIAGRAM A

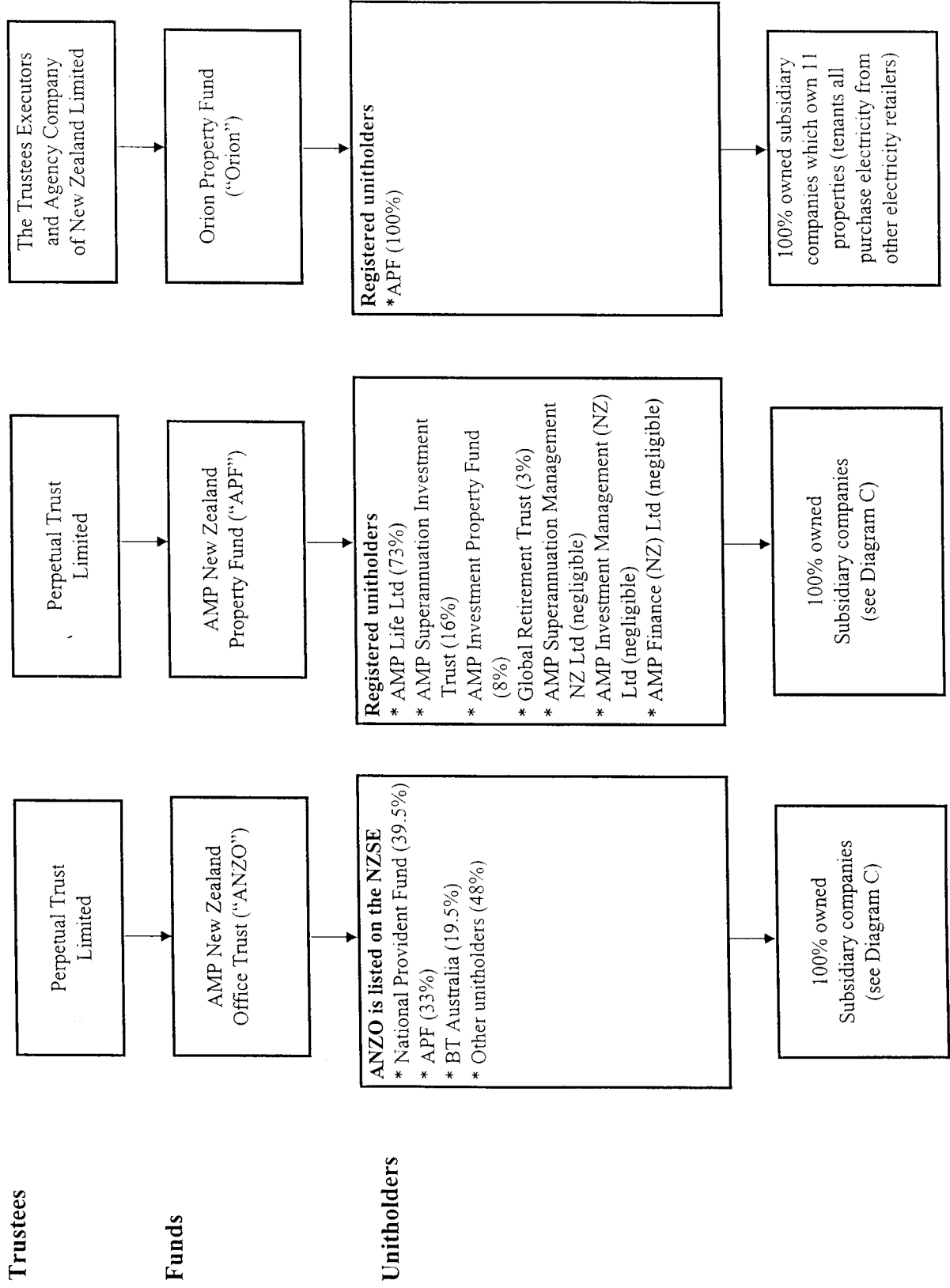
## AMP Ownership Structure



# Appendix 2

**DIAGRAM B**

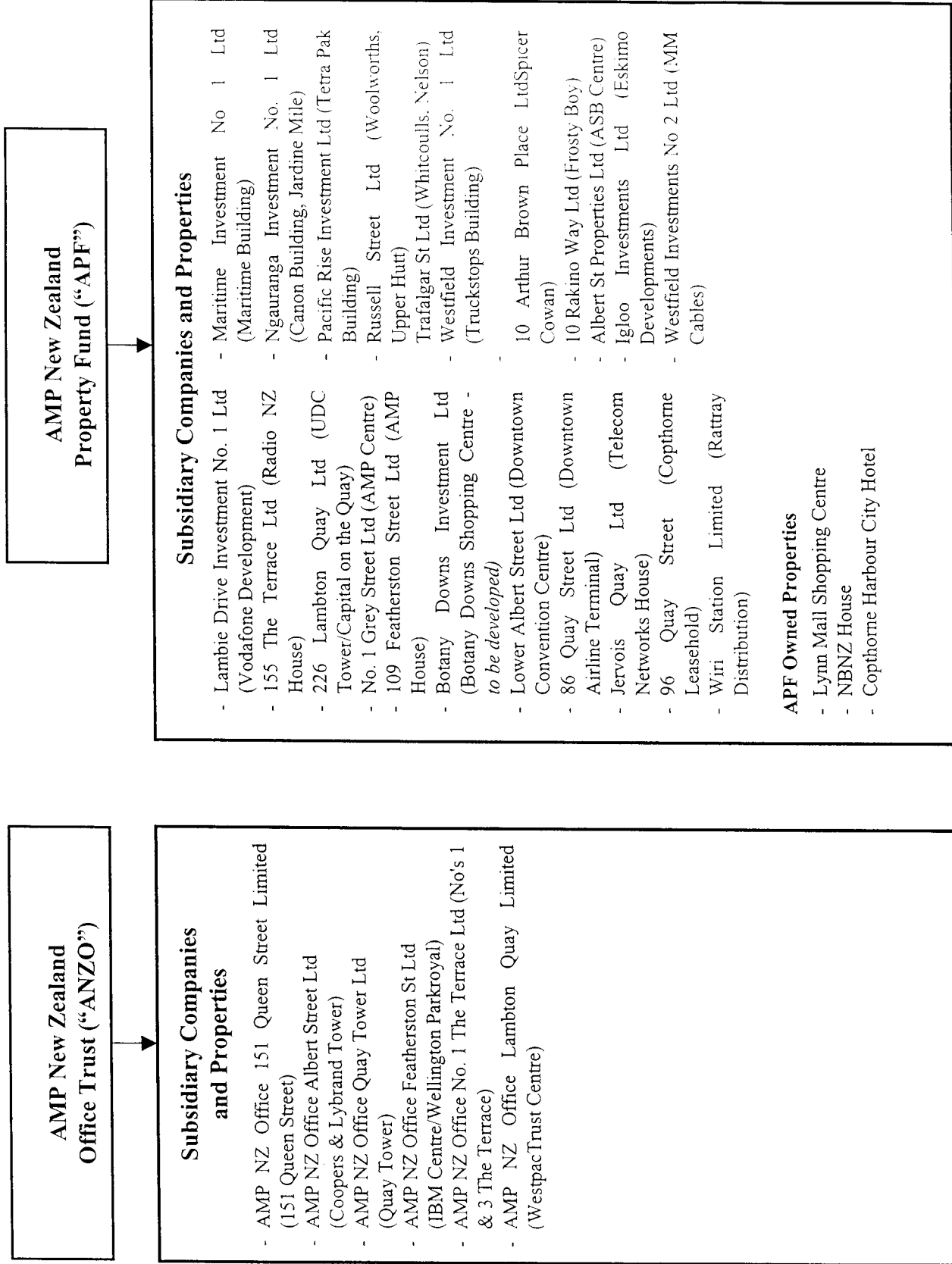
**The Funds Managed by AMPAM**



# Appendix 3

## DIAGRAM C

### ANZO and APF Properties Managed by AMPAM



**AMP New Zealand  
Office Trust ("ANZO")**

**AMP New Zealand  
Property Fund ("APF")**

#### Subsidiary Companies and Properties

- AMP NZ Office 151 Queen Street Limited (151 Queen Street)
- AMP NZ Office Albert Street Ltd (Coopers & Lybrand Tower)
- AMP NZ Office Quay Tower Ltd (Quay Tower)
- AMP NZ Office Featherston St Ltd (IBM Centre/Wellington Parkroyal)
- AMP NZ Office No. 1 The Terrace Ltd (No's 1 & 3 The Terrace)
- AMP NZ Office Lambton Quay Limited (Westpac Trust Centre)

#### Subsidiary Companies and Properties

- Lambie Drive Investment No. 1 Ltd (Vodafone Development) - Maritime Investment No. 1 Ltd (Maritime Building)
- 155 The Terrace Ltd (Radio NZ House) - Ngauranga Investment No. 1 Ltd (Canon Building, Jardine Mile)
- 226 Lambton Quay Ltd (UDC Tower/Capital on the Quay) - Pacific Rise Investment Ltd (Tetra Pak Building)
- No. 1 Grey Street Ltd (AMP Centre) - Russell Street Ltd (Woolworths, Upper Hutt)
- 109 Featherston Street Ltd (AMP House) - Trafalgar St Ltd (Whitcoulls, Nelson)
- Botany Downs Investment Ltd (Botany Downs Shopping Centre - *to be developed*) - Westfield Investment No. 1 Ltd (Truckstops Building)
- Lower Albert Street Ltd (Downtown Convention Centre) - 10 Arthur Brown Place Ltd (Spicer Cowan)
- 86 Quay Street Ltd (Downtown Airline Terminal) - 10 Rakino Way Ltd (Frosty Boy)
- Jervois Quay Ltd (Telecom Networks House) - Albert St Properties Ltd (ASB Centre)
- 96 Quay Street (Cophorne Leasehold) - Igloo Investments Ltd (Eskimo Developments)
- Wiri Station Limited (Ratray Distribution) - Westfield Investments No 2 Ltd (MM Cables)

#### APF Owned Properties

- Lynn Mall Shopping Centre
- NBNZ House
- Cophorne Harbour City Hotel



# Appendix 4

**SCHEDULE A**

**ANZO SUBSIDIARIES WHERE ELECTRICITY  
SUPPLIED TO TENANTS (BY AMPAM ON BEHALF OF THE OWNER) IS  
MORE THAN 2.5 GWH PER ANNUM**

<b>PROPERTIES</b>	<b>OWNER OF PROPERTY</b>	<b>GWH PER ANNUM (tenant)</b>	<b>GWH PER ANNUM (building)</b>	<b>TYPES OF LEASE CLAUSES USED (See the Schedule of Lease clauses)</b>
151 Queen Street	AMP NZ Office 151 Queen Limited	[ ]	[ ]	[ ]
Coopers & Lybrand Tower	AMP NZ Office Albert Street Limited	[ ]	[ ]	[ ]
Quay Tower	AMP NZ Office Quay Tower Limited	[ ]	[ ]	[ ]

**CONFIDENTIAL**

**SCHEDULE B**

**ANZO SUBSIDIARIES WHERE ELECTRICITY  
SUPPLIED TO TENANTS (BY AMPAM ON BEHALF OF THE OWNER) IS  
LESS THAN 2.5 GWH PER ANNUM**

<b>PROPERTIES</b>	<b>OWNER OF PROPERTY</b>	<b>GWH PER ANNUM (tenant)</b>	<b>GWH PER ANNUM (building)</b>	<b>TYPES OF LEASE CLAUSES USED (See the Schedule of Lease clauses)</b>
IBM Centre/Wellington Parkroyal	AMP NZ Office Featherston Street Limited	[ ]	[ ]	[ ]
No's 1 & 3 The Terrace	AMP NZ Office No. 1 The Terrace Limited	[ ]	[ ]	[ ]

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# Appendix 5

**SCHEDULE C**

**APF FUND AND SUBSIDIARIES WHERE ELECTRICITY  
SUPPLIED TO EACH TENANT (BY AMPAM ON BEHALF OF THE OWNER) IS  
MORE THAN 2.5 GWH PER ANNUM**

<b>PROPERTIES</b>	<b>OWNER OF PROPERTY</b>	<b>GWH PER ANNUM (tenant)</b>	<b>GWH PER ANNUM (building)</b>	<b>TYPES OF LEASE CLAUSES USED (See the Schedule of Lease clauses)</b>
Lynn Mall Shopping Centre	APF	[ ]	[ ]	[ ]
Radio NZ House, 155 The Terrace	155 The Terrace Limited	[ ]	[ ]	[ ]

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**SCHEDULE D**

**APF FUND SUBSIDIARIES WHERE ELECTRICITY  
SUPPLIED TO TENANTS (BY AMPAM ON BEHALF OF THE OWNER) IS  
LESS THAN 2.5 GWH PER ANNUM**

<b>PROPERTIES</b>	<b>OWNER OF PROPERTY</b>	<b>GWH PER ANNUM (tenant)</b>	<b>GWH PER ANNUM (building)</b>	<b>TYPES OF LEASE CLAUSES USED (See the Schedule of Lease clauses)</b>
Shortland Centre 1	Lambie Drive Investment No 1 Limited	[ ]	[ ]	[ ]
UDC Tower/Capital on the Quay	226 Lambton Quay Limited	[ ]	[ ]	[ ]
AMP Centre	No 1 Grey Street Limited	[ ]	[ ]	[ ]
AMP House	109 Featherston Street Limited	[ ]	[ ]	[ ]

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**ELECTRICITY SUPPLIED TO BUILDING BUT NOT TENANTS  
(STILL LESS THAN 2.5GWH PER ANNUM)**

Telecom Networks House, Jervois Quay	Jervois Quay Limited	[ ]	[ ]	[ ]
Downtown Convention Centre	Lower Albert Street Limited	[ ]	[ ]	[ ]
Downtown Airline Terminal	86 Quay Street Limited	[ ]	[ ]	[ ]

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