



~~"Without prejudice"~~

**ENFORCEABLE UNDERTAKING**  
**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION ACT**

**SECTION 93A**

The commitments in this Undertaking are offered to the Australian Securities and Investments Commission ('ASIC') by:

**Ingwerson & Landsdown Securities Limited (ACN 088 636 220)**  
**Corner Gold Coast Hwy & Palm Beach Avenue**  
**PALM BEACH QLD 4221**

**1. BACKGROUND**

- 1.1 Ingwerson & Landsdown Securities Limited (ACN 088 636 220) ("the company") is an unlisted public company which was incorporated in Queensland on 14 July 1999 for the purpose of acting as the responsible entity of a managed investment scheme under Chapter 5C of the Corporations Law ("the Law"). That scheme known as Ingwerson & Landsdown Securities Fund ARSN 089 634 453 ("the scheme") was registered under Section 601ED of the Law on 15 October 1999 and conducts a contributory mortgage business.
- 1.2 On 15 November 2000 the Company lodged with ASIC a Prospectus ('the general prospectus') pursuant to section 718 of the Corporations Law ('the Law') in relation to offering interests in the scheme. On page 18 of the general prospectus the company disclosed its intention to rely on ASIC Class Order 00/202 ("Two part prospectus relief for mortgage schemes"). By relying on the Class Order the company was permitted, upon lodging with ASIC the general prospectus, to separately disclose to investors, information required under Division 4 of Part 6D.2 of the Law specific to each mortgage transaction.
- 1.3 The company has since the date of lodgement of the general prospectus circulated to members of the public various documents titled "First Mortgage Investment Proposal" (hereinafter collectively or severally referred to as "the specific prospectus") in respect of a proposed loan by the company to Nelly Bay Harbour Pty Ltd in the sum of \$8 million and against the mortgage security, inter alia, of leasehold property situated at Nelly Bay Magnetic Island in the State of Qld.

1.4 On or about 12 February 2001 ASIC formed the view that the offer of securities under the specific prospectus might contravene section 728 of the Law in that the prospectus appeared to contain omissions of information required by sections 710 and 711 of the Law or misleading information. On the same date ASIC identified concerns in relation to the adequacy of disclosure in the specific prospectus which included:

- I. The specific prospectus omitted to disclose the effect of legal action pending in the Supreme Court of Queensland in relation to the claim by North Queensland Conservation Council Inc. and The Executive Director Queensland Parks and Wildlife Service (No. S3728/00) concerning a permit allowing the reclamation of part of the Great Barrier Reef Marine Park.
- II. The specific prospectus omitted to disclose all material information about:
  - the joint funding contractual arrangements between the borrower and the Queensland State Government; and
  - other agreements entered into with the State Government, borrower, builder and lender.
- III. The prospectus contained a possibly misleading representation, namely "The borrower for the project is a large company with a long history of work in similar projects".
- IV. The prospectus omitted to disclose the "as is" valuation.

1.5 The Company acknowledges ASIC's concerns set out in this undertaking and wishes to effect withdrawal of the specific prospectus from further circulation on the basis of the following undertakings.

## 2. UNDERTAKING


2.1 Pursuant to section 93A of the Australian Securities and Investments Commission Act, the Company undertakes that it will:

- (a) not issue or otherwise circulate the specific prospectus to any person;
- (b) within 14 days after the date of this undertaking, in the case where the specific prospectus has been issued to persons, issue to those persons a letter notifying them that:
  - (i) the specific prospectus is subject to this undertaking;
  - (ii) the company will not further allot or issue any securities pursuant to the specific prospectus; and
  - (iii) no applications by persons for the subscription of securities will be accepted by the Company on the basis of the specific prospectus following the date of the undertaking;

- (c) not allot or issue or transfer any securities on the basis of the specific prospectus;
- (d) within 14 days after the date of this undertaking, offer to refund to persons who have not yet been allotted interests in the scheme under the specific prospectus, any subscription monies received by the Company under the specific prospectus;
- (e) offer to refund to all persons who apply in the future for subscription of shares or interests under the specific prospectus their subscription monies within 14 days after the Company has received them;
- (f) within 14 days after the date of this undertaking, destroy all copies of the specific prospectus in the custody, possession, or under the control, of the Company (except for file copies);
- (g) within 21 days after the date of this undertaking, provide to ASIC marked to the attention of Director Regulation, Queensland, a statutory declaration of one of the directors of the Company that the Company has complied with the undertakings referred to (a) to (f) above; and
- (h) at the written request of ASIC, provide access to ASIC officers to books which will allow ASIC to ascertain that the Company has complied with the undertakings referred to in (a) to (f) above.
- (i) to supply to ASIC prior to its circulation a draft of any future disclosure document utilised in relation to the mortgage loan to Nelly Bay Harbour Pty Ltd; and
- (j) to henceforth only issue interests to persons to participate in the mortgage loan to Nelly Bay Harbour Pty Ltd on the receipt of a signed application form attached to a disclosure document (including a specific prospectus utilised pursuant to CO 00/202) that complies with Div 4 of Part 6D.2 of the Law.

### 3. ACKNOWLEDGMENTS

#### 3.1 The Company acknowledges that ASIC:

- (a) may issue a media release on execution of this undertaking referring to its terms and the concerns of ASIC which led to its execution;
  - (b) may from time to time publicly refer to this undertaking; and
  - (c) will make this undertaking available for public inspection.
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3.2 The Company further acknowledges:

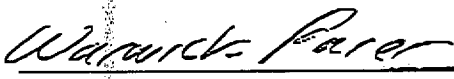
- (a) that this undertaking in no way derogates from the rights and remedies available to ASIC or any other person or entity arising from any conduct described in this undertaking;
- (b) that ASIC's acceptance of an enforceable undertaking does not affect ASIC's power to investigate a contravention arising from future conduct, or pursue a criminal prosecution, or its power to lay charges or seek a pecuniary civil order; and
- (c) that this undertaking has no operative force until accepted by ASIC.

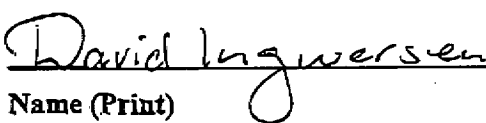
The Common Seal of Ingwersen & Lansdown )  
Securities Limited (ACN 088 636 220) was duly  
affixed to this undertaking in the presence of: )



  
\_\_\_\_\_  
Director

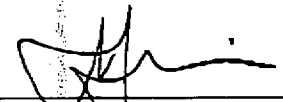
  
\_\_\_\_\_  
Director/Secretary

  
\_\_\_\_\_  
Name (Print)

  
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Name (Print)

This            day of February 2001.

ACCEPTED BY THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION  
PURSUANT TO SECTION 93A OF THE ASIC LAW BY ITS DULY AUTHORISED  
DELEGATE:

  
\_\_\_\_\_  
Jan Spiers  
Director Regulation

Queensland Regional Office  
This 5<sup>th</sup> day of ~~February~~ <sup>March</sup> 2001. 