



Securities Act (Jacks Point Development) Exemption Notice 2010

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

- 1 Title**
This notice is the Securities Act (Jacks Point Development) Exemption Notice 2010.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 31 December 2010.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

communal facilities means the following facilities that are owned, leased, licensed, maintained, held, levied, or operated in whole or in part by the society:

- (a) any land or any right over, or interest in, land within the development that is designated by the developer or the society for use by the owners or occupiers of developed properties, by invitees, or by certain classes of those persons (including public or private access roads):
- (b) chattels, fixtures, fittings, plant, equipment, and other amenities used, or intended, adopted, or designed for use, in connection with the use of the developed properties by those owners, occupiers, or invitees:
- (c) utilities

controlling member means the controlling member of the society in accordance with the rules

developed property means a property within the development for which a certificate of title has been or will be issued, or for which a computer register has been or will be created,—

- (a) for an estate in fee simple under the Land Transfer Act 1952; or
- (b) for a stratum estate under the Unit Titles Act 1972 or the Unit Titles Act 2010

developer—

- (a) means Jacks Point Limited; and
- (b) includes any assignee or successor in title of Jacks Point Limited (in whole or in part) that continues the promotion and carrying out of the development

development means—

- (a) any residential development undertaken within the area of the Jacks Point Zone:
- (b) any residential and commercial development undertaken within the area of the Jacks Point Zone

golf course means the golf course constructed as part of the development

group means the group comprising the operator of the golf course and any subsidiary of that operator

interest in the golf course includes—

- (a) any estate or interest in the land on which the golf course is located;
- (b) any shares in a company that is the registered proprietor of any estate or interest in the land on which the golf course is located;
- (c) any shares in a company that owns or operates the business of the golf course (in whole or in part);
- (d) the business of the golf course (in whole or in part);
- (e) any assets of that business (in whole or in part)

Jacks Point Zone means the residential and commercial development zone known as Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Section 12 of the Queenstown Lakes District Plan

lease, in relation to any lease by the society in connection with communal facilities, means a lease pursuant to a memorandum of lease registered under the Land Transfer Act 1952 or for which a computer interest register has been created under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

members' interest group has the same meaning as it has in the rules

pecuniary gain has the same meaning as in the Incorporated Societies Act 1908

registered valuer means a person who is a registered valuer within the meaning of the Valuers Act 1948

Regulations means the Securities Regulations 2009

related entity, in relation to a person, means—

- (a) any holding company of the person;
- (b) any person that is an associated person or subsidiary of that holding company or of the person

rules means the constitution of the society that is registered under the Incorporated Societies Act 1908 as the rules of the society

sale agreement means an agreement for the sale of a developed property and a specified security

society means the Jacks Point Residents & Owners Association Incorporated, a society incorporated under the Incorporated Societies Act 1908

specified security means a participatory security in the form of membership of the society that confers rights to participate in the ownership and use of all or part of the communal facilities

utilities means the following utilities and services:

- (a) sealed vehicle access over all roading within the development (including roading that is accessible to the public connecting to the adjoining State highway):
- (b) underground gas and drainage reticulation connecting 1 or more developed properties to any sewage treatment plant, disposal system, or gas supply:
- (c) wastewater and stormwater disposal systems:
- (d) service lines connecting 1 or more developed properties to appropriate supply networks:
- (e) underground domestic and irrigation water supply reticulation connecting 1 or more developed properties to any water supply system (including storage tanks and treatment facilities):
- (f) any other utilities or services ancillary to the use or enjoyment of a developed property or the development

utility company—

- (a) means any company that holds, maintains, or manages any of the utilities or communal facilities (or both); and
- (b) includes the water company

vendor, in relation to a specified security, means any person who acquires the security with a view to its being offered for sale to the public in New Zealand if the security has not previously been offered for sale to the public in New Zealand

water company means a company that is established to provide domestic and irrigation water supply to the development.

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
 - (a) that registered valuer and any director of a vendor of an interest in the golf course or of any associated person of that vendor are relatives, one being the spouse, civil

- union partner, or de facto partner of the other or being the parent, brother, sister, or child of the other or of the spouse, civil union partner, or de facto partner of the other; or
- (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the report under clause 6(1)(n)(iii),—
- (i) a shareholder or director of a vendor of an interest in the golf course or any associated person of that vendor; or
- (ii) a shareholder or director of any company that is a holding company or subsidiary of a vendor of an interest in the golf course or any associated person of that vendor or that is a partner or joint venturer with a vendor of an interest in the golf course or any associated person of that vendor; or
- (c) there is any other relationship or interest between the registered valuer and a vendor of an interest in the golf course or any associated person of that vendor that is likely to influence the judgement of the registered valuer.
- (3) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions from sections 33(3), 37, 37A, 38A, and 54 of Act and Regulations (except regulation 23)

The developer, the society, every vendor, and every person acting on behalf of any or all of them are exempted from sections 33(3), 37, 37A, 38A, and 54 of the Act and the Regulations (except regulation 23) in respect of specified securities of which the developer, the society, or the vendor is an issuer.

6 Conditions

- (1) The exemptions in clause 5 are subject to the following conditions:

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- (a) subscribers for specified securities have, before subscription, been supplied by the developer or the relevant vendor with a copy of each of the following documents:
 - (i) the rules;
 - (ii) the management agreement for the society (if any);
 - (iii) a specimen of the sale agreement;
 - (iv) a specimen of any lease for communal facilities;
 - (v) any agreement between the water company, the society, and the developer in connection with the supply of water to the development; and
 - (b) the specified securities are subscribed for by entering into a sale agreement; and
 - (c) deposit moneys paid by a subscriber for specified securities are held in any of the following trust accounts until the sale agreement becomes unconditional:
 - (i) a trust account operated by a solicitor or a conveyancing practitioner or an incorporated firm (as each of those terms is defined in section 6 of the Lawyers and Conveyancers Act 2006); or
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 2008; or
 - (iii) a trust account operated by a trustee company under the Trustee Companies Act 1967; and
 - (d) no settlement of a sale agreement is completed unless,—
 - (i) if the developer or the relevant vendor represents or agrees that certain communal facilities will be held by the society at the time of settlement of the sale agreement, those communal facilities are held in accordance with that representation or agreement; and
 - (ii) if any right or interest in land is included in the communal facilities to be held by the society at the time of settlement of the sale agreement, that right or interest is registered on the certificate of title, or computer register, for that land at that time; and

- (iii) if the developer or the relevant vendor represents or agrees that the society will hold any shares in any utility company at the time of settlement of the sale agreement, the society holds those shares in accordance with that representation or agreement; and
- (e) if the society leases or agrees to lease any communal facilities (other than an interest in the golf course),—
 - (i) the communal facilities are owned, or to be owned, by subscribers for specified securities; and
 - (ii) interests in the communal facilities can only be purchased with a purchase of developed property; and
- (f) it is a term of the offer of the specified securities that the rules provide that if any shares are held, or to be held, by the society in a utility company, the constitution of the utility company provides that the utility company cannot—
 - (i) carry on trading activities for profit; or
 - (ii) carry on a business for profit; and
- (g) it is a term of the sale agreement that the specified securities can be obtained only on the purchase of a developed property and, on resale, must be sold with that developed property; and
- (h) it is a term of the offer of the specified securities that the developer or the relevant vendor provides to a prospective purchaser of a developed property from the developer or that vendor, within 5 working days after receiving a request, a copy of the most recent financial statements of the society; and
- (i) it is a term of the offer of the specified securities that the rules provide that the financial statements of the society are audited annually and distributed to members of the society as soon as is reasonably practicable after each audit is completed, and in any event no later than 5 months after the end of each accounting period of the society; and

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- (j) it is a term of the offer of the specified securities that the rules provide that all moneys paid to the society by its members under the rules are applied only for any or all of the following purposes:
- (i) holding, administering, operating, and maintaining the communal facilities and any utilities owned by a utility company (including issuing licences to members of the society or shareholders of the utility company that confer rights solely on those members or shareholders to use the communal facilities or utilities, and administering those licences in accordance with the rules);
 - (ii) administering and enforcing a scheme for the regulation and control of matters relating to the use and enjoyment, repair, decoration, and landscaping of, and provision of services to, developed properties;
 - (iii) providing and maintaining services, utilities, facilities, and benefits (including the golf course) to developed properties;
 - (iv) providing for any incidental or other matters that the society considers are beneficial for members; and
- (k) it is a term of the offer of the specified securities that the rules provide that—
- (i) members of the society have the right to use and enjoy all or part of the communal facilities in accordance with the rules and any relevant deed; and
 - (ii) members of the society have the right to vote at meetings of members of the society; and
 - (iii) if the society is wound up, any interest of the society in communal facilities and any shares in any utility company held by the society vest in the members of the society as tenants in common; and
 - (iv) levies, fees, or subscriptions payable to the society by its members are determined by the mem-

- bers of the society in accordance with a procedure set out in the rules; and
- (l) the society does not have as objects—
 - (i) the carrying on of trading activities for pecuniary gain; or
 - (ii) the carrying on of a business for pecuniary gain; and
 - (m) it is a term of the offer of the specified securities that the rules provide that the society may exercise its right of first refusal over an interest in the golf course or otherwise acquire an interest in the golf course only if that action is approved in advance by a special resolution passed by the members of the society (excluding certain persons in accordance with subclause (4)); and
 - (n) it is a term of the offer of the specified securities that the rules provide that, before a special resolution referred to in paragraph (m) is voted on, the society must have received the following:
 - (i) a copy of summary financial statements for the business of the golf course containing, with any necessary modifications, the matters specified in subclause (2) in respect of the 5 accounting periods of the operator of the golf course that precede the proposed date of the special resolution;
 - (ii) particulars of the interest concerned;
 - (iii) a copy of a report by an independent registered valuer stating the capital value of the golf course;
 - (iv) a statement by the directors of the operator of the golf course as to whether, after due inquiry by them in relation to the period between the date of the most recent summary financial statements referred to in subparagraph (i) and the date that those summary financial statements are provided to the society in relation to the special resolution, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (A) the profitability or activities of the business of the golf course; or

- (B) the value of the assets of the business of the golf course; or
- (C) the ability of the business of the golf course to pay its liabilities due within the next 12 months:
- (v) particulars of any material matters relating to the society's decision to exercise the right of first refusal or to otherwise acquire the interest in the golf course (as the case may be); and
- (o) it is a term of the offer of the specified securities that the rules provide that an independent mediator must be appointed to act in a dispute between any members of the society and the developer concerning the developer's compliance with the rules when exercising its powers, or performing its duties, as the controlling member, if at least 50% of the members of a members' interest group (excluding the developer) or 25% of all members of the society (excluding the developer) vote to appoint a mediator; and
- (p) it is a term of the offer of the specified securities that the rules provide that the society will provide to a member of the society, within 5 working days of receiving a request, a statement of levies, fees, or charges that are estimated to be or were payable by subscribers in relation to the development for the period beginning on 17 February 2006 and ending on 31 December 2010 that—
 - (i) comprises estimates, historical data, or both; and
 - (ii) is itemised in relation to the different facilities and services provided in relation to the development; and
 - (iii) contains a statement in relation to each of those facilities and services on whether the levy, fee, or charge payable for that facility or service is fixed, variable, or based on the capital value of the developed property; and
 - (iv) contains a statement on which of those facilities and services were, or are expected to be, provided in each year within that period; and

- (v) contains a statement on what stage the development is at, or expected to be at, as at the end of each year within that period; and
 - (vi) contains, if a levy, fee, or charge is based on the capital value of a developed property, a statement of a formula by which the levy, fee, or charge can be calculated, together with a worked example; and
 - (vii) contains a statement of the principal assumptions on which any estimates are based; and
 - (q) a subscriber for specified securities has, before subscription, received a statement described in paragraph (p) if the relevant developed property is purchased from the developer or a vendor.
- (2) The matters referred to in subclause (1)(n)(i) are—
- (a) a financial statement in summary form (and, where practicable, in tabular form) in respect of the group:
 - (b) the amounts in the financial statement required by paragraph (a) must be amounts that appear in consolidated financial statements of the group that give a true and fair view of the results and state of affairs of the group for the period concerned, or, where no such statements have been prepared, amounts that would have appeared in such statements if they had been prepared:
 - (c) the amounts that appear in the financial statement required by paragraph (a) must include amounts showing—
 - (i) total operating revenues:
 - (ii) total interest expense:
 - (iii) the net surplus or deficit before taking account of taxation and extraordinary items:
 - (iv) the total provided for, or credited by way of, taxation:
 - (v) the net surplus or deficit before taking account of extraordinary items:
 - (vi) the total of any extraordinary items (net of taxation) that derive from events outside the ordinary activities of the group's business:

- (vii) the net surplus or deficit after taking account of extraordinary items:
- (viii) if the equity method of accounting has been used, surpluses or deficits that have resulted from using that method:
- (ix) the totals of each of the amounts required by subparagraphs (vii) and (viii):
- (x) such part of the total required by subparagraph (ix) as is attributable to persons who are not members of the group and who hold equity securities issued by subsidiaries of the issuer:
- (xi) the amount paid or provided for dividends in respect of each class of equity securities of the issuer, including for each class the rate of dividend expressed in cents per share:
- (xii) the surplus or deficit retained in the group:
- (d) the amounts that appear in the financial statement required by paragraph (a) must include, as at the end of each accounting period specified in subclause (1)(n)(i) and other period specified in subclause (1)(n)(iv), amounts showing—
 - (i) total assets:
 - (ii) total tangible assets:
 - (iii) total liabilities:
 - (iv) total equity:
- (e) a statement as to whether or not the amounts stated pursuant to paragraphs (b), (c), and (d) have been taken from audited financial statements:
- (f) if the amounts stated in the financial statement required by paragraph (a) have been taken from audited financial statements but the auditor's report is qualified, a statement to this effect explaining what the qualification is:
- (g) in respect of the amounts stated pursuant to paragraphs (b), (c), and (d),—
 - (i) a description of the nature of any extraordinary items:
 - (ii) a description of the nature of any item that is of such incidence and size, or of such nature, that

- its disclosure is necessary to explain the performance of the group:
- (iii) a description (and, where practicable, quantification) of the effect on those amounts of any material changes in the activities of the group, and of any material changes in the accounting policies used, that occurred during the periods to which the amounts relate.
- (3) A condition in subclause (1)(f), (i) to (k), or (m) to (p) ceases to apply if—
- (a) an amendment to the rules is approved by a special resolution passed by the members of the society (excluding the developer, the controlling member, and any vendor); and
 - (b) the amendment results in the rules no longer complying with the condition.
- (4) For the purposes of subclause (1)(m), a person must not vote on a special resolution referred to in that paragraph if the person, or a related entity of that person,—
- (a) is the vendor of the interest referred to in that paragraph; or
 - (b) has sold the interest referred to in that paragraph to a third party with a view to the third party on-selling the interest (whether to the society or otherwise), and that third party is the vendor of that interest.

Dated at Wellington this 20th day of July 2010.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

N O Todd,
Member.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 31 December 2010, exempts Jacks Point Limited (and any assignee or successor in title of that company), the Jacks Point Residents & Owners Association Incorporated (the **society**), and certain potential vendors from sections 33(3), 37, 37A, 38A, and 54 of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (except regulation 23), subject to conditions, in respect of the offer of certain participatory securities. The securities are in the form of membership of the society and confer rights to participate in the ownership and use of all or part of the communal facilities in a development undertaken at Jacks Point, Queenstown.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- section 5(1)(b) of the Act exempts offers of land or an interest in land for which a separate certificate of title can be issued from compliance with Part 2 of the Act;
- the securities offered are participatory securities, being memberships in an incorporated society that will own, manage, or maintain communal facilities or provide communal services for the benefit of all members. These securities are ancillary to the ownership of land and are not intended for the purposes of investment, but rather to confer ownership rights or rights to use the communal facilities in the development:

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- the society may in the future acquire a golf course that is part of the development. This may result in it operating a business. The conditions of exemption require that this can only occur if a special resolution is passed by the residents, prior to which they must have received certain relevant information in relation to the golf course:
 - the Commission's policy regarding real property developments has evolved to require that further information be provided to potential investors prior to subscription. However, to ensure that suitable conditions are provided, and to allow the issuer time to adjust to these conditions, the Commission considers it appropriate to grant an exemption for 6 months only, on similar terms and conditions to the expired Securities Act (Jacks Point Development) Exemption Notice 2006.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 22 July 2010.

This notice is administered by the Securities Commission.
