



## Securities Act (Hawthorn Water Limited) 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 (Hawthorn Water Limited) 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 May 2015.

**4 Interpretation**

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

**Act** means the Securities Act 1978

**computer register** means—

- (a) a computer register within the meaning of section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002;
- (b) a certificate of title issued under the Land Transfer Act 1952 or the Unit Titles Act 1972

**developer** means an issuer, a promoter, or a transferor of a specified security

**HWL** means Hawthorn Water Limited

**lot** means a parcel of land that—

- (a) is contained within a separate computer register; and
- (b) is owned by a person who holds an interest in the water permit; and
- (c) contains, or whose owner has the right to build on it, a residential unit; and
- (d) is situated, in whole or in part, within 850 metres of the point at which Lot 4 (identifier 171036) on Deposited Plan 341569 (Otago Registry) adjoins all of the following lots:
  - (i) Lot 5 (identifier 171037);
  - (ii) Lot 6 (identifier 171038);
  - (iii) Lot 7 (identifier 171039)

**offer** means an offer of specified securities to the public

**owner**, in relation to a lot, means a registered proprietor of a fee simple, leasehold, or stratum estate in the lot

**Regulations** means the Securities Regulations 2009

**sale agreement** means an agreement for the sale of a fee simple, leasehold, or stratum estate in a lot adopted or entered into by a developer as vendor

**specified security** means—

- (a) a share in HWL;
- (b) a security giving the holder an interest in the water permit

**water facilities** means—

- (a) the system used to supply water to lots (including, without limitation, all bores, pumps, pipes, lines, conduits, tanks, electrical installations, water treatment equipment, water meters, water storage equipment, and installations used for firefighting purposes);
- (b) the supply of water to lots by means of the system referred to in paragraph (a)

**water permit** means the water permit granted by the Otago Regional Council with consent number 2002.666 (and includes any replacement or additional water permit that authorises the taking of water supplied by way of the water facilities).

- (2) 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**

Every developer, HWL, and every person acting on behalf of either or both of them are exempted from sections 33(3), 37, 37A, 38A, and 54 of the Act and from the Regulations (except regulation 23) in respect of specified securities.

## **6 Condition of exemptions relating to documentation that subscriber must receive**

The exemptions in clause 5 are subject to the condition that, before subscribing for the specified securities, the subscriber must have received all of the following from the developer:

- (a) a copy of HWL's constitution;
- (b) a copy of any agreement about the management of HWL's business;
- (c) if a lot is being sold to the subscriber in conjunction with the offer, a specimen of the sale agreement;
- (d) a document that sets out in a prominent position—
  - (i) a description of the water facilities that are owned, leased, licensed, maintained, administered, or operated in whole or in part by HWL; and

- (ii) a description of the rights and obligations of shareholders of HWL in relation to the water facilities and the specified securities; and
  - (iii) a description of the voting rights of the subscriber, as a shareholder of HWL, in respect of the specified securities (including a statement as to whether HWL's constitution provides for voting by classes of shareholders, or by a representative, in relation to particular matters):
- (e) a specimen of all of the following documents that contain provisions concerning the rights and obligations referred to in paragraph (d)(ii):
- (i) material instruments that will be executed by subscribers for specified securities:
  - (ii) deeds:
  - (iii) agreements:
- (f) a statement of levies, fees, or charges that are estimated to be, or were, payable by shareholders of HWL for each calendar year beginning with 2010 and ending with the fourth calendar year after the calendar year in which the statement is provided that—
- (i) comprises estimates, historical data, or both; and
  - (ii) contains a statement as to whether the levies, fees, or charges payable are fixed, variable, or based on the water usage of the lot; and
  - (iii) contains, if a levy, fee, or charge is variable, a statement of the factors that influence how the levy, fee, or charge can vary; and
  - (iv) contains a statement of the principal assumptions on which any estimates are based; and
  - (v) contains a statement as to whether the estimates have been reviewed by an independent third party acting in his or her professional capacity or consist only of the expression of the developer's opinion.

## 7 **Condition of exemptions relating to deposit moneys**

The exemptions in clause 5 are subject to the condition that, if a lot is being sold to the subscriber in conjunction with the offer,

any deposit moneys paid by the subscriber for the specified securities must be held in 1 of the following trust accounts until the sale agreement becomes unconditional:

- (a) a nominated trust account operated by a lawyer, an incorporated law firm, a conveyancing practitioner, or an incorporated conveyancing firm under the Lawyers and Conveyancers Act 2006:
- (b) a trust account operated by a real estate agent under the Real Estate Agents Act 2008:
- (c) a trust account operated by a trustee company under the Trustee Companies Act 1967.

#### **8 Condition of exemptions relating to HWL's constitution**

The exemptions in clause 5 are subject to the condition that it must be a term of the offer that HWL's constitution will contain the following provisions:

- (a) every owner of a lot is entitled to be a shareholder of HWL:
- (b) no person other than an owner of a lot may be a shareholder of HWL:
- (c) HWL is prohibited from carrying on trading activities and business for profit.

#### **9 Further condition of exemptions relating to HWL's constitution**

(1) The exemptions in clause 5 are subject to the condition that it must be a term of the offer that, except in the circumstances referred to in subclause (2), HWL's constitution will contain the following provisions:

- (a) HWL is permitted to carry on only the following activities:
  - (i) owning, leasing, licensing, maintaining, administering, or operating the water facilities:
  - (ii) allowing its shareholders to use the water facilities and administering and enforcing the rights to use the water facilities in accordance with its constitution:

- (iii) managing, on behalf of its shareholders, the water permit and the monitoring and administration associated with it:
  - (iv) managing and administering the business of HWL, including enforcing its constitution and the covenant and encumbrance (as defined in the constitution):
  - (v) providing and maintaining services, utilities, facilities, and benefits associated with the water facilities for use in conjunction with lots:
  - (vi) any incidental activities that HWL considers are beneficial for its shareholders:
- (b) all moneys paid to HWL by its shareholders are applied only for the activities referred to in paragraph (a):
  - (c) shareholders of HWL have the right to use the water facilities in accordance with the constitution:
  - (d) shareholders of HWL have the right to vote at meetings of shareholders of HWL:
  - (e) on a liquidation of HWL, each shareholder of HWL has the right to share pro rata with all other shareholders of HWL in a distribution of any surplus assets of HWL:
  - (f) levies, fees, or charges payable to HWL by its shareholders are determined only by a resolution of the shareholders, or of a committee of the shareholders, passed in accordance with the constitution:
  - (g) HWL provides to a prospective purchaser of a lot, within 5 working days after receiving a request, a copy of the most recent financial statements of HWL:
  - (h) financial statements of HWL that comply with the Financial Reporting Act 1993 are audited annually and are distributed to shareholders of HWL as soon as is reasonably practicable after each audit is completed and, in any event, no later than 5 months after the balance date of HWL.
- (2) The circumstances are that—
- (a) an amendment to HWL's constitution that results in the constitution no longer containing a provision referred to in subclause (1) is approved by a special resolution; and

- (b) every person who subscribed for specified securities before the date on which the amendment is approved received from the developer, before subscribing for the specified securities, a statement that describes the procedure for amending the constitution in accordance with this clause.
- (3) In this clause, **special resolution** means a resolution approved by a majority of 75%, or, if a higher majority is required by HWL's constitution, that higher majority, of the votes of shareholders of HWL apart from Hawthorn Estate Limited that are entitled to vote and vote on the question.

Dated at Wellington this 1st day of June 2010.

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

[Seal]

J Diplock,  
Chairperson.

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### 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 May 2015, provides exemptions from certain provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 in respect of certain securities that relate to rights to, and the supply of, water on land near 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; and
- the securities offered are equity and participatory securities, being shares in a company that will own, manage, and maintain water facilities for the benefit of all shareholders, and an interest in a water permit. The ability to subscribe for an equity security is dependent on the subscriber already having acquired an interest in the water permit. These securities are ancillary to the ownership of the land and are not intended for the purpose of investment, but rather confer rights to water; and
- the conditions of the exemptions require that potential investors receive important information prior to subscription regarding the intended water facility.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 3 June 2010.  
This notice is administered by the Securities Commission.

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