



Securities Act (Waipamu Station 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).

Contents

		Page
1	Title	1
2	Commencement	1
3	Expiry	1
4	Interpretation	1
5	Exemptions from sections 37, 54A, and 54B of Act	3
6	Conditions of exemptions in clause 5	4

Notice

- 1 Title**
 This notice is the Securities Act (Waipamu Station 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 28 February 2014.
- 4 Interpretation**
 (1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

business day means any day of the week other than Saturday, Sunday, or a public holiday (as defined in section 44(1) of the Holidays Act 2003)

communal facilities means the following facilities that are owned, maintained, held, or operated in whole or in part by the management company:

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

constitution means the constitution of the management company

controlling shareholder means any controlling shareholder of the management company, as that term is defined in the constitution

developer—

- (a) means Waipamu Developments Limited; and
- (b) includes any assignee or successor in title of Waipamu Developments Limited that continues to complete the promotion and sale of residential properties in the development

development means the residential development at 387 Pokuru Road, Whakamaru comprising lots 1 to 12, 14 to 51, 60, and 62 on DP 408852 South Auckland Registry

management company means Waipamu Station Limited

offer means the offer of specified equity securities to the public

proposed subscriber means a person intending to enter into a sale agreement for the purchase of a residential property and a specified equity security

Regulations means the Securities Regulations 2009

residential property means a residential property within the development for which—

- (a) a certificate of title has been issued for an estate in fee simple under the Land Transfer Act 1952; or
- (b) a computer freehold register has been created under the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002

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

shareholder means a person holding 1 or more specified equity securities

specified equity security means a share in the management company

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 and that connects to the adjoining State Highway;
 - (b) service lines connecting 1 or more residential properties to appropriate supply networks;
 - (c) underground domestic and irrigation water supply reticulation connecting 1 or more residential properties to any water supply system;
 - (d) any other utilities or services ancillary to the use or enjoyment of a residential property or the development.
- (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 from sections 37, 54A, and 54B of Act

- (1) The developer, the management company, and every person acting on behalf of either or both of them are exempted from section 37 of the Act in respect of any specified equity security.
- (2) The developer and every person acting on its behalf are exempted from sections 54A and 54B of the Act in respect of any specified equity security.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the following conditions:
- (a) the developer has supplied to each proposed subscriber for a specified equity security a copy of each of the following documents:
 - (i) the constitution;
 - (ii) a copy of the title or computer freehold register for the residential property proposed to be acquired by the proposed subscriber;
 - (iii) the proposed sale agreement relating to that proposed subscriber and that property;
 - (iv) design guidelines applying to the development;
 - (b) the specified equity securities are subscribed for by each subscriber entering into a sale agreement with the developer;
 - (c) it is a term of the sale agreement that the specified equity securities can be obtained only on the purchase of a residential property and, on resale of that property, must be sold with that property;
 - (d) the investment statement relating to the offer contains, or is accompanied by,—
 - (i) forecast statements of financial position, cash flows, and financial performance of the management company for the 15-month period ending on 30 June 2010 and for the years ending on 30 June 2011 and 30 June 2012; and
 - (ii) a statement describing the developer's view of the long-term financial prospects of the management company and the operations and activities for which money is applied under paragraph (i); and
 - (iii) a statement of who is to meet expenses of the management company in the event that all the specified equity securities are not subscribed for;
 - (e) the forecast statements referred to in paragraph (d)(i) include—

- (i) an estimate of the contributions to be levied from each subscriber during the period covered by the statements; and
 - (ii) a statement of the principal assumptions on which those estimates are based:
- (f) deposit money paid by a subscriber for a specified equity security and residential property is to be held in any of the following trust accounts until the sale agreement becomes unconditional:
 - (i) a trust account operated by a solicitor or an incorporated law firm (as each of those terms is defined in section 6 of the Lawyers and Conveyancers Act 2006):
 - (ii) a trust account operated by a conveyancing practitioner or an incorporated conveyancing firm (as each of those terms is defined in section 6 of the Lawyers and Conveyancers Act 2006):
 - (iii) a trust account operated by a real estate agent under the Real Estate Agents Act 2008:
 - (iv) a trust account operated by a trustee company under the Trustee Companies Act 1967:
- (g) it is a term of the offer that the developer provides any proposed subscriber or subscriber, within 5 business days after being asked to do so, with a copy of the most recent financial statements of the management company:
- (h) it is a term of the offer that the financial statements of the management company are audited annually and distributed to shareholders 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 financial year of the management company:
- (i) it is a term of the offer that the constitution provides that all money paid to the management company by shareholders under the constitution is applied solely for the following purposes:
 - (i) holding, administering, and maintaining the communal facilities:

- (ii) the operation of the communal facilities as a farm:
- (iii) administering and enforcing a scheme for the regulation and control of matters relating to—
 - (A) the use and enjoyment, repair, improvement, and landscaping of the communal facilities; and
 - (B) the conservation of land between the development and the foreshore of Lake Whakamaru; and
 - (C) the provision of services to the residential properties:
- (iv) providing and maintaining services, facilities, and benefits to the residential properties:
- (v) providing for any incidental or other matters that the management company considers are beneficial for shareholders:
- (j) it is a term of the offer that the constitution provides that—
 - (i) shareholders have the right to use and enjoy the communal facilities; and
 - (ii) shareholders have the right to vote at meetings of the management company; and
 - (iii) the levies, fees, or subscriptions payable by shareholders to the management company are determined by shareholders at a meeting of the management company:
- (k) it is a term of the offer that the constitution contains a provision to the effect that the management company may carry on business only if that business is necessary or expedient for the purpose of the continued operation of the communal facilities as a farm:
- (l) it is a term of the offer that the constitution provides that, while the developer is the controlling shareholder, an independent mediator must be appointed to act if at least 25% of shareholders (excluding the developer as controlling shareholder) vote to appoint a mediator in any dispute between the shareholders and the developer concerning the developer's exercise of its powers

- or performance of its duties, under the constitution, as controlling shareholder:
- (m) while the developer is the controlling shareholder, proposed subscribers for specified equity securities must, before subscription, have received from the developer a statement that—
 - (i) describes the rights, powers, and duties of the controlling shareholder in relation to both the management company and the communal facilities; and
 - (ii) specifies where and how proposed subscribers and shareholders of the management company may obtain further information concerning the rights, powers, and duties referred to in subparagraph (i); and
 - (iii) states that proposed subscribers should seek professional advice before entering into a sale agreement.
 - (2) A condition in subclause (1)(i) or (j) ceases to apply if—
 - (a) an amendment to the constitution is approved by a special resolution passed by shareholders (excluding the developer while it is the controlling shareholder); and
 - (b) the amendment results in the constitution no longer complying with the condition.

Dated at Wellington this 14th day of June 2010.

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

[Seal]

David Mayhew,
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 28 February 2014, exempts Waipamu Developments Limited and Waipamu Station Limited from section 37 of the Securities Act 1978 (the **Act**) and exempts Waipamu Developments Limited from sections 54A and 54B of the Act, subject to conditions.

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 equity securities, being shares in a company that will own, manage, or maintain communal facilities for the benefit of shareholders. These securities are ancillary to the ownership of residential lots and are not intended for the purpose of investment, but rather confer ownership rights in respect of the company or rights to use the communal facilities in the development:
 - the conditions of the exemptions require that potential investors receive important additional information with the investment statement, including information on levies, and have access to a dispute resolution mechanism if necessary.
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