



Securities Act (Serenity Cove Development Limited) Exemption Notice 2007

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 (Serenity Cove Development Limited) Exemption Notice 2007.

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 29 February 2012.

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 management company:

- (a) land, or a right over or interest in land, within the development (including public or private access roads), that is designated by the developer or the management company for use by the owners or occupiers of residential properties, by invitees, or by certain classes of those persons:
- (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 the controlling shareholder of the management company, as that term is defined in the constitution

developer—

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

development means the residential development undertaken by the developer on the site at 387 Pokuru Road, Whakamaru

management company means Serenity Cove Farm Limited

offer means the offer of specified equity securities to the public

Regulations means the Securities Regulations 1983

residential property means a residential 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

sale agreement means an agreement for the sale of a residential property

shareholder means a person holding 1 or more shares in the management company

specified equity security means a share in the share capital of 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) underground gas and drainage reticulation connecting 1 or more developed properties to any sewage treatment plant, disposal system, or gas supply;
 - (c) waste water and storm water 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 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 Exemption for specified equity securities

- (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

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

- (a) the developer has supplied to each subscriber for a specified equity security a copy of each of the following documents:
 - (i) the constitution;
 - (ii) a specimen of any deed or agreement providing for the transfer of communal facilities from the developer to the management company;
 - (iii) the proposed sale agreement relating to that subscriber;
 - (iv) a specimen of the memorandum of encumbrance, which is the encumbrance over the communal facilities given by the developer in favour of the management company;
 - (v) building covenants applying to the development;
 - (vi) 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, must be sold with that residential 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 period ending on 30 June 2007 and for the year ending on 30 June 2008; 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 (j); 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 financial statements 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 under the Law Practitioners Act 1982;
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 1976;
 - (iii) a trust account operated by a trustee company under the Trustee Companies Act 1967:
- (g) no settlement of a sale agreement may be completed until—
 - (i) the land forming part of the communal facilities has been transferred to the management company; and
 - (ii) the chattels forming part of the communal facilities are owned by the management company:
- (h) it is a term of the offer that the developer provides any subscriber or prospective purchaser of a residential property, within 5 business days after being asked to do so, with a copy of the most recent financial statements of the management company:
- (i) 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 accounting period of the management company:
- (j) 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) administering and enforcing a scheme for the regulation and control of matters relating to the use and enjoyment, repair, improvement, and landscaping of, and provision of services to, the residential properties:

- (iii) providing and maintaining services, utilities, facilities, and benefits to the residential properties;
 - (iv) providing for any incidental or other matters that the management company considers are beneficial for shareholders;
 - (k) 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;
 - (l) 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;
 - (m) it is a term of the offer that the constitution provides that 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.
- (2) A condition mentioned in clause (1)(j) or (k) ceases to apply if—
 - (a) an amendment to the constitution is approved by a special resolution passed by shareholders (excluding the developer as controlling shareholder); and
 - (b) the amendment results in the constitution no longer complying with the condition.

Dated at Wellington this 6th day of March 2007.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 29 February 2012, exempts Serenity Cove Development Limited and Serenity Cove Farm Limited from section 37 of the Securities Act 1978 (the **Act**) and exempts Serenity Cove Development 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 which will own, manage, or maintain communal facilities for the benefits of all members. These securities are ancillary to the ownership of land and are not intended for the purpose of investment, but rather confer ownership rights or rights to use the communal facilities in the development:
- the conditions of the exemption 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.

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

Date of notification in *Gazette*: 8 March 2007.

This notice is administered by the Securities Commission.
