



Securities Act (Kensington Park Properties 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 (Kensington Park Properties 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 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

developer—

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

development means any residential development undertaken by the developer on the site generally bounded by Puriri Avenue, Centreway Road, Millennial Way and Alice Eaves Scenic Reserve in Orewa

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

offer means the offer of specified securities to the public

Regulations means the Securities Regulations 1983

rules means the rules of the society

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

society means the Kensington Park Residents' 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

undeveloped land means those portions of land being Lot 3 Deposited Plan 318969 comprised in certificate of title NA74275 and Lot 1 Deposited Plan 66936 comprised in certificate of title NA78D/762 (North Auckland Land Registry)

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) 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 developed 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

The developer, the society, and every person acting on behalf of either or both of them are exempted from sections 33(3), 37, 37A, 38A, 54, and 54B(3) of the Act and from the Regulations (except regulation 8) in respect of specified securities of which the developer or the society is an issuer.

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 specified securities, before subscription, a copy of each of the following documents:
 - (i) the rules (including a copy of any agreement for the management of the society's affairs);
 - (ii) a specimen of any deed or agreement providing for the transfer of communal facilities from the developer to the society;
 - (iii) the proposed sale agreement relating to that subscriber;
 - (iv) a specimen of any lease agreement for communal facilities; and
 - (b) the developer has supplied to each subscriber for the specified securities, before subscription, a document that prominently sets out—
 - (i) for each stage of the development, the intended communal facilities; and
 - (ii) the material risks of those communal facilities not being transferred to the society at each stage; and
 - (iii) a statement that—
 - (A) the developer and the controlling member have certain rights in relation to the society and the communal facilities; and
 - (B) further information regarding these rights is contained in the rules; and
 - (C) potential investors should seek professional advice before purchasing a developed property; and
 - (c) the specified securities are subscribed for by each subscriber entering into a sale agreement with the developer; and
 - (d) 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

- (e) deposit monies 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 under the Law Practitioners Act 1982; or
 - (ii) a trust account operated by a real estate agent under the Real Estate Agents Act 1976; or
 - (iii) a trust account operated by a trustee company under the Trustee Companies Act 1967; and
- (f) it is a term of the offer that if communal facilities are leased, or are to be leased, by the society—
 - (i) the communal facilities are owned, or are 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
- (g) in respect of any communal facility that the developer represents or agrees will be held by the society at the completion of a certain stage of the development—
 - (i) the developer has executed in favour of the society a deed of transfer for that communal facility; and
 - (ii) it is a term of the offer that the deed of transfer is registered immediately after the subdivision of the undeveloped land and the issue of a separate certificate of title, or the creation of a computer register, for an estate in fee simple in respect of the land on which the excluded facility is to be situated; and
 - (iii) it is a term of the offer that the developer provides the deed of transfer to the society; and
- (h) if the development is advertised on the basis that the society will hold certain communal facilities at the completion of certain stages of the development or at the completion of the development, it is a term of the offer that the society holds those communal facilities at the completion of those stages or at the completion of the development; and
- (i) it is a term of the offer that the developer provides to a subscriber or a prospective purchaser of a developed

- property, within 5 working days after receiving a request, a copy of the most recent financial statements of the society; and
- (j) it is a term of the offer 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
 - (k) it is a term of the offer of the specified securities that the rules provide that all monies 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;
 - (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 to developed properties;
 - (iv) providing for any incidental or other matters that the society considers are beneficial for members; and
 - (l) it is a term of the offer that the rules provide that—
 - (i) members of the society have the right to use and enjoy the communal facilities in accordance with the rules; and
 - (ii) members of the society have the right to vote at meetings of the members of the society; and
 - (iii) on a winding up of the society, any interest of the society in communal facilities vests 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 a committee of members of the society constituted or appointed under the rules; and
 - (m) the society does not have as objects—
 - (i) the carrying on of trading activities; or
 - (ii) the carrying on of business for profit; and

- (n) it is a term of the offer 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 or in its capacity as the developer, if at least 25% of all members of the society (excluding the developer and the controlling member) vote to appoint a mediator; and
- (o) it is a term of the offer 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 the commencement of this notice and ending on 31 December 2012 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 as to 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 as to which of those facilities and services were, or are expected to be, provided in each year within that period; and
 - (v) contains a statement as to what stage the development is at, or expected to be at, 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
- (p) a subscriber for specified securities has, before subscription, received a statement described in paragraph

- (o) if the relevant developed property is purchased from the developer.
- (2) A condition in subclause (1)(k), (l), (n), or (o) 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 and the controlling member); and
 - (b) the amendment results in the rules no longer complying with the condition.
- (3) This clause is subject to clause 7.

7 Transitional provisions

- (1) The condition contained in clause 6(1)(c) does not apply to specified securities that are subscribed for by a person who purchased a developed property before this notice comes into force.
- (2) The condition contained in clause 6(1)(d) does not apply, to the extent that it requires it to be a term of the offer for the specified securities that the specified securities can be obtained only on the purchase of a developed property, to a contract for specified securities entered into by a person who purchased a developed property before this notice comes into force.

Dated at Wellington this 21st day of February 2007.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 29 February 2012.

This notice exempts Kensington Park Properties Limited (and any assignee or successor in title of that company), the Kensington Park Residents' Association Incorporated (the **Association**), and any person acting on behalf of either or both of them, subject to conditions, from sections 33(3), 37, 37A, 38A, 54, and 54B(3) of the Securities Act 1978 (the **Act**) and from the Securities Regulations 1983 (except regulation 8) in respect of the offer of participatory securities in the form of membership of the Association that confers rights to participate in the ownership and use of all or part of the communal facilities in a development undertaken at Kensington Park, Orewa, Auckland.

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 membership of an incorporated society that will own, manage, or maintain communal facilities for the benefit 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 information regarding the rights that the developer has in relation to the communal facilities, in its role as the developer and the controlling member of the society. Potential investors will also receive important information prior to subscription regarding the intended communal facilities and the risks that those communal facilities may not be owned by the society, and will have access to a dispute resolution mechanism in the event of a dispute between members and the developer.

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

Date of notification in *Gazette*: 22 February 2007.

This notice is administered by the Securities Commission.
