



## Securities Act (Eastside Trustee 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 (Eastside Trustee 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

**allotment** means a commercial or residential property in the development for which a certificate of title has been or will be issued

**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 lessors or occupiers of allotments, 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 allotments by those lessors, occupiers, or invitees:
- (c) utilities

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

**developer** means Eastside Trustee Limited, and includes any assignee or successor in title of that company

**development** means the subdivision of the land comprising QuBA into allotments and communal facilities

**lease** means a lease pursuant to a memorandum of lease registered under the Land Transfer Act 1952

**memorandum of encumbrance** means the encumbrance over the communal facilities given by the developer in favour of the society

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

**QuBA** means the property known as QuBA situated at East on Quay, Parnell, Auckland

**Regulations** means the Securities Regulations 1983

**rules** means the rules of the society

**sale agreement** means an agreement for the sale of a leasehold interest in an allotment adopted by the developer as vendor

**society** means QuBA Precinct Society Incorporated, a society incorporated under the Incorporated Societies Act 1908 that leases, or will lease, the communal facilities

**specified security** means a participatory security in the form of membership of a society that confers rights to participate in

the leasehold interest in, 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:
  - (b) underground gas and drainage reticulation connecting 1 or more allotments 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 allotments to appropriate supply networks:
  - (e) underground water supply reticulation connecting 1 or more allotments to any water supply system (including storage tanks and treatment facilities):
  - (f) any other utilities or services ancillary to the use or enjoyment of an allotment 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) the memorandum of encumbrance:
    - (iii) a specimen of the memorandum of lease for the subscriber's allotment:
    - (iv) a specimen of any deed or agreement providing for the lease of the communal facilities from the developer to the society; and

- (b) the developer has supplied to each subscriber for the specified securities, before subscription, a document that prominently sets out—
  - (i) the date by which it is anticipated that the communal facilities will be leased to the society; and
  - (ii) the material risks of the communal facilities not being leased to the society at that date; 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 by purchasing a leasehold interest in an allotment and that, on the assignment of the leasehold interest, the specified securities must be transferred with that interest; 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) in respect of any communal facilities that the developer represents or agrees will be held at the completion of the development,—
  - (i) the developer has registered in favour of the society a memorandum of encumbrance and has provided the society with that memorandum of encumbrance; and
  - (ii) it is a term of the offer that a deed of transfer in favour of the society for the leasehold interest in the communal facilities is to be registered immediately after the transfers in respect of the allotments are executed; and
- (g) 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

- (h) it is a term of the offer that the developer provides to a subscriber or a prospective purchaser of a leasehold interest in an allotment, 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 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
- (j) it is a term of the offer 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, an allotment;
  - (iii) providing and maintaining services, utilities, facilities, and benefits to allotments;
  - (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 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 members of the society; and
  - (iii) on a winding up of the society, any interest of the society in the 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
- (l) the society does not have as objects—
  - (i) the carrying on of trading activities; or
  - (ii) the carrying on of business for profit.

- (2) A condition in subclause (1)(j) or k) 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 enters into a sale agreement 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 leasehold interest in an allotment, and that on the assignment of the leasehold interest the specified securities must be transferred with that interest, to a sale agreement entered into by a person before this notice comes into force.

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.

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### 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 Eastside Trustee Limited (and any assignee or successor in title of that company), QuBA Precinct Society Incorporated (the **Society**), 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 Society that confers rights to participate in the leasehold interest in, and use of all or part of, the communal facilities in a development undertaken at Parnell, 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 lease, manage, or maintain communal facilities for the benefit of all members. These securities are ancillary to the lease of land and are not intended for the purpose of investment, but rather confer leasehold rights or rights to use the communal facilities in the development:
- the conditions of the exemptions require that potential investors receive important information before subscription regarding the communal facilities and the risk that the communal property may not be owned by the Society, and require that the developer has executed a memorandum of encumbrance to protect the Society's interest in the communal facilities.

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

Date of notification in *Gazette*: 15 March 2007.

This notice is administered by the Securities Commission.

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