

**Reprint
as at 1 July 2010**



**Securities Act (Jacks Point
Development) Exemption Notice
2006**

(SR 2006/20)

Securities Act (Jacks Point Development) Exemption Notice 2006: expired, on 1 July 2010, by clause 3.

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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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

The Securities Act (Jacks Point Development) Exemption Notice 2006 is administered by the Securities Commission.

Notice

1 Title

This notice is the Securities Act (Jacks Point Development) Exemption Notice 2006.

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 30 June 2010.

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 Jacks Point Limited; and

- (b) includes any assignee or successor in title of Jacks Point Limited (in whole or in part) that continues the promotion and carrying out of the development

development means—

- (a) any residential development undertaken within the area of the Jacks Point Zone:
- (b) any residential and commercial development undertaken within the area of the Jacks Point Zone

golf course means the golf course that is to be constructed as part of the development

interest in the golf course includes—

- (a) any estate or interest in the land upon which the golf course is located:
- (b) any shares in a company that is the registered proprietor of any estate or interest in the land upon which the golf course is located:
- (c) any shares in a company that owns or operates the business of the golf course (in whole or in part):
- (d) the business of the golf course (in whole or in part):
- (e) any assets of that business (in whole or in part)

Jacks Point Zone means the residential and commercial development zone known as Jacks Point Zone established by the Queenstown Lakes District Council as a resort zone under Part 12 of the Queenstown Lakes District Plan

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

registered valuer means a person who is a registered valuer within the meaning of the Valuers Act 1948

Regulations means the Securities Regulations 1983

related entity, in relation to a person, means—

- (a) any holding company of the person:
- (b) any person that is an associated person or subsidiary of that holding company or of the person

rules means the rules of the society

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

society means the Jacks Point Residents and Owners 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

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

utility company—

- (a) means any company that holds, maintains, or manages any of the utilities or communal facilities (or both); and
- (b) includes the water company

vendor, in relation to a specified security, means any person who acquires the security with a view to its being offered for sale to the public in New Zealand and the security has not previously been offered for sale to the public in New Zealand

water company means a company that is established to provide domestic and irrigation water supply to the development.

- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
 - (a) that registered valuer and any director of a vendor of an interest in the golf course or of any associated person of that vendor are relatives, one being the spouse, civil

- union partner, or de facto partner of the other or being the parent, brother, sister, or child of the other or of the spouse, civil union partner, or de facto partner of the other; or
- (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the report under clause 6(1)(n),—
- (i) a shareholder or director of a vendor of an interest in the golf course or any associated person of that vendor; or
- (ii) a shareholder or director of any company that is a holding company or subsidiary of a vendor of an interest in the golf course or any associated person of that vendor or that is a partner or joint venturer with a vendor of an interest in the golf course or any associated person of that vendor; or
- (c) there is any other relationship or interest between the registered valuer and a vendor of an interest in the golf course or any associated person of that vendor that is likely to influence the judgment of the registered valuer.
- (3) 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, every vendor, and every person acting on behalf of any or all of them, are exempted from sections 33(3), 37, 37A, 38A, and 54 of the Act and the Regulations (except regulation 8) in respect of specified securities of which the developer, the society, or the vendor is an issuer.

6 Conditions

- (1) The exemptions in clause 5 are subject to the following conditions:
- (a) subscribers for specified securities have, before subscription, been supplied by the developer or the relevant vendor with a copy of each of the following documents:
- (i) the rules:

- (ii) the management agreement for the society (if any):
- (iii) a specimen of the sale agreement:
- (iv) a specimen of any lease for communal facilities:
- (v) any agreement between the water company, the society, and the developer in connection with the supply of water to the development; and
- (b) the specified securities are subscribed for by entering into a sale agreement; and
- (c) 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
- (d) no settlement of a sale agreement is completed unless,—
 - (i) if the developer or the relevant vendor represents or agrees that certain communal facilities will be held by the society at the time of settlement of the sale agreement, those communal facilities are held in accordance with that representation or agreement; and
 - (ii) if any right or interest in land is included in the communal facilities to be held by the society at the time of settlement of the sale agreement, that right or interest is registered on the certificate of title, or computer register, for that land at that time; and
 - (iii) if the developer or the relevant vendor represents or agrees that the society will hold any shares in any utility company at the time of settlement of the sale agreement, the society holds those shares in accordance with that representation or agreement; and

- (e) if communal facilities (other than an interest in the golf course) are leased, or to be leased, by the society,—
 - (i) the communal facilities are owned, or 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
- (f) it is a term of the offer of the specified securities that the rules provide that if any shares are held, or to be held, by the society in a utility company, the constitution of the utility company provides that the utility company cannot—
 - (i) carry on trading activities for a profit; or
 - (ii) carry on a business for a profit; and
- (g) 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
- (h) it is a term of the offer of the specified securities that the developer or the relevant vendor provides to a prospective purchaser of a developed property from the developer or that vendor, 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 of the specified securities that the rules provide 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 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 owned by a utility company (including issuing

- licences to members of the society or shareholders of the utility company that confer rights solely on those members or shareholders to use the communal facilities or utilities, and administering those licences in accordance with the rules):
- (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 (including the golf course) to developed properties:
 - (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 of the specified securities that the rules provide that—
- (i) members of the society have the right to use and enjoy all or part of the communal facilities in accordance with the rules and any relevant deed; 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 communal facilities and any shares in any utility company held by the society vest 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 the members of the society in accordance with a procedure set out in the rules; and
- (l) the society does not have as objects—
- (i) the carrying on of trading activities for a profit; or
 - (ii) the carrying on of a business for a profit; and

- (m) it is a term of the offer of the specified securities that the rules provide that the society may exercise its right of first refusal over an interest in the golf course or otherwise acquire an interest in the golf course only if this action is approved in advance by a special resolution passed by the members of the society (excluding certain persons in accordance with subclause (3)); and
- (n) it is a term of the offer of the specified securities that the rules provide that, before a special resolution referred to in paragraph (m) is voted on, the society must have received the following:
 - (i) a copy of summary financial statements for the business of the golf course containing, with any necessary modifications, the matters specified in clause 8 (other than subclauses (3)(b)(v) and (5)) of Schedule 1 of the Regulations in respect of the 5 accounting periods of the operator of the golf course that precede the proposed date of the special resolution:
 - (ii) particulars of the interest concerned:
 - (iii) a copy of a report by an independent registered valuer as to the capital value of the golf course:
 - (iv) a statement by the directors of the operator of the golf course as to whether, after due enquiry by them in relation to the period between the date of the most recent summary financial statements referred to in subparagraph (i) and the date that those summary financial statements are provided to the society in relation to the special resolution, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (A) the profitability or activities of the business of the golf course; or
 - (B) the value of the assets of the business of the golf course; or
 - (C) the ability of the business of the golf course to pay its liabilities due within the next 12 months; and

- (v) particulars of any material matters relating to the society's decision to exercise the right of first refusal or to otherwise acquire the interest in the golf course (as the case may be); and
- (o) it is a term of the offer of the specified securities 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, if at least 50% of the members of an interest group (excluding the developer) or 25% of all members of the society (excluding the developer) vote to appoint a mediator; and
- (p) it is a term of the offer of the specified securities 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 30 June 2010 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
 - (q) a subscriber for specified securities has, before subscription, received a statement described in paragraph (p) if the relevant developed property is purchased from the developer or a vendor.
- (2) A condition in subclause (1)(f), (i) to (k), or (m) to (p) 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, the controlling member, and any vendor); and
 - (b) the amendment results in the rules no longer complying with the condition.
- (3) For the purposes of subclause (1)(m), a person must not vote on a special resolution referred to in that paragraph if the person, or a related entity of that person,—
- (a) is the vendor of the interest referred to in that paragraph; or
 - (b) has sold the interest referred to in that paragraph to a third party with a view to the third party on selling the interest (whether to the society or otherwise), and that third party is the vendor of that interest.

Dated at Wellington this 14th day of February 2006.

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 30 June 2010, exempts Jacks Point Limited (and any assignee or successor in title of that company), the Jacks Point Residents and Owners Association Incorporated (the **society**), and certain potential vendors from sections 33(3), 37, 37A, 38A, and 54 of the Securities Act 1978 (the **Act**) and the Securities Regulations 1983 (except regulation 8), subject to conditions, in respect of the offer of certain participatory securities. The securities are in the form of membership of the society and confer rights to participate in the ownership and use of all or part of the communal facilities in a development undertaken at Jacks Point, 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:
- the securities offered are participatory securities, being memberships in an incorporated society which will own, manage, or maintain communal facilities or provide communal services for the benefit of all members. These securities are ancillary to the ownership of land and are not intended for the purposes of investment, but rather to confer ownership rights or rights to use the communal facilities in the development:
- the society may in the future acquire a golf course that is part of the development. This may result in it operating a business. The conditions of exemption require that this can only occur if a special resolution is passed by the residents, prior to which they must have received certain relevant information in relation to the golf course:
- the conditions of exemption ensure that potential investors receive important information regarding their rights and obliga-

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**Securities Act (Jacks Point Development)
Exemption Notice 2006**

Statement of
reasons

tions in relation to the society before they subscribe for the securities.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 16 February 2006.

Contents

- 1 General
 - 2 Status of reprints
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Notes**1 General**

This is a reprint of the Securities Act (Jacks Point Development) Exemption Notice 2006. The reprint incorporates all the amendments to the notice as at 1 July 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989*

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Securities Act (Jacks Point Development) Exemption Notice 2006
(SR 2006/20): clause 3
