



Securities Act (Grey Water Limited) Exemption Notice 2004

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

1	Title	5	Exemptions from sections 33, 37,
2	Commencement	37A, 38A, and 54B(3) of Act	
3	Expiry	6	Conditions of exemptions
4	Interpretation		

Notice

1 Title

This notice is the Securities Act (Grey Water Limited) Exemption Notice 2004.

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 31 October 2009.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

communal facilities—

(a) means any land or any right over, or interest in, land within the development that is designated by the developer for use in connection with—

- (i) the drainage of sewage and waste water from the residential properties; and
 - (ii) the treatment and disposal of that sewage and waste water in the sewage and waste water treatment and disposal plant; and
- (b) includes chattels, fixtures, and fittings used, or intended, adopted, or designed for use, in connection with the drainage of sewage and waste water from the residential properties and the treatment and disposal of that sewage and waste water

company means Grey Water Limited

deed of encumbrance means a deed between the company and each purchaser of residential property that relates to specified securities

developer means Livewell Limited

development means the subdivision of the land known as Mangawhai Stage 1 and Mangawhai Stage 2 located at Moir Point Road and Molesworth Drive, Mangawhai Heads, being Lot 36 on Deposited Plan 334498 comprised in certificate of title 141253 (North Auckland Registry) and Lot 31 on Deposited Plan 340252 comprised in certificate of title 165361 (North Auckland Registry) into residential properties

lease means the memorandum of lease to be entered into between the developer and the company for the lease of that part of the development on which the portion of the communal facilities consisting of the sewage and waste water treatment and disposal plant is sited

Regulations means the Securities Regulations 1983

residential property means a residential property in 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, for an estate in fee simple under the Land Transfer Act 1952

sale agreement means an agreement for the sale of a residential property entered into between the developer as vendor and a subscriber of specified securities as purchaser

specified securities means shares in the company.

- (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 33, 37, 37A, 38A, and 54B(3) of Act

The company, the developer, and every person acting on behalf of either or both of them are exempted, in respect of specified securities, from sections 33, 37, 37A, 38A, and 54B(3) of the Act.

6 Conditions of exemptions

The exemptions in clause 5 are subject to the following conditions:

- (a) the developer has supplied to each subscriber for specified securities, before subscription, copies of the following documents:
- (i) the constitution of the company; and
 - (ii) the deed of encumbrance for execution by the subscriber; and
 - (iii) the sale and purchase agreement dated 29 September 2004 providing for the transfer from the developer to the company of the portion of the communal facilities defined in paragraph (b) of the definition of **communal facilities**; and
 - (iv) the lease; and
 - (v) the proposed sale agreement relating to that subscriber; and
- (b) the specified securities are subscribed for by entering into a sale agreement; and
- (c) deposit money paid by a subscriber for specified securities is 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) the portion of the communal facilities defined in paragraph (b) of the definition of **communal facilities** is owned legally and beneficially by the company; and
 - (ii) if any right or interest in land is included in the communal facilities, the company's interest in that land is registered on the certificate of title or computer register for that land under the Land Transfer Act 1952; and
- (e) all money paid to the company by its shareholders under the constitution of the company is applied only for either or both of the following purposes:
 - (i) owning, administering, and maintaining the communal facilities; or
 - (ii) administering and enforcing a scheme for the regulation and control of matters relating to the drainage of sewage and waste water from the residential properties and the treatment and disposal of that sewage and waste water; and
- (f) the constitution of the company provides that—
 - (i) the shareholders of the company have the right to use and enjoy the communal facilities in accordance with the constitution and the deed of encumbrance; and
 - (ii) the shareholders of the company have the right to vote at meetings of the shareholders of the company; and
 - (iii) levies, fees, or subscriptions payable to the company by its shareholders are determined by the shareholders at a shareholders' meeting of the company; and
 - (iv) the company cannot carry on trading activities or a business for a profit; and
 - (v) the company cannot carry on activities other than those required by, or associated with, drainage of sewage and waste water from the residential properties and the treatment and disposal of that sewage and waste water; and
- (g) it is a term of the contract for specified securities that the specified securities can be obtained only on the

- purchase of residential property and, on resale, must be sold with that residential property; and
- (h) it is a term of the offer of the specified securities that the developer provides to a prospective purchaser of residential property, within 5 business days after receiving a request, a copy of the most recent audited financial statements of the company; and
 - (i) it is a term of the offer of the specified securities that the financial statements of the company are audited annually and distributed to the shareholders of the company 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 company.

Dated at Wellington this 26th day of October 2004.

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

[L.S.]

C. A. N. Beyer,
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 31 October 2009, exempts Grey Water Limited and Livewell Limited from sections 33, 37, 37A, 38A, and 54B(3) of the Securities Act 1978, subject to conditions, in respect of the offer of securities in Grey Water Limited.

The securities in Grey Water Limited are to be offered as part of a scheme that requires purchasers of residential properties in a development (known as Mangawhai Stage 1 and Mangawhai Stage 2 and situated at Mangawhai Heads in North Auckland) to subscribe for those securities. The purpose of the scheme is to facilitate the use, ownership, and management of communal facilities by Grey Water Limited for the benefit of the residential property owners in the development in connection with the drainage, treatment, and disposal of sewage and waste water.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- it is consistent with the policy of previous exemptions the Commission has granted in relation to residential property developments, including a class notice (the Securities Act (Residential Property Developments) Exemption Notice 1999); and
- the securities involved in these developments are not intended for purposes of investment, but rather to confer ownership rights and rights to use the communal facilities in a residential development. The conditions of exemption require that the entity offering the securities does not have as its objects the carrying on of trading activities or a business for profit. Rather, the purpose of the Issuer is to allow the owners of residential lots to participate in the control of the communal facilities.

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

Date of notification in *Gazette*: 28 October 2004.

This notice is administered by the Securities Commission.
