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Attention: The Commissioner of Inland Revenue

## **Re: IRRUIP7 - Bodies Corporate – GST Registration**

I respectfully offer my submissions on the issues paper referred to above.

By way of background, I am a chartered accountant with 25 years experience and am personally a member of a residential body corporate that is directly affected by this issue. I am chairman of the body corporate that I am a member of. I offer these submissions professionally, personally and on behalf of the body corporate.

It is my sincere belief that this issue needs to be looked at from the root of the tree “so to speak”. In order to do this, firstly, we must define in its simplest form the structure to which the issues paper is directed. For the purposes of this submission I define the structure as follows:

“A body corporate substantially formed for a residential unit title development, where that development is substantially owned by individuals for their own residential occupation or long-term residential rental investment”.

It is my belief that when we arrive at a clear decision about the GST consequences of the above structure. We can then easily apply commonly used applications of tax laws to modify the GST (and indeed income tax) consequences.

Now, getting to the root of the tree. It is an inescapable fact that at the heart of this matter is the delivery of residential accommodation and quite simply, as we all know, this is a GST exempt activity.

In order to demonstrate the heart of this matter as being residential accommodation, I have put together a comparative diagram which I enclose at appendix A.

As you can see, the GST exempt status that is afforded the delivery of residential accommodation is about the delivery of wholly and entirely the same set of goods and services as that delivered through body corporates.

The first limb of this tree then represents the government imposed Unit Titles Act 2010. It is clear to me that the imposition of this act is in the public good and is designed to eliminate uncertainties in administration and to create a uniformity and safety for owners of unit title developments. It is there to facilitate the owner in the delivery of residential accommodation - this is its *raison d'être*.

Ownership via the Unit Titles Act 2010 is, as far as I am aware, the only form of Real Estate ownership that does (or could) force the owner into a GST registered situation (for the delivery of long term residential accommodation), other forms such as freehold, leasehold, strata title etc do not create this impact and neither does the use of other “separate legal entities” such as company ownership. As we know, the separation of owner and eventual consumer of the

residential accommodation does not in itself change the nature of the underlying supply – long term residential rental accommodation supplied by a company to a tenant for example.

For all of the above reasons, it is my sincere belief that the body corporate should be considered to be exempt in its main activity. If the body corporate becomes involved in commercial enterprise, and realistically this would include anything that saw funds coming into the body corporate from external parties in a way that these funds would have the effect of reducing the imposition of levies on the members (i.e. profit), then this aspect of the body corporate is open to normal taxation interpretation and may have income tax and GST implications.

This is clearly seen currently in practice with the imposition of income tax on interest earned on funds invested by the body corporate (and for the same reasons that GST is not imposed on this interest earned, GST should not be imposed on the levies to the members - the underlying nature of the activity being exempt – in this case residential accommodation).

I now turn to the purpose of the unit titles act 2010, which is as follows:

### **3 Purpose**

*The purpose of this Act is to provide a legal framework for the ownership and management of land and associated buildings and facilities on a socially and economically sustainable basis by communities of individual owners*

And as you state at paragraph 3.57 in your issues paper:

*The change was intended to facilitate the efficient administration of **the** common property.*

So as you can see, it is to provide a legal framework for the ownership and management of land and associated buildings... efficiently... It is the framework provided for the underlying intention. This underlying intention is residential accommodation in nature. The fruit of this tree must be residential accommodation in nature or surely something is going wrong?

It would appear to me that the only argument effectively raised for GST registration is that of “separate legal entity”, As we are all aware, the Government has a number of precedents for the Commissioner to look through the separate legal status of entities to the ultimate **intention** behind them, the LAQC and LTC regimes being examples that immediately come to mind.

If we can now look at the three diagrams given in the issues paper at page 36. On the face of it as you can see the net result of all three scenarios is the payment of \$15,000 GST to the Crown. On the face of this, surely from an efficiency point of view, one would have to question why the body corporate should be GST registered - because of the underlying administration costs.

I can absolutely understand the Commissioners desire to create certainty around this topic and applaud the Commissioner’s actions.

The concern I have with the three scenarios is that they look at the situation on a “business as usual” basis. They do not address the GST imposition caused when the body corporate is GST registered and goes from “start up” with zero in the bank to the point where it now holds sufficient retained members funds to cover operational cash flow and long-term maintenance contingencies et cetera.

Another concern with the three scenarios is that it does not take into account the likes of ground rent paid by the body corporate (if leasehold), this ground rent is exempt by nature (residential accommodation), yet because the body corporate is GST registered, the members are charged GST in addition to the exempt amount. This represents a very significant increase in cost to the owner.

I would like to raise an interesting question to the Commissioner as follows:

If as a result of this review, body corporates are required by the Commissioner to be registered for GST, then, should a body corporate wind up and cease (due to the end of life of the underlying unit title development), however prior to winding up it returns all surplus retained funds to the members, will this return of funds be acceptable as an input to the GST return?

If we were to look at the results for my own body corporate at last balance date. We have retained member's funds of \$151,483 for a small building of 10 owners, on average, representing \$15,148 funded by each owner. On average, this represents GST in addition to this of \$2,272, funded by each owner, and never retrievable by the owner (during the operational lifetime of the body corporate).

A further interesting issue arises when you look at my body corporate – our property is leasehold with the underlying ground rent (exempt), representing at least 60% of the annual levies. My belief is that it would be improper to apportion this “activity” into GSTable and exempt – if this is to be the case, there should be a similar “unbundling” and apportionment of “activity” operated by residential rental investors, this would result in a material change in the intention of GST imposition in relation to residential accommodation.

The GST on the ground rent alone (for my body corporate) is an impact of \$1,350 per annum per member (excess GST paid to Inland Revenue).

I finalise my submission (tongue in cheek) and suggest that if a body corporate should be GST registered for the delivery of the goods and services wrapped around the underlying residential accommodation, there should be the ability to claim a GST input on the fundamental assets at the heart of the activity – the land and buildings, noting that under S54(1) of the Unit Titles Act 2010 “The common property is owned by the body corporate”.

This submission is approved by and supported by the following parties:

Body Corporate 336459

Thank you for your time in reviewing this submission, I eagerly await the outcome of this process.

Kind regards



**Tim Fleming CA (PP) ACIS**  
Director

Appendix A

**Typical expenses of a Body Corporate**

used in delivery of its obligations to its members

**Expenses of delivering residential accommodation**

- Cleaning
- Contingency Funds
- Ground Rent (if applicable)
- Insurance
- Maintenance of buildings
- Maintenance of grounds
- Rubbish Removal
- Water & Waste
- Window Cleaning

**Expenses as a result of the Unit Titles Act**

- Admin/Secretarial
- Change of Address for Service
- GST Return Prep
- Income Tax Return Prep
- Trust Account Management
- Valuation Fees

**Typical expenses of a Home Owner**

**Expenses of delivering residential accommodation**

- Cleaning
- Delivered by budgeting and personal funds
- Ground Rent (if applicable)
- Insurance
- Maintenance of buildings
- Maintenance of grounds
- Rubbish Removal
- Water & Waste
- Window Cleaning

**Other Expenses**

There is no "activity"

Valuation Fees only if refinancing

**Typical expenses of a residential landlord**

**Expenses of delivering residential accommodation**

- Cleaning
- Delivered by budgeting and personal funds
- Ground Rent (if applicable)
- Insurance
- Maintenance of buildings
- Maintenance of grounds
- Rubbish Removal
- Water & Waste
- Window Cleaning

**Other Expenses**

Exempt activity

Income Tax Return Prep

Valuation Fees only if refinancing