

WHITBY CORPORATION LIMITED

C/- PO Box 10788 Wellington, 6143

8 December 2015

Mr Richard Kidd
Auckland

Mr Clive Ellis
Nelson

By email:

By email:

Dear Richard & Clive

Your questions in relation to the proposals for shareholders meeting on 11 December 2015

Thank you for each taking the time and effort to review the notice of meeting and accompanying materials and raise a number of questions for our attention.

The directors regret to advise that, since the notice of meeting was despatched, and despite a great deal of background work to deliver an outcome that was in the best interests of all shareholders, a handful of points have been raised which may impact the implementation of the proposal outlined in the meeting materials. In the short time available, we believe that the most appropriate course of action is to change the proposal and seek shareholders' approval to investigate further - while we seek additional advice, decide whether (and, if so, how) the proposal may need to be modified and then update shareholders.

If the directors decide to proceed to later put the proposal to shareholders, possibly in modified form, then a special meeting will need to be called.

In the meantime, in light of your efforts to raise a number of questions, we thought it courteous to both respond to your questions and make them available to all shareholders via the Whitby Corporation tab of the Silverwood website. For the reasons noted in the preceding paragraph, it is proposed to simply refer shareholders to the website – rather than discuss them at length at the 11 December meeting.

#	Question	Comments
Richard Kidd		
1	As Directors of both Silverwood Forest Corporation and Whitby Corporation do Tony Loveday and Peter Tiedemann consider that they have a conflict of interest in this resolution and should they abstain from voting?	<ul style="list-style-type: none">• The overriding purposes of the proposed restructuring are:<ul style="list-style-type: none">○ efficiency of operation – to remove the two-tier structure and strip out duplicated overheads;○ enhanced returns – for the reasons discussed in the explanatory material that accompanied the notice of meeting.

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		<ul style="list-style-type: none"> • Tony & Peter are: <ul style="list-style-type: none"> ○ directors of both: <ul style="list-style-type: none"> ▪ Whitby; and ▪ Silverwood Corporation Ltd (previously called Silverwood Forest Corporation Ltd – the General Partner of the Silverwood Land 2015 Limited Partnership) ○ Shareholders in: <ul style="list-style-type: none"> ▪ Whitby – both directly and indirectly in Tony's case in a total of the shares (9.59%). Peter has a non-beneficial interest, as a trustee of a family trust, in 2.1% of the shares. ▪ Silverwood (0.2% and 0.7% respectively). • Silverwood holds 6.5% of the shares in Whitby – in its capacity as General Partner. However this stake is non-beneficial, and is held ultimately for the benefit of the Limited Partners (investors) in the Limited Partnership. • In any event, neither the constitution of Whitby nor the Companies Act 1993 would prevent a shareholder voting in respect of the proposal. • And for completeness, it is only the NZX Listing Rules – which apply to listed companies only which contain restrictions on certain related party transactions. Even if Whitby was listed – it is likely that the NZX would grant a waiver in the present case on the basis that any personal connections with, or involvement or personal interest of Tony and Peter in the proposal is plainly unlikely to have influenced its promotion. Indeed, their interests are aligned with those of all shareholders (and the proposal is arguably detrimental to their interests – for example they will cease to draw directors' fees from Whitby).
2.	As a major shareholder in Whitby Corporation does Silverwood Corporation have a conflict of interest in this resolution and should	<ul style="list-style-type: none"> • As in #1, Silverwood's interests are aligned with those of the other shareholders. • At 6.5% the Silverwood interest is not considered major.

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	that Company abstain from voting?	
3.	There appears to be inadequate information made available to shareholders of Whitby Corporation to make an informed judgement on the merits of the proposal. The final statement in the director's report regarding "loss of one third of future income from us" appears to be an exaggeration. Is it correct that what you are referring to is that if distributions continue to be made by Whitby Corporation they will be subject to tax whereas a distribution "in specie" and realisation of those assets may be tax free in the hands of shareholders? Isn't the one third loss referred to dependent on the tax rate of the shareholder or whether or not they have tax losses of their own?	<ul style="list-style-type: none"> On its own, the suggestion that there appears to be inadequate information made available to shareholders of Whitby Corporation to make an informed judgement on the merits of the proposal is rather wide-sweeping. The prospect of a winding up was signalled at the last AGM. The tax treatment of distributions is addressed in both the directors' report and the summary of the tax advice from NSA. And the reference to the loss of future income is clearly labelled as possible – although the impact on individual shareholders will, of course, depend on their specific tax position. The board cannot, for example, predict whether a specific shareholder may have tax losses available. This is a matter for each shareholder and their tax advisers.
4.	The report refers to Silverwood forecasting a "significant portion of payout to its unit holders ... over the next 12-24 months with a fair proportion expected to come from capital gains i.e. tax free to its unit holders". If the liquidation did not take place then these payments from Silverwood would flow to Whitby. - The tax losses in Whitby would ensure that no tax becomes payable. Could Whitby then be liquidated in 24 months and all the proceeds from the Silverwood units be distributed then tax free? Do we therefore need to go	<ul style="list-style-type: none"> Amounts that are tax free capital gains derived by Whitby from Silverwood can only be distributed to Whitby shareholders tax free on liquidation. Amounts that are taxable receipts derived by Whitby from Silverwood can be offset by available tax losses in Whitby. However, any distribution of those profits to Whitby shareholders will be a taxable dividend to the shareholders (whenever distributed), and to the extent the dividend is unimputed resident withholding tax at 33% must be deducted from the dividend and paid to the Inland Revenue Department.

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	through with Special resolution this year?	
5.	Why has an independent accountants report not been sought as would be normal in such a fundamental resolution as a liquidation and distribution "In Specie" to reassure shareholders that this is in their best interests?	<ul style="list-style-type: none"> Because Whitby Corporation is not a listed company and the proposed winding up / distribution process is not a transaction that requires such an independent report under the Takeovers Code – the directors decided that, because the key issue is a taxation matter, the taxation advice (a summary of which is attached to the notice of meeting) was sufficient.
Clive Ellis		
1.	It would not be unreasonable for the directors to settle on the date of each AGM a few months ahead. In 2013 the meeting was held on Tuesday 17 December. This year it is held on Friday 11 December. It would not be difficult to settle a date for mid December 2016 earlier than two weeks prior. Then everyone would have plenty of notice to keep the date free and out of town shareholders would have the opportunity to secure reduced airfares.	<ul style="list-style-type: none"> Your comments are noted. Regrettably, the timing this year has been driven by a range of logistical issues affecting the company – and the directors will seek to take your comment into account when scheduling future meeting dates.
2.	On page 2 of the director's report there are two lines in bold print. I believe these are worded inappropriately and could, for some shareholders create a panic situation which is unnecessary. These lines border on scare tactics.	<ul style="list-style-type: none"> Regrettably, the directors do not agree. The setting out was in an effort to emphasise the key messages and reasons for the proposal.
3.	As and when Whitby Corporation Ltd receives capital income from the Silverwood Land Partnership can these capital profits be distributed to the shareholders as a capital dividend?	<ul style="list-style-type: none"> The directors' tax advice concludes that this is not possible – for the reasons summarised in the report from NSA.

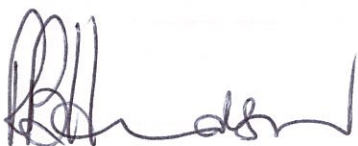
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4.	If the shareholders of Whitby Silverwood units in exchange for our shares in Whitby do we then become partners with Silverwood?	<ul style="list-style-type: none"> • They key point of the proposal is that Whitby shareholders will hold Limited Partner Units in Silverwood Land 2015 Limited Partnership directly, rather than indirectly (via Whitby).
5.	Do we then each have any liabilities to the Silverwood partnership?	<ul style="list-style-type: none"> • The units concerned are Limited Partner Units in a Limited Partnership – and a limited partner is not liable for the debts and liabilities of the limited partnership. • As a result, the economic position of the holder of a Limited Partner Unit is liability is substantially the same as that of a shareholder in a limited liability company.
6.	As the Silverwood Land Partnership is a property development identity do we each also become a property developer? i.e. as an associated person.	<ul style="list-style-type: none"> • Silverwood has received tax advice that it holds land on both revenue account (taxable on sale under section CB 13 of the Income Tax Act 2007) and capital account (non-taxable on sale). It is not, and has never been, in the business of development or subdivision of land or a dealer in land. Therefore there is no tainting issue for associated persons, notwithstanding that it holds some land on revenue account.
7.	If so then if any of us, quite separately have rental properties, we could then have major tax implications on our rental activities. The reasoning here is that our status with the IRD changes from a landlord to a developer.	<ul style="list-style-type: none"> • Given the answer to 6 above, we have not addressed this however this is a matter for you to discuss with your own tax adviser. The directors cannot advise on the specific tax situation of each individual shareholder. However, the directors are seeking to act in the best interests of the majority of shareholders. Ultimately, if an individual shareholder has structured their own tax affairs in a manner that means that they may be disadvantaged by an outcome that is preferred by the majority of shareholders – the interests of the majority must prevail.
8.	If we have a share in Silverwood, as an accountant, I believe there is going to be a tax implication which is not clear at present and has not been explained in the director's report. E.g. If Silverwood pays us \$X a year in which financial year is this declared as income? Or is it a capital gain?	<ul style="list-style-type: none"> • A direct interest in Silverwood will result in the receipt of capital (non-taxable) and revenue (taxable) amounts as they arise for the Silverwood Land Partnership. The Silverwood directors will no doubt look to distribute such amounts as soon as they are received, after accounting for relevant expenses relating thereto.

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9.	If we accept the directors' recommendation and acquire a share in Silverwood there is still going to be a time lag before all the sections are sold. This could be years.	<ul style="list-style-type: none"> An indication of the likely timeline for the sale of sections has been contained in a number of communications from the directors.
10.	What happens to the settlement monies from Transmission Gully i.e. feeder roads etc?	<ul style="list-style-type: none"> \$5M of the NZTA 2010 settlement was invested in the Joint Venture as set out in detail in the Silverwood financial statements and this, and all other funds, are distributed to the Silverwood Land 2015 Limited Partnership unit holders after operating expenses have been deducted. See Silverwood audited financial statements on our website.
11.	Presently Whitby has a tax loss of approximately \$753,000. What happens to this carried forward tax loss?	<ul style="list-style-type: none"> If Whitby no longer has any assets following the in specie distribution and is liquidated, any remaining tax losses will be forfeited.
12.	What is the reason for the urgency of the directors' proposed winding up of Whitby?	<ul style="list-style-type: none"> The directors' tax advice concludes that Whitby is no longer able to make tax-free payments to shareholders – for the reasons summarised in the report from NSA. As has been noted on a number of occasions, the directors are keen to make distributions to shareholders as soon as possible. Nonetheless, the directors wish to do so in as tax-effective manner as possible for the bulk of shareholders.
13.	I do not believe that any proxy votes held by the directors can be valid as these shareholders have not received full information.	<ul style="list-style-type: none"> For the reasons set out in the introductory paragraphs to this letter – this question has been overtaken by events. Nonetheless, based on the information available to the directors at the time that the notice of meeting was despatched – the directors do not agree.
14.	If directors can make payments before voluntary liquidation why do we need voluntary liquidation?	<ul style="list-style-type: none"> The material accompanying the notice of meeting, including the summary advice from NSA, explains that the directors have been advised that they are no longer able to make tax-free distributions.
15.	On page 2 of the Directors' report in the second paragraph re the small shareholders who do the directors imagine would be	<ul style="list-style-type: none"> The directors have not explored this issue in great deal – although we note that it may be advantageous (to the company and all

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	buying these shares? It is not clear.	<p>remaining shareholders) for the company to buy-back some of these very small holdings.</p> <ul style="list-style-type: none"> • This issue will be explored in further detail - and shareholders updated in due course.
16.	If the directors consider small shareholders may wish to sell then why was the recent correspondence accompanied by a current valuation of the shares?	<ul style="list-style-type: none"> • Valuation information has been provided sporadically. And the directors have been asked from time to time by small shareholders, including deceased estates, about options for cash in their investment.

To conclude, I look forward to working with you constructively in the future – in the best interests of Whitby Corporation and all of its stakeholders.

Yours sincerely



Richard Hudson

Secretary
Whitby Corporation Ltd

Richard@Pocockhudson.co.nz