



# NZX Regulation Decision

Vital Healthcare Property Trust (“VHP”)

Application for a waiver from NZX Listing Rule 4.1.1

11 December 2019



# Waiver from Listing Rules

## Background

1. NZX has updated the NZX Listing Rules (**Rules**), effective from 1 January 2019. This waiver decision re-documents a prior waiver decision granted by NZX Regulation (**NZXR**) dated 7 November 2007.

## Decision

2. On the basis that the information provided by NorthWest Healthcare Properties Management Limited (the **Manager**), the manager of Vital Healthcare Property Trust (**VHP**), is complete and accurate in all material respects, NZXR grants VHP a waiver from Rule 4.1.1, to enable the issue of Incentive Units to the Manager for the purposes of the Incentive Fee.
3. The information on which this decision is based is set out in Appendix One to this decision. This waiver will not apply if that information is not or ceases to be full and accurate in all material respects.
4. The Rules to which this decision relates are set out in Appendix Two to this decision.
5. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

## Reasons

6. In coming to the decision to provide the waiver set out in paragraph 2 above, NZXR has considered that:
  - a. the material terms of the Incentive Fee and Incentive Units were originally disclosed and approved by VHP unitholders prior to Listing in 1999. Any changes to the terms of the Trust Deed, including those relating to the Incentive Fee and/or Incentive Units, are now governed by the Financial Markets Conduct Act 2013 (the **FMCA**). Pursuant to section 139 of the FMCA, changes to the Trust Deed must be approved by a special resolution of unitholders, unless the supervisor is satisfied that the amendment or replacement does not have a material adverse effect on unitholders. In either case, the supervisor must certify (or obtain a certificate from a lawyer) that the amended Trust Deed complies with the applicable requirements of the FMCA;
  - b. the price at which the Incentive Units are issued is calculated on the weighted average market price;
  - c. the Manager has submitted, and NZXR has no reason not to accept, that the requirement to reinvest the Incentive Fee is to promote an alignment of the interests between the Manager and VHP unitholders;
  - d. in accordance with clause 60 of Schedule 5 of the Financial Markets Conduct Regulations 2014, VHP is required to disclose the Incentive Fee in each Annual Report. Rule 3.13.1 also requires VHP to announce to market any issue of Incentive Units; and
  - e. there is precedent for this decision.



## Appendix One

1. VHP is an Issuer of Fund Securities with units Quoted on the NZX Main Board. VHP is externally managed and is a registered Managed Investment Scheme under the FMCA.
2. VHP was originally established as a unit trust established under the Unit Trust Act 1960 by a Trust Deed dated 11 February 1994 (the **Trust Deed**). The Trust Deed has been amended and updated from time-to-time with unitholders most recently approving certain changes on 31 October 2019.
3. Under the terms of the Trust Deed, VHP's Manager is entitled to receive an incentive fee after the end of each financial year (**Incentive Fee**) as part of the remuneration for its management services. The aggregate of the Incentive Fee, the base fee and the activity fee payable to the Manager under the Trust Deed may not exceed an amount equal to 1.75% per annum of the gross value of the trust fund.
4. The Trust Deed requires that immediately after receipt by the Manager of the Incentive Fee, the Manager must apply the Incentive Fee in full for the subscription of new units in VHP (**Incentive Units**). The issue price of the Incentive Units is the weighted average of the prices at which VHP units were sold through the NZX Main Board during the seven day period immediately preceding the last day of the relevant financial year.
5. Under Rule 4.2.1, the issue of the Incentive Units must be approved by an ordinary resolution of VHP unitholders unless it falls within an exemption in Rule 4.1.2. The issue of the Incentive Units does not fall within one of these exemptions.
6. NZXR granted VHP a waiver from previous NZX Listing Rules to allow for the issue of the Incentive Units without unitholder approval. Due to NZX publishing new Rules, the Manager has applied for a new waiver to preserve the existing Incentive Fee structure.



## Appendix Two

### **Rule 4.1.1 Issue of New Equity Securities**

Except as provided in Rule 4.1.2, an Issuer must only issue Equity Securities with approval by Ordinary Resolution in accordance with Rule 4.2.1.

### **Rule 4.2.1 Shareholder approval for Issues by Ordinary Resolution**

For the holders of Equity Securities to approve an issue of Equity Securities by the Issuer, the precise terms and conditions of the issue must have been approved by:

- (a) Separate Ordinary Resolutions of each Class of Quoted Equity Securities whose rights or entitlements could be affected, or

...

### **Rule 4.2.2** An issue of Equity Securities authorised under Rule 4.2.1 must be completed within:

...

- (b) 12 months after the passing of those resolutions in all other circumstances,

Otherwise the issue cannot occur until further approval is obtained under Rule 4.2.1.

### **Rule 4.18.1 Issues, buy backs and redemptions of Fund Securities**

An Issuer of Fund Securities that is not a Continuous Issuer must issue, acquire and redeem further Fund Securities in accordance with Rule 4.1 to 4.17 as if the Fund Securities were Equity Securities carrying Votes.

