



NZX Regulation Decision

Investore Property Limited ("IPL")

Application for a waiver from NZX Listing Rule 5.2.1 and limb (a) of the definition of "Share Purchase Plan"

29 April 2020



Background

1. 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.
2. The Rules to which this decision relates is set out in Appendix Two to this decision.
3. Capitalised terms which have not been defined in this decision have the meanings given to them in the Rules.

Waiver from Listing Rule 5.2.1 and limb (a) of the definition of Share Purchase Plan

Waiver from Rule 5.2.1

4. Subject to the conditions set out in paragraph 5 below, and on the basis that the information provided by IPL is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants IPL a waiver from NZX Listing Rule (**Rule**) 5.2.1, to the extent that this Rule would otherwise require IPL to obtain the approval of shareholders to enter into a Material Transaction with Related Parties.
5. The waiver in paragraph 4 above is provided on the conditions that:
 - a. IPL's Directors, excluding any Director who is an Associated Person of any of the Related Parties, certify to NZX that:
 - i. IPL was not unduly influenced in its decision to undertake the Placement by the Related Parties;
 - ii. the Related Parties who participate in the Placement will not be involved in, or influence, any allocation decision in relation to the Placement; and
 - iii. the Related Parties will derive no benefit as a result of the Related Party relationship, other than solely through participation in the Placement on the same terms and conditions as all other Equity Security holders or as participants in the Placement on commercial terms; and
 - b. the waiver, its conditions and its implications are disclosed in IPL's annual report for the financial year ending 31 March 2021.

Reasons

6. In coming to the decision to provide the waiver set out in paragraph 4 above, NZXR has considered that:
 - a. The policy of Rule 5.2.1 is to ensure that a Related Party does not exercise undue influence or use personal connections to reach a favourable outcome for, or a transfer of value to, the Related Party in respect of a transaction and that shareholders are given an opportunity to review transactions where the board may have been subject to actual or perceived influence from a Related Party.
 - b. IPL submits, and NZXR has no reason not to accept, that these circumstances do not offend the policy behind Rule 5.2.1 because:
 - i. the Related Parties have not influenced IPL's choice of structure for the Placement, which has been determined by the IPL Board in light of advice received from its advisers;

- ii. the pricing and allocation decisions for the Placement will be managed by the Independent Directors of IPL in conjunction with the lead arranger and underwriter for the Placement. Accordingly, the Related Parties will have no influence over the pricing or allocation decisions in the Placement; and
- iii. the participation of the Related Parties who do participate in the Placement will be on the same basis and terms as all other Placement participants and so there is not transfer of value to those Related Parties;
- iv. the Rules already contemplate that an issue of Financial Products is not a Material Transaction with a Related Party requiring approval of shareholders in accordance with Rule 5.2.1 if:
 - A. the Issuer gives each holder of Financial Products of the Class in question the opportunity to receive the same benefit in respect of each Financial Product held (except to the extent that an issue excludes holders outside New Zealand in accordance with Rule 4.4.3(e)); or
 - B. the Equity Securities are issued by an Issuer under an Accelerated Offer.
- v. the existing relationships between IPL and the Related Parties are unlikely to influence the decision of the Independent Directors of IPL in undertaking the Placement;
- c. the reason the Placement will potentially be considered a Material Transaction under the Rules is due to the need to aggregate the participation of all Related Parties. This aggregation is due to the potential for Related Parties to exercise undue influence over an Issuer. NZXR has no reason to believe that SPL, ANZ, and Salt are each acting together to influence IPL to undertake the Offer. If each of the Related Parties' participation in the Placement was considered individually, the issuance of shares under the Placement would not be a Material Transaction under the Rules; and
- d. there is precedent for this decision.

Waiver from limb (a) of the definition of "Share Purchase Plan"

7. Subject to the conditions set out in paragraph 8 below, and on the basis that the information provided by IPL is complete and accurate in all material respects, NZX Regulation (**NZXR**) grants IPL a waiver from the definition of "Share Purchase Plan", to the extent that this definition would prevent IPL from accepting applications in excess of \$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner) in any 12-month period.
8. The waiver in paragraph 7 above is provided on the conditions that:
 - a. the consideration payable for the Equity Securities issued in the SPP does not exceed \$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner); and
 - b. the waiver, its conditions and its implications are disclosed in IPL's annual report for the financial year ending 31 March 2021.
9. The waiver in paragraph 7 above shall only apply to the SPP and not to any other offer made by IPL.

Reasons

10. In coming to the decision to provide the waiver set out in paragraph 7 above, NZXR has considered that:

- a. The policy of the 12 month requirement in the definition of "Share Purchase Plan" is to prevent minority shareholders from being diluted through multiple offers.
- b. IPL submits, and NZXR has no reason not to accept, that in this case these circumstances do not apply to the SPP because:
 - i. the offer structure comprising a Placement and SPP was determined by the IPL Board to be the optimal capital raising structure for IPL and its shareholders at this time and was a structure which provided genuine benefits for IPL's shareholders (over a Rights offer or Accelerated offer);
 - ii. the SPP is intended to be fair to minority shareholders by providing a mechanism to mitigate the dilutionary impacts of the Placement;
 - iii. an SPP offer amount of up to \$50,000 per registered holder (or beneficial owner) permits almost all (approximately 98%) of IPL's shareholders to participate in the SPP to a level which at least maintains their pre-Offer holding; and
 - iv. permitting IPL to offer up to \$50,000 per registered holder (or beneficial owner) in the SPP (as opposed to requiring IPL to "top-up" the ability for shareholders to make applications through use of placement capacity) is a simpler offer structure and is easy for shareholders to understand.
- c. Whilst there is potentially no precedent for this decision, the waiver is an appropriate response, and is only required, given the unique circumstances currently subsisting in New Zealand and globally due to COVID-19.

Confidentiality

- 11. IPL has requested that this decision be kept confidential until IPL releases an announcement relating to the Offer.
- 12. In accordance with Rule 9.7.2, NZXR grants IPL's request.



Appendix One

1. Investore Property Limited (**IPL**) is a Listed Issuer with ordinary shares quoted on the NZX Main Board.
2. IPL is considering undertaking a potential equity capital raise, which will be undertaken by way of a placement to existing and new institutional investors under Listing Rule 4.5.1 (**Placement**) and a share purchase plan under Listing Rule 4.3.1(c) (**Share Purchase Plan**, with the Placement, the **Offer**). IPL had been advised that, due to market conditions, the significant volatility experienced in New Zealand and globally, and potentially other capital raisings coming to market, the current time presents the optimal window for a capital raising to be launched.
3. IPL previously undertook an equity capital raise in November 2019 by way of placement and share purchase plan (the **Previous Offer**). The issue of shares under that placement was ratified by IPL's shareholders on 16 January 2020. At that time IPL did not consider that it would undertake a second share purchase plan within 12 months.

Material Transaction with Related Parties

4. IPL has three major shareholders which may be "Related Parties" as holders of more than 10% of IPL's shares (per limb (b) of the definition of "Related Party"), being:
 - a. Stride Property Limited (**SPL**), which holds 19.4% of IPL's shares;
 - b. ANZ New Zealand Investments Limited and ANZ Bank New Zealand Limited (aggregated as related bodies corporate (together, **ANZ**)) which holds 11.242% of IPL's shares (based on the most recent disclosure); and
 - c. Salt Funds Management Limited (**Salt**), which holds 9.4% of IPL's shares, but which held 10.209% of IPL's shares in the six-month period prior to launch of the Offer.
5. On a pro-rata basis, the aggregate value of shares issued to SPL, ANZ and Salt would not be more than 10% of IPL's Average Market Capitalisation (based on an \$85 million Placement, the total pro-rata allocation to those shareholders would be approximately \$34 million). However, IPL wishes to be able to have the flexibility to "overallocate" to those shareholders if required (for example, under sub-underwriting arrangements or placement allocations).
6. The pricing and allocation determinations under the Placement will be made between the lead arranger and the Independent Directors of IPL, in accordance with the terms of a placement agreement to be entered into between those parties prior to the launch of the Offer.
7. The market value of the shares issued to each of SPL, ANZ and Salt under the Placement (and, therefore, the aggregate amount) will not be known until the completion of the Placement. Accordingly, the market value of IPL's shares issued to these Related Parties in the Placement may exceed 10% of IPL's Average Market Capitalisation, which was \$517,383,747 as at 28 April 2020.
8. Limb (b) of the definition of Material Transaction requires that IPL consider the aggregate amount of shares being issued to all Related Parties that participate in the Placement when determining whether shareholder approval of a related party transaction is required.

Share Purchase Plan

9. Under the retail offer component of the Previous Offer, IPL accepted applications for new shares from certain of its shareholders under Listing Rule 4.3.1(c), up to a maximum of \$15,000 per application.
10. Under limb (a) of the definition of Share Purchase Plan, IPL is only able to accept applications for up to \$50,000 (in reliance on the class ruling and waiver released by NZX on 19 March 2020) per registered shareholder (or beneficial owner) in any 12-month period. Because IPL

accepted applications in the retail offer component of the Previous Offer for up to \$15,000 per registered holder (or beneficial owner), absent this waiver IPL would only be able to accept applications for a maximum of \$50,000 per registered holder (or beneficial owner) in the SPP, less the value of shares issued to that registered holder (or beneficial owner) under the share purchase plan component of the Previous Offer.



Appendix Two

Share Purchase Plan¹

means an offer of Equity Securities to all holders of existing Equity Securities of the Issuer carrying Votes (subject to Rule 4.4.1(e)) where:

- (a) the consideration payable for the Equity Securities issued does not in any 12 month period exceed \$50,000 per registered holder (or, in the case of Equity Securities held through a custodian, each beneficial owner),
- (b) the number of Equity Securities to be issued does not exceed 30% of the Class of Equity Securities already on issue at the time the offer is made which are fully paid and entitle the holder to Vote, and
- (c) the Offer Document contains a term to the effect that, if oversubscribed, oversubscriptions will be accepted (subject to paragraph (b) above or such lower limit as contained in the Offer Document) or acceptances will be scaled having regard to the number of fully paid Equity Securities carrying Votes held by those accepting the offer either on Record Date or the closing date of the offer (and which date is relevant must be specified in the Offer Document).

Rule 5.2.1 Transactions with Related Parties

Rule 5.2.1 An Issuer must not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct party to the Material Transaction, or
 - (b) a beneficiary of a guarantee or other transaction which is Material Transaction,
- unless that Material Transaction is approved by an Ordinary Resolution (such resolution being subject to the voting restrictions in Rule 6.3) or conditional on such approval.

¹As amended pursuant to the NZX Regulation Class Waiver and Ruling in relation to Section 4 of the NZX Listing Rules dated 19 March 2020, which can be found here: <https://www.nzx.com/regulation/class-waivers-and-rulings>.