

Notice of Annual Meeting



Dear Shareholder,

On behalf of the Board of Directors, I am pleased to invite you to the 2022 Annual Meeting of Shareholders of Tower Limited (Tower) on **Wednesday, 2 February 2022 at 10.00am (NZT)**.

As at the date of issue of this notice, Tower's Annual Shareholder Meeting will be a hybrid meeting, held both online at Computershare's online web platform at www.meetnow.global/nz (see the Virtual Meeting Guide released with this Notice of Meeting for more information on how to participate online) and in Guineas Room 3, Ellerslie Event Centre, Ellerslie Racecourse, 80 Ascot Avenue, Auckland, New Zealand. Please note that all those attending Tower's Annual Shareholder Meeting in person will be required to follow Ellerslie Event Centre's procedures for operating under the Covid-19 Protection Framework including the requirement to present their Ministry of Health Covid-19 Vaccine Pass (or other approved form of proof of vaccination) before being granted access to the venue.

The health and safety of staff and shareholders is important to Tower, as such, if there is any change to New Zealand Covid-19 alert levels before 2 February 2022, Tower may cancel the in-person meeting and will provide as much notice as possible to shareholders via NZX and ASX. In that case, all shareholders who wish to attend the Annual Shareholder Meeting must do so by joining the virtual meeting at www.meetnow.global/nz.

The business before the annual meeting this year covers the usual administrative matters (auditor remuneration and director re-elections), but also the approval of the proposed NZ\$30.4m capital return. I encourage all shareholders to read the Notice of Meeting and explanatory notes carefully as they provide important information on the capital return in particular.

Business of the meeting

Presentations

- a) Chair's address
- b) CEO's address

Resolutions

Item 1: Auditor Remuneration

To consider, and if thought fit, to pass the following by ordinary resolution:

"That the Board be authorised to determine the auditor's fees and expenses for the 2022 financial year."

Re-election of Directors

In accordance with NZX Listing Rule 2.7.1, Warren Lee, Graham Stuart, and Marcus Nagel retire by rotation, and being eligible, offer themselves for re-election. Accordingly, it is proposed that the shareholders consider, and if thought fit, pass each of the following ordinary resolutions for the purposes of NZX Listing Rule 2.7.1:

Item 2: Re-election of Warren Lee as Director of Tower

"That Warren Lee, who retires on rotation in accordance with NZX Listing Rule 2.7.1, be re-elected as a Director of Tower."

Item 3: Re-election of Graham Stuart as Director of Tower.

"That Graham Stuart, who retires on rotation in accordance with NZX Listing Rule 2.7.1 be re-elected as a Director of Tower."

Item 4: Re-election of Marcus Nagel as Director of Tower

"That Marcus Nagel, who retires on rotation in accordance with NZX Listing Rule 2.7.1 be re-elected as a Director of Tower."

Item 5: Capital Return

To consider and, if thought fit, to pass the following by special resolution:

"THAT the scheme of arrangement relating to the return of capital to shareholders, as set out in the Arrangement Document annexed to the Notice of Meeting, dated 22 December 2021, be approved."

Other business

To consider any other business that may be properly brought before the Annual Meeting.

Michael Stiasny
Chairman
22 December 2021

Explanatory Notes

These notes form part of the Notice of Meeting.

Item 1: Auditor Remuneration

Our auditors, PricewaterhouseCoopers are automatically reappointed at the Annual Meeting under section 207T of the Companies Act 1993. Consistent with past practice, the proposed resolution is to authorise the Board to fix the fees and expenses of the auditors for the coming financial year.

The Board unanimously recommends that shareholders vote in favour of Resolution 1.

Item 2: Re-election of Warren Lee



Warren Lee
BCom, CA
Non-Executive Director
Independent
Appointed Director:
26 May 2015

Warren has extensive experience and a long record of leadership in the international insurance industry, including 15 years at AXA in senior management positions within the company's Australian and Asian businesses. Warren's two most recent positions were Chief Executive Officer of the Victorian Funds Management Corporation and Chief Executive Officer, Australia and New Zealand for AXA Asia Pacific Holdings Limited. Warren is a non-executive director of MyState Limited, a listed Australian Financial Services Group. He has a Bachelor of Commerce from the University of Melbourne and is a member of Chartered Accountants Australia and New Zealand. Warren resides in Melbourne, Australia.

The Board unanimously recommends that shareholders vote in favour of Warren Lee's re-election (Resolution 2).

Item 3: Re-election of Graham Stuart



Graham Stuart
BCom (Hons), MS, FCA
Non-Executive Director
Independent
Appointed Director:
24 May 2012

With over 30 years' of senior management experience, Graham has held senior leadership roles with several major corporates, in New Zealand and overseas, the latest being Sealord Group of which he was Chief Executive Officer for 7 years.

Prior to that he held a number of diverse leadership roles including CEO of Mainland Products, Managing Director of Lion Nathan International, and Chief Financial Officer and Director of Strategy for the Fonterra Co-operative Group. Graham has a Bachelor of Commerce (First Class Hons) from the University of Otago, a Master of Science from Massachusetts Institute of Technology, and is a Fellow of Chartered Accountants Australia and New Zealand. Graham has served on a number of Government bodies including the Food & Beverage Taskforce and the Maori Economic Development Panel. Graham resides in Auckland, New Zealand.

The Board unanimously recommends that shareholders vote in favour of Graham Stuart's re-election (Resolution 3).

Item 4: Re-election of Marcus Nagel



Marcus Nagel
MBA.Economics,
M.Intnl Mgmt
Non-Executive Director
Non-Independent Director
Appointed Director:
14 January 2019

Marcus was nominated by Bain Capital Credit LP (**Bain Capital**) to represent Bain Capital's stake in Tower (Bain Capital holds 19.99% of Tower's ordinary shares). His election was supported by the Tower Board, noting his position with Bain Capital as a Special Advisor. Marcus is not considered an independent director, and Tower's Board and Bain Capital have agreed and implemented necessary governance and confidentiality protocols to protect the interests of all shareholders. Marcus has significant experience in the insurance industry having performed senior leadership roles for Zurich in Europe both in life insurance and general insurance. These roles have included being the branch manager of Zurich Insurance plc Germany, and the CEO of Zurich Group Germany. Marcus resides in Schindellegi, Switzerland.

The Board unanimously recommends that shareholders vote in favour of Marcus Nagel's re-election (Resolution 4).

Item 5: Capital Return

BACKGROUND

- 1 On 24 November 2021, Tower announced its intention to undertake a capital return to shareholders, on a pro rata basis, of approximately NZ\$30.4 million. The amount to be paid out under the proposed capital return will be funded by cash reserves.
- 2 The Board has determined that this return of capital should be effected by way of a Court approved arrangement under Part 15 of the Companies Act 1993 (NZ) (**Scheme**). The Board considers the proposed Scheme to be fair to all shareholders as it achieves a return of capital on a pro rata basis, with the result that the transaction does not alter the shareholders' relative voting and distribution rights.
- 3 The Scheme involves Tower's shareholders having one (1) share cancelled for every ten (10) shares held, and receiving a cash sum of NZ\$0.72 for each share cancelled (with Australian shareholders being paid the Australian dollar equivalent as explained in paragraph 16 below). If the number of shares a shareholder owns is not divisible by ten, then the number will be rounded up or down to the nearest whole number (with 0.5 rounded down).
- 4 On 30 November 2021, Tower applied to the High Court of New Zealand for an order directing Tower to put the Scheme to shareholders. The Court made initial orders on 10 December 2021 which require (amongst other things) the Scheme to be approved by special resolution of shareholders (that is, a resolution passed by a 75% majority of the votes of all shareholders entitled to vote and voting at the meeting), and IRD approval of the Scheme to be obtained by 9 February 2022. Tower will also be seeking a ruling from the Australian Tax Office in relation to the tax effect of the capital return for Australian tax purposes on Australian Shareholders. However, this will not be a condition of the Scheme.
- 5 If the resolution is passed and IRD approval is obtained, Tower will seek final orders from the High Court sanctioning the return of capital. The final orders that are being sought by Tower sanctioning the Scheme are set out in the copy of Tower's application to the Court (dated 30 November 2021), which accompanies this Notice of Meeting.
- 6 If shareholders do not approve the Scheme or if IRD approval is not obtained, the Scheme will not proceed and Tower's application to the High Court will be discontinued.
- 7 The Directors of Tower unanimously recommend that shareholders vote in favour of the Scheme (Resolution 5).

RATIONALE FOR THE CAPITAL RETURN

- 8 In 2019 Tower undertook a capital raising to fund the acquisition of Youi NZ's insurance portfolio, and also to reflect a change in its RBNZ licence conditions reflecting the removal of its EQC receivable¹ from its solvency calculations due to a dispute concerning it. As advised to the market on 24 November 2020, the dispute was settled with Tower receiving a net amount of NZ\$42.1 million².
- 9 Consequently, as at 30 September 2021 (and following payment of the dividend announced on 24 November 2021), Tower had approximately NZ\$37.7 million of surplus capital in excess of its target operating range for its prudential solvency margins.
- 10 The Board has been through an extensive exercise to determine the best use of these funds (subject to maintaining appropriate headroom above minimum solvency margins), including potential acquisition opportunities. The Board does not believe that any better opportunities exist at present or are likely in the short to medium term for these funds.

¹The Earthquake Commission (EQC) receivable relates to the recovery of claims costs related to the 2010 and 2011 Christchurch Earthquakes.

²Under the settlement agreement Tower received \$53.6m of the \$70.3m gross recovery receivable recognised as of 30 September 2020, with \$42.1m being the net amount after disbursement to reinsurers and costs.

- 11 After taking into account Tower's balance sheet structure, prudential and solvency requirements, investment opportunities and operating outlook, the Board has determined that approximately NZ\$30.4 million be returned to shareholders by the Scheme.
- 12 Immediately following the capital return Tower's solvency margins and ratios will be materially above the minimum prescribed by law³.
- 13 In determining the amount of capital to be returned to shareholders, Tower considered a number of factors, including:
- a. Tower's statutory capital adequacy requirements and its solvency position (including that of subsidiaries);
 - b. any potential need for capital expenditure over the next 1 – 2 years;
 - c. Tower's ability to meet all of its liabilities;
 - d. Tower's credit quality; and
 - e. likely future revenues and liabilities.
- 14 In determining the preferred form of capital return, Tower sought advice from its external legal advisers, investment bankers, appointed actuary, and tax advisers. All options were considered, including the payment of a dividend, both on-market and off-market share buyback transactions, and the proposed Scheme. After careful consideration by the Board, the preferred method adopted was the Scheme.
- 15 In reviewing the options for the return of capital, Tower's objectives included:
- a. certainty that the return of capital would proceed (with a low level of execution risk);
 - b. ensuring that the payment made to shareholders is appropriately treated as a return of capital for New Zealand tax purposes (see further information under the heading "Taxation – New Zealand" below). Tower will also be seeking a ruling from the Australian Tax Office in relation to the tax effect of the capital return for Australian tax purposes on Australian Shareholders (see further information under the heading "Taxation – Australia" below);
 - c. ensuring that the return of capital will be made in a timely manner, so that shareholders receive cash in the near term; and
 - d. adopting a method that ensured all shareholders are treated on the same basis and that the return of capital does not alter any shareholder's proportionate voting or distribution rights.

THE SCHEME AND ITS EFFECT

- 16 Subject to approval by shareholders, receipt of IRD approval by 9 February 2022 (see "Taxation – New Zealand" below), and receipt of final orders from the High Court sanctioning the return of capital, the Scheme will result in:
- a. the cancellation of one (1) in every ten (10) shares held by each shareholder in Tower (together with all rights attaching to those shares) on the Record Date (as defined in paragraph 20 below). Fractions of a share will be rounded up or down to the nearest whole number (with 0.5 rounded down); and
 - b. the payment to each shareholder of NZ\$0.72 for each share cancelled. Shareholders with an address on the register in Australia at 7:00pm (New Zealand time) on the Record Date for determining the shareholders to participate in the Scheme will be paid the NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower's share registrar on or about that time, as approved by Tower. In this way, Tower will return to shareholders, on a pro rata basis, approximately NZ\$30.4 million of capital. On the Record Date, there are expected to be 421,647,258 shares on issue. Based on this number, 42,164,726 ordinary shares will be cancelled (subject to rounding). This will leave the total number of ordinary shares on issue at approximately 379,482,532.
- 17 Subject to the approval of shareholders and receipt of IRD approval (see "Taxation – New Zealand" below), the final orders from the High Court sanctioning the Scheme are expected to be made on or about 25 February 2022. If shareholders do not approve the Scheme or IRD approval is not obtained, it will not proceed and Tower's application to the High Court will be discontinued.

³Tower is required to maintain capital in excess of the minimum solvency capital requirement specified by the Reserve Bank of New Zealand (RBNZ). See also Tower's 2021 full year results presentation, released to NZX and ASX on 24 November 2021.

- 18 The indicative timetable for the proposed Scheme is set out in the table below.

| EVENT | DATE |
|----------------------------------|------------------|
| Annual Meeting | 2 February 2022 |
| Due date for IRD approval | 9 February 2022 |
| Final orders made by High Court* | 25 February 2022 |
| Record Date* | 4 March 2022 |
| Payment to shareholders* | 18 March 2022 |

*The dates above are indicative only. If the final court orders have not been made by 25 February 2022, the Record Date will be five business days after the date on which the final orders from the High Court sanctioning the Scheme are made. Payment will be made to shareholders within ten business days after the Record Date.

- 19 Directors of Tower and associated persons of Directors who legally and/or beneficially own shares in Tower will participate in the return of capital in exactly the same way as all other ordinary shareholders of Tower. Directors and/or their associated persons are entitled to vote on Resolution 5 to approve the capital return.

PAYMENT OF FUNDS UNDER THE SCHEME

- 20 The share register will close at 7:00pm (New Zealand time) on 4 March 2022, or the date five business days after the date on which the final orders from the High Court sanctioning the Scheme are made, whichever is the latest (**Record Date**). This will be for the purpose of determining the number of shares to be cancelled and the amount to be returned to those shareholders whose names appear in the share register at that time. The cancellation will be effected during the course of a short trading halt, the details of which will be advised through NZX/ASX in due course.
- 21 Payment to shareholders will be made by direct credit in the case of those shareholders who have previously provided bank account details to Tower. Direct credits will be made, within ten business days after the Record Date. At the same time, each shareholder will be issued with a new shareholding statement showing the new number of shares held following the cancellation of shares. Both the payment to shareholders and the provision of a new shareholding statement will be undertaken by Tower's share registrar.
- 22 For those shareholders that have not previously provided their bank account details to Tower, the share registrar will make contact to obtain them by the Record Date. Payment will then be made within ten business days of valid details having been provided (without interest) if they are not provided by the Record Date, with the funds being dealt with as unclaimed dividends in the meantime in accordance with Tower's constitution (see clause 5.11).
- 23 Shareholders with an address on the register in Australia at 7:00pm (New Zealand time) on the Record Date will be paid NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower's share registrar on or about that time, as approved by Tower. Any such shareholder who does not provide valid bank account details by the Record Date, will have these funds held for them in accordance with paragraph 22 above.

TAXATION – NEW ZEALAND

- 24 The following is provided as general guidance as to the tax effect in New Zealand. Shareholders should obtain independent taxation advice on the effect of the Scheme based on their individual circumstances.
- 25 The Scheme is conditional on Tower receiving notification from the Commissioner of Inland Revenue under section CD 22 of the Income Tax Act 2007 (NZ) by 9 February 2022 that no part of the amount that will be paid (\$30.4 million) to shareholders on the share cancellation is in lieu of the payment of a dividend. Therefore, even if the shareholders approve the Scheme, it will not proceed unless this condition is satisfied by 9 February 2022.
- 26 If this condition is satisfied as well as certain other requirements in the Income Tax Act 2007 (NZ), the amount paid to shareholders will be treated as a return of capital and not as a dividend for New Zealand income tax purposes.
- 27 This means the payment will generally not be taxable for New Zealand shareholders unless:
- a. the shareholder is a share dealer;
 - b. the shares were acquired for the dominant purpose of disposal; or
 - c. the amount received by a shareholder is derived from a profit-making undertaking or scheme.

TAXATION – AUSTRALIA

- 28 The following is provided as general guidance as to the tax implications for Australian tax resident shareholders (**Australian Shareholders**). Australian Shareholders should obtain independent tax advice on the effect of the Scheme based on their individual circumstances.
- 29 Tower will be applying to the Australian Taxation Office (**ATO**) for a Class Ruling on behalf of the Australian Shareholders to confirm that no part of the payment received by the Australian Shareholders under the Scheme will be treated as a dividend for Australian tax purposes and that the payment will be treated as capital proceeds received by the Australian Shareholders for the purposes of calculating any capital gain or loss on the cancellation of the shares. The description below is based on a favourable Class Ruling being issued by the ATO. Regardless of whether the Class Ruling is issued, Tower will proceed with the proposed Scheme (subject to shareholder approval, final Court approval and IRD approval).
- 30 Australian Shareholders cannot rely on this guidance until the Class Ruling is issued by the ATO. If it is issued, Tower will notify the Australian Shareholders as soon as the Class Ruling is available by announcement on NZX/ASX and a copy of the Class Ruling will be published on the Tower website. If the Class Ruling is not issued by the ATO then the tax consequences for Australian Shareholders may be different to the description below.
- 31 Under the Scheme, the shares held by an Australian Shareholder will be cancelled. The cancellation of the shares will constitute a CGT event (CGT event C2). The CGT event will happen at the time the shares are cancelled.
- 32 An Australian Shareholder will make a capital gain from the CGT event to the extent that the capital proceeds received in respect of the cancellation of their shares (the payment they receive) is more than the cost base of the shares (which will broadly include the amount paid to acquire the shares and certain non-deductible costs associated with acquiring and holding the shares). An Australian Shareholder will make a capital loss to the extent that the capital proceeds received in respect of the cancellation of the shares is less than the reduced cost base of the shares.
- 33 To the extent that the Scheme results in an Australian Shareholder having a capital gain, they may be entitled to reduce the gain under the CGT discount rules. Under the CGT discount rules, an Australian Shareholder is generally able to reduce the capital gain (after first applying any current year or prior year capital losses) by 50% where they are an individual or trust and by 33.33% where they are a complying superannuation fund, provided that they have held the shares for at least 12 months before their cancellation. The CGT discount is not available to Australian Shareholders that are companies.

- 34** An Australian Shareholder must include the net capital gain in their assessable income for the income year in which the Scheme is implemented. If an Australian Shareholder makes a capital loss, this can be used to offset other capital gains from the same income year or may be carried forward to offset capital gains incurred in future income years. Specific loss recoupment rules apply to companies which determine whether capital losses can be carried forward to future income years.
- 35** This section and the Class Ruling is only relevant for Australian Shareholders who hold their Tower shares on capital account and does not apply to Australian Shareholders who:
- hold their shares as trading stock or as revenue assets;
 - hold their shares as assets used in carrying on a business or as part of a profit making undertaking or scheme;
 - who are Australian tax residents but who hold their shares as part of an enterprise carried on, at or through a permanent establishment in a foreign country;
 - that are financial institutions, insurance companies, partnerships, tax exempt organisations, trusts (except where expressly stated), superannuation funds (except where expressly stated) or temporary residents of Australia; or
 - who are subject to the taxation of financial arrangements rules in Australia in relation to gains and losses on their shares.

FURTHER INFORMATION

- 36** Shareholders who have any questions about the effect of the Scheme on their investment should consult their financial advisers.
- 37** Copies of the Court documents filed in relation to the Scheme and the initial Court orders are available on the following website <https://www.tower.co.nz/investor-centre/>.

Procedural Notes

Convening orders

The meeting referred to in this Notice of Meeting has been convened by an order of the High Court of New Zealand made at Auckland on 10 December 2021.

The scheme of arrangement referred to in Resolution 5 is recorded in the Arrangement Document annexed to this Notice of Meeting.

A copy of Tower's application to the Court for final orders sanctioning the scheme of arrangement (dated 30 November 2021) accompanies this Notice of Meeting.

A copy of the Court's minute containing its initial orders (dated 10 December 2021) accompanies this Notice of Meeting.

This Notice of Meeting has been submitted to NZ RegCo in accordance with NZX Listing Rule 7.1.1 and NZ RegCo has provided written confirmation that it does not object to this Notice of Meeting. However, NZX accepts no responsibility for any statement in this Notice of Meeting.

Eligibility to vote

If you are a shareholder whose name is recorded in the Tower share register at the close of business on 31 January 2022, you are entitled to attend the Annual Meeting and vote either in person or by Proxy (subject to the time limits for returning Proxy Forms).

Appointing a Proxy

A Proxy Form is included with this Notice of Meeting. A shareholder entitled to vote at the Annual Meeting but who is unable to attend may appoint a Proxy to attend the meeting, to act generally and vote on their behalf. A Proxy does not need to be a Tower shareholder. You may appoint the Chair of the meeting or any Director as your Proxy. The Chair of the meeting and the Directors will vote as directed on any resolutions and intend to vote any discretionary proxies in favour of all resolutions, even if they have an interest in the outcome of the resolution, to the extent permitted by the NZX Listing Rules, ASX Listing Rules, and Tower's constitution. If you have ticked the "Proxy's Discretion" box and your named Proxy does not attend the meeting or you have not named a Proxy (but otherwise completed your Proxy Form in full), the Chair of the meeting will act as your Proxy.

To be valid, a completed Proxy Form (and any power of attorney under which it is signed) must be deposited with Computershare no later than 10:00am (NZT) on Monday, 31 January 2022.

COMPLETING PROXY FORMS

A completed Proxy Form may be deposited by:

ONLINE

1. Go to www.investorvote.co.nz
2. Use the control number and CSN/shareholder number found on the Proxy Form and post code or country of residence (if outside New Zealand) to securely access InvestorVote.
3. Follow the prompts to appoint a proxy or corporate representative online.

EMAIL

Email a completed and signed Proxy Form to corporateactions@computershare.co.nz with "Tower proxy" in the subject line.

NOTICE IN WRITING

1. Complete and sign the Proxy Form attached to this Notice of Meeting.
2. Return the completed and signed Proxy Form to Tower's Share Registry, Computershare Investor Services Limited, Private Bag 92119, Victoria Street West, Auckland 1142, New Zealand, or if in **Australia** to Tower's Share Registry, Computershare Investor Services Pty Limited, GPO Box 3329, Melbourne, VIC 3001, Australia.

Please see your Proxy Form for further details about signing the proxy form. Proxy Forms that are signed incorrectly will be invalid.

Resolutions

Resolutions 1 to 4 are ordinary resolutions. An ordinary resolution is a resolution passed by a simple majority of votes of those shareholders entitled to vote and voting on the resolution. No shareholder is prohibited from voting on resolutions 1 to 4.

Resolution 5 is a special resolution. The special resolution must be approved by a majority of 75% of votes of those shareholders entitled to vote and voting on the resolution. No shareholder is prohibited on voting on the special resolution and all shareholders will vote together as one class.

The Board unanimously recommends that you vote in favour of all resolutions put to the meeting. The Directors intend to vote their own shares in favour of all resolutions.

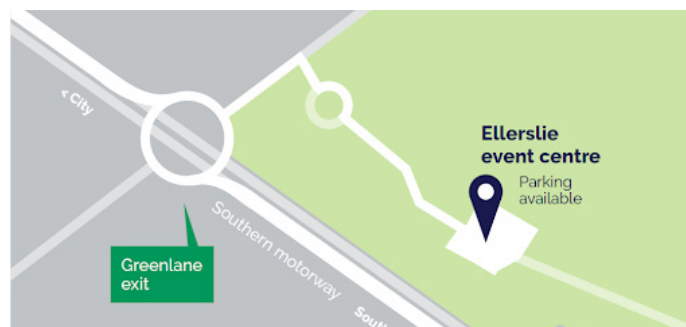
Motions from the floor will not be allowed unless they are consistent with the meeting agenda.

Participating in the Annual Meeting online

To attend the Annual Meeting online please go to www.meetnow.global/nz. To access the Meeting, click Go under the Tower meeting and then click JOIN MEETING NOW. Select 'shareholder' on the login screen and enter your CSN or holder number (which can be found on the Proxy Form attached to this Notice of Meeting) and mailing address postcode (if in New Zealand) or if outside New Zealand, choose your country from the drop-down list. Shareholders attending online will be able to vote and ask questions virtually during the Meeting.

The Virtual Meeting Guide accompanying this Notice of Meeting contains more information on how to attend and participate in the Annual Meeting online. We recommend that you read this guide, and login 15 minutes in advance of the Annual Meeting to ensure you are familiar and ready to start at 10.00am. If you have any questions on how to attend the meeting online, please contact Computershare Investor Services Limited on +64 9 488 8777 between 8.30am and 5.00pm Monday to Friday (NZT).

Directions to Ellerslie Event Centre and parking details



ARRANGEMENT DOCUMENT

Scheme of Arrangement pursuant to Part 15 of the Companies Act 1993 (NZ)

BETWEEN: Tower Limited and the holders of shares in Tower Limited.

1. INTERPRETATION

1.1 In this document, unless the context otherwise requires:

"Business Day" means a day on which the stock exchanges operated by NZX and ASX are open for trading.

"Record Date" means 4 March 2022, or the date five Business Days after the date on which the final order from the High Court of New Zealand is made pursuant to section 236(1) of the Companies Act 1993 sanctioning the arrangement, whichever is the latest.

"Share" means an ordinary share in Tower.

"Shareholder" means each person who is registered in the share register of Tower as the holder of a Share at 7:00pm (New Zealand time) on the Record Date.

"Tower" means Tower Limited.

2. ARRANGEMENT

2.1 One (1) Share for every ten (10) Shares registered in the name of each Shareholder at 7:00pm (New Zealand time) on the Record Date shall be cancelled (together with all the rights attaching to those Shares). For this purpose, fractions of a Share shall be rounded up or down to the nearest whole Share (with 0.5 rounded down).

2.2 Within ten Business Days after the Record Date, Tower shall pay to each Shareholder for each Share registered in the name of that Shareholder which has been cancelled in accordance with clause 2.1:

(a) where that Shareholder has at 7:00pm (New Zealand time) on the Record Date an address on the share register other than in Australia, NZ\$0.72; or

(b) where that Shareholder has at 7:00pm (New Zealand time) on the Record Date an address on the share register in Australia, NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower's share registrar on or about that time, as approved by Tower.



Lodge Your Vote

Online at: www.investorvote.co.nz

By email: corporateactions@computershare.co.nz



By mail in New Zealand

Tower Share Registry
Computershare Investor Services Limited
Private Bag 92119, Victoria Street West,
Auckland 1142, New Zealand



Or mail in Australia

Tower Share Registry
Computershare Investor Services Pty Limited
GPO Box 3329, Melbourne, VIC 3001, Australia



For all enquiries contact

Freephone within New Zealand: **0800 222 065**

Telephone within New Zealand: **+64 9 488 8777**

Freephone within Australia: **1800 501 366**

Telephone within Australia: **+61 3 9415 4083**

PROXY/VOTING FORM

For the **Tower Limited (Tower)** Annual Meeting of Shareholders to be held both online at Computershare's online web platform at www.meetnow.global/nz (see the Virtual Meeting Guide released with the Notice of Meeting for more information) and at Guineas Room 3, Ellerslie Event Centre, Ellerslie Racecourse, 80 Ascot Avenue, Auckland, New Zealand, on **Wednesday, 2 February 2022 at 10.00am (NZT)**.

For your vote to be effective it must be received by 10:00am (NZT) Monday, 31 January 2022.

Vote Online: www.investorvote.co.nz available 24 hours a day, 7 days a week.

Your secure access information

Control number:

CSN/Securityholder Number:

Please note: You will need above Control number, CSN/Securityholder Number and Postcode or country of residence (if outside New Zealand) to securely access InvestorVote and then follow the prompts to appoint and exercise your vote online.

Smartphone?
Scan the code



What is this form?

This Proxy Form allows you to appoint someone to vote in your place at Tower's Annual Shareholder Meeting if you are unable to attend.

Can I still attend the meeting in person?

Yes, you can attend the meeting in person (but you will not be able to vote if you have appointed a Proxy).

How do I appoint a Proxy?

If you wish to appoint a Proxy to attend the meeting in your place, simply fill out the form on the next page.

Who can I appoint?

The person you appoint as your Proxy does not have to hold shares in Tower. You can also appoint the Chair of the meeting, or any other Tower Director, if you wish.

If, in appointing a Proxy, you have not named a person to be your Proxy, or your named Proxy does not attend the Meeting, the Chair will be your Proxy.

How will my Proxy vote?

Your Proxy will vote whichever way you direct. Just tick next to each resolution on the next page whether you are 'For' or 'Against' the resolution. You can also allow the Proxy to decide how to vote by ticking the 'Proxy Discretion' box, or you can choose to 'Abstain'. If you do not tick anything, your Proxy can vote however they wish.

If you tick more than one box next to each resolution, your vote will be invalid on that particular resolution.

If you appoint the Chair of the Meeting or any other

Tower Director, they will vote in favour of all resolutions, even if they have an interest in the outcome of a resolution, to the extent permitted by the NZX Listing Rules, ASX Listing Rules, and Tower's constitution.

There are no voting restrictions on the resolutions proposed in the Notice of Meeting.

I am a representative of a corporate shareholder – do I need to provide any other documentation?

Yes, in addition to the completed Proxy Form, you will need to provide the appropriate "Certificate of Appointment of Corporate Representative" before you will be admitted to the meeting.

Will you allow motions from the floor at the meeting?

Motions from the floor will not be allowed unless they are consistent with the Meeting agenda. You can however ask questions at the Meeting and the attached RSVP form has a space for you to submit questions before the Meeting.

A Proxy is able to vote on motions from the floor and/or any resolutions put before the Meeting to amend the resolutions stated in the Notice of Meeting.

Can I attend the meeting virtually?

The Meeting will be a hybrid meeting, held both online at www.meetnow.global/nz (see the virtual meeting guide released with the Notice of Meeting for more information on how to participate online) and in person at the Ellerslie Event Centre.

Signing Instructions

Individual

Where the holding is in one name, the securityholder must sign this Proxy Form.

Joint Holding

Where the holding is in more than one name, all of the securityholders must sign the Proxy Form.

Power of Attorney

If this Proxy Form has been signed under a power of attorney, a copy of the power of attorney (unless already deposited with Computershare) and a signed certificate of non-revocation of the power of attorney must be provided with this Proxy Form.

Companies

The Proxy Form should be signed by a Director or an authorised officer. Please sign in the appropriate place and indicate which office you hold.

Where do I send my Proxy Form?

You can lodge your Proxy Form by post or by email at the details listed under the heading 'Lodge Your Vote' at the top of this form. Alternatively, you can appoint a Proxy online by going to www.investorvote.co.nz, or if you have a Smartphone, by scanning the QR code on the first page of this Proxy Form and following the prompts.

All Proxy appointments must be received by 10.00am (NZT) on Monday, 31 January 2022.

Please turn over to complete the form to vote

Proxy/Corporate Representative Form

1 Step 1: Appoint a Proxy/Corporate Representative to vote on your behalf

I/We being a shareholder/s of Tower Limited

appoint _____ of _____

or failing him/her _____ of _____

as my/our Proxy to act generally at the meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, the Proxy will vote as they see fit) at the Annual Meeting of shareholders of Tower Limited to be held both online at Computershare's online web platform at www.meetnow.global/nz (see the Virtual Meeting Guide released with the Notice of Meeting for more information) and at Guineas Room 3, Ellerslie Event Centre, Ellerslie Racecourse, 80 Ascot Avenue, Auckland, New Zealand on Wednesday, 2 February 2022 at 10.00am (NZT) and at any adjournment of that meeting. If you wish, you may appoint as your Proxy 'The Chair of the Meeting'.

If your Proxy is not the Chair of the Meeting or another Director of Tower Limited, please ensure that you provide their contact details (phone and email address) below. If this information is not provided, your Proxy's admission to the online Meeting is not guaranteed.

Proxy contact details

Phone _____ Email _____

2 Step 2: Items of Business/Resolutions - Voting Instructions/Ballot Paper

Please note: If you mark the Abstain box for an Item, you are directing your Proxy not to vote on your behalf and your votes will not be counted in computing the required majority.

| Resolutions | For | Against | Proxy Discretion | Abstain |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| 1. Auditor Remuneration That the Board be authorised to determine the auditor's fees and expenses for the 2022 financial year. (See Explanatory Note 1) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 2. Re-election of Director (Warren Lee) That Warren Lee, who retires on rotation in accordance with NZX Listing Rule 2.7.1, be re-elected as a Director of Tower. (See Explanatory Note 2) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 3. Re-election of Director (Graham Stuart) That Graham Stuart, who retires on rotation in accordance with NZX Listing Rule 2.7.1 be re-elected as a Director of Tower. (See Explanatory Note 3) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 4. Re-election of Director (Marcus Nagel) That Marcus Nagel, who retires on rotation in accordance with NZX Listing Rule 2.7.1 be re-elected as a Director of Tower. (See Explanatory Note 4) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 5. Capital return That the scheme of arrangement relating to the return of capital to shareholders, as set out in the Arrangement Document annexed to the Notice of Meeting, dated 22 December 2021, be approved. (See Explanatory Note 5) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

3 Step 3: Sign Signature of Securityholders

This section must be completed.

Securityholder 1
(or Director/Authorised Officer)

Securityholder 2
(if second joint shareholder)

Securityholder 3
(if third joint shareholder)

Contact name

Telephone (day)

Date



Annual meeting of Tower Limited to be held both online at Computershare's online web platform at www.meetnow.global/nz (see the virtual meeting guide released with the Notice of meeting for more information) and at Guineas Room 3, Ellerslie Event Centre, Ellerslie Racecourse, 80 Ascot Avenue, Auckland, New Zealand on **Wednesday, 2 February 2022 at 10:00am (NZT)**.

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV/2021-404-

UNDER

Part 15 of the Companies Act 1993

IN THE MATTER OF an application by **TOWER LIMITED** a duly incorporated company having its registered office at Level 5, 136 Fanshawe Street, Auckland, and carrying on business as an insurance business, for approval of an arrangement

APPLICANT

**WITHOUT NOTICE ORIGINATING APPLICATION FOR ORDER APPROVING
ARRANGEMENT UNDER PART 15 OF THE COMPANIES ACT 1993**

Dated:

30 November 2021

MinterEllisonRuddWatts

PO Box 105 249 Auckland City 1143
Telephone +64 9 353 9700
Facsimile +64 9 353 9701
Solicitor Acting: Ana Simkiss
ana.simkiss@minterellison.co.nz
Partner Responsible: Sean Gollin

TO: The Registrar of the High Court at Auckland

AND TO: Any person that the High Court directs to be served

This document notifies you that –


1. The applicant, Tower Limited (**Tower**) applies for the following orders:
 - (a) approving the scheme of arrangement described in the Arrangement Document (a draft of which is attached to this originating application marked “**A**”) between Tower and its shareholders for the return of capital (the **Arrangement**);
 - (b) declaring the Arrangement to be binding upon Tower, all its shareholders, and all such other persons necessary to give effect to the Arrangement, with (amongst other things) the effect that:
 - (i) One (1) of every ten (10) ordinary shares registered in the name of each shareholder at 7:00pm on either 4 March 2022, or the date that is five business days after the date on which final orders of this Court are made sanctioning the Arrangement, whichever is the latest (**Record Date**), together with all rights attaching to those shares, will be cancelled.
 - (ii) Within 10 business days after the Record Date, Tower will make payment by direct credit to each shareholder NZ\$0.72 for each share registered in the name of the shareholder, which has been cancelled in accordance with paragraph (i) above.
 - (iii) Shareholders with an address on the register in Australia at 7:00pm on the Record Date will be paid NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower’s share registrar on or about that time as approved by Tower.
 - (c) dispensing with formal service of this application, or any other application made by Tower in this proceeding, on any person; and
 - (d) granting leave to apply to this Court for approval of any amendment, modification, or supplement to the Arrangement.

2. The grounds upon which each order is sought are as follows:
- (a) the board of directors of Tower has resolved to seek the approval of (and apply to this Court for approval of) a scheme of arrangement under Part 15 of the Companies Act 1993 (**Act**);
 - (b) section 236(1) of the Act provides jurisdiction for the Court to make orders that the Arrangement is binding on Tower and any other such persons as the Court may specify and on terms and conditions the Court thinks fit;
 - (c) Tower has, at the same time as filing this application, filed an interlocutory application for orders pursuant to s 236(2) of the Act directing and approving the process to be followed in holding a meeting of shareholders to vote on the Arrangement;
 - (d) if approved by the shareholders of Tower, final orders in terms of section 236(1) of the Act will be required so as to make the Arrangement binding;
 - (e) by the date on which this originating application is determined, Tower will have complied with the initial interlocutory orders requested and the requirements of Part 15 of the Act;
 - (f) all persons who might be affected by the Arrangement, being all shareholders of Tower, will receive notice of and be entitled to vote at the proposed meeting seeking the approval of shareholders to the Arrangement;
 - (g) any shareholder who may oppose this Originating Application will have the opportunity to oppose it and to be heard;
 - (h) the Arrangement will not adversely impact Tower's creditors or shareholders as Tower will maintain the level of solvency required by the Insurance (Prudential Supervision) Act 2010 and the Reserve Bank of New Zealand;
 - (i) by the date on which this originating application is determined, Tower will also have received the approval of the IRD to the Arrangement;

- (j) the Arrangement is such that an intelligent and honest person of business acting in respect of his or her own interest would reasonably approve it;
 - (k) the terms and conditions of the Arrangement are otherwise fair and equitable to the shareholders of Tower;
 - (l) as set out in the Affidavit of Michael Peter Stiassny sworn 30 November 2021 the memorandum of counsel and interlocutory application for initial orders filed with this originating application; and
 - (m) as set out in any further updating affidavits to be filed following the implementation of initial orders and prior to the determination of this application.
3. This application is made in reliance upon:
- (a) Part 15 of the Act;
 - (b) rules 7.19, 7.20, 7.23, 19.2(c) and 19.10 of the High Court Rules 2016;
 - (c) *Re CM Banks Ltd* [1944] NZLR 248 (SC); *Weatherston v Waltus Property Investments Ltd* [2001] 2 NZLR 103 (CA), *Re Auckland International Airport* [2014] NZHC 405, *Re Kirkcaldie & Stains Limited* [2016] NZHC 112, *Re Tenon Limited* [2016] NZHC 2497, *Re Nuplex Industries* [2016] NZHC 1677, *Re Tenon Limited* [2017] NZHC 674, *Re New Zealand Oil & Gas Ltd* [2017] NZHC 809, *Re PGG Wrightson Ltd* [2019] NZHC 1780 and *Re Tilt Renewables Ltd* [2020] NZHC 1398;
 - (d) the memorandum of counsel filed in support of this application and the without notice interlocutory application for initial orders;
 - (e) the evidence filed in support of this application as set out in the affidavit of Michael Peter Stiassny, sworn 30 November 2021; and
 - (f) any further affidavit evidence or memorandum of counsel filed prior to the Court's determination of this application.

4. This application is made without notice to any other party on the following grounds:
- (a) that requiring the applicant to proceed on notice to each shareholder would cause undue delay or prejudice to the applicant;
 - (b) that all persons who might be affected by the Arrangement will receive notice of and be entitled to vote at the proposed meeting seeking the approval of shareholders to the Arrangement; and
 - (c) that the interests of justice require the application to be determined without serving notice of the application.
5. I certify that –
- (a) the grounds set out in paragraph 4 on which the application relies are made out; and
 - (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

DATED at Auckland on 30 November 2021


S C D A Gollin
Counsel for the Applicant

This **ORIGINATING APPLICATION** is filed by **SEAN CHRISTOPHER DAVID ALBERT GOLLIN**, of MinterEllisonRuddWatts, PwC Tower, 15 Customs Street West, Auckland 1010, solicitor for the abovenamed Applicant. The address for service of the Applicant is at the offices of MinterEllisonRuddWatts, PwC Tower, 15 Customs Street West, Auckland 1010.

Documents for service on the abovenamed Applicant may be left at that address for service or may be:

- (A) posted to the solicitor at PO Box 105 249, Auckland 1143; or
- (B) emailed to the solicitor at sean.gollin@minterellison.co.nz and ana.simkiss@minterellison.co.nz

ARRANGEMENT DOCUMENT

Scheme of Arrangement pursuant to Part 15 of the Companies Act 1993 (NZ)

BETWEEN: Tower Limited and the holders of shares in Tower Limited.

1. INTERPRETATION

1.1 In this document, unless the context otherwise requires:

“**Business Day**” means a day on which the stock exchanges operated by NZX and ASX are open for trading.

“**Record Date**” means 4 March 2022, or the date five Business Days after the date on which the final order from the High Court of New Zealand is made pursuant to section 236(1) of the Companies Act 1993 sanctioning the arrangement, whichever is the latest.

“**Share**” means an ordinary share in Tower.

“**Shareholder**” means each person who is registered in the share register of Tower as the holder of a Share at 7:00pm (New Zealand time) on the Record Date.

“**Tower**” means Tower Limited.

2. ARRANGEMENT

2.1 One (1) Share for every ten (10) Shares registered in the name of each Shareholder at 7:00pm (New Zealand time) on the Record Date shall be cancelled (together with all the rights attaching to those Shares). For this purpose, fractions of a Share shall be rounded up or down to the nearest whole Share (with 0.5 rounded down).

2.2 Within ten Business Days after the Record Date, Tower shall pay to each Shareholder for each Share registered in the name of that Shareholder which has been cancelled in accordance with clause 2.1:

(a) where that Shareholder has at 7:00pm (New Zealand time) on the Record Date an address on the share register other than in Australia, NZ\$0.72; or

(b) where that Shareholder has at 7:00pm (New Zealand time) on the Record Date an address on the share register in Australia, NZ\$0.72 converted into Australian dollars at the exchange rate organised by Tower’s share registrar on or about that time, as approved by Tower.

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

CIV-2021-404-2299

| | |
|---------------|---|
| UNDER | Part 15 of the Companies Act 1993 |
| IN THE MATTER | of an application by TOWER LIMITED for approval of an arrangement Applicant |

Hearing: On the papers

Counsel: SDA Gollin and A Simkiss for the Applicant

Minute: 10 December 2021

MINUTE OF ASSOCIATE JUDGE SUSOCK

Solicitors:
MinterEllisonRuddWatts, Auckland,
sean.gollin@minterellison.co.nz / ana.simkiss@minterellison.co.nz

Case Officer:
Samy Saminathan

Introduction

[1] The applicant, Tower Limited, wishes to implement a scheme of arrangement between Tower and its shareholders under Part 15 of the Companies Act 1993 (“Arrangement”). The Arrangement is intended to return approximately NZ\$30.4 million of capital to shareholders by way of a pro rata cancellation of one share in every 10 ordinary shares.

[2] Two applications have been filed on a without notice basis:

- (a) an originating application for final orders approving a scheme of arrangement under Part 15 of the Companies Act for the return of capital to shareholders (“Originating Application”); and
- (b) an interlocutory application for initial procedural orders relating to the process for seeking shareholders’ approval for the Arrangement (“Interlocutory Application”).

[3] Further documents were filed in support of the applications as follows:

- (a) covering letter dated 30 November 2021;
- (b) memorandum of counsel for the applicant dated 30 November 2021;
- (c) affidavit of Michael Peter Stiassny affirmed on 30 November 2021;
- (d) certificate concerning administration of oath or declaration signed by Jessica Fay Needham; and
- (e) bundle of authorities.

[4] A further memorandum was filed on 9 December 2021 confirming that copies of the applications together with the supporting documents had been sent to the Reserve Bank as required for all applications under Parts 14 to 16 of the Companies Act by s 157 of the Insurance (Prudential Supervision) Act 2010.

[5] Section 157 requires not only the Applicant but also the Registrar of the High Court to take reasonable steps to ensure that copies of any applications are sent to the Reserve Bank. No further steps need to be taken by the Registrar to satisfy s 157 now that the memorandum has been filed attaching copies of the correspondence with the Reserve Bank confirming receipt.

[6] The remainder of this Minute relates to the application for initial procedural orders only and the setting down of the Originating Application for final orders for a hearing.

Application for initial orders

[7] The interlocutory orders sought are procedural. The Court's approval is sought for the steps needed to facilitate consideration of and voting on the Arrangement. It is only if those steps are followed and the required majority vote in favour of the Arrangement and further conditions are satisfied as discussed below that Tower will then seek final orders under Part 15 of the Companies Act.

[8] In summary, it is proposed under the Arrangement that:

- (a) One in every 10 ordinary shares, together with all rights attaching to those shares, will be cancelled.
- (b) Tower will pay to each shareholder NZ\$0.72 for each share registered in the name of the shareholder.
- (c) Fractions of a share will be rounded up or down to the nearest whole number (with 0.5 rounded down).

[9] Tower is proposing to effect the Arrangement under Part 15 of the Companies Act. In particular, Tower intends:

- (a) first that Tower's shareholders will be asked to vote on whether they support the Arrangement; and

- (b) if the required 75 per cent vote yes and IRD approval is obtained, to file further evidence and submissions and to seek the Court's approval of the Arrangement by way of final orders.

Jurisdiction

[10] Part 15 provides for schemes of arrangement with the sections governing eligibility being ss 235 and 236(1). An "arrangement" is defined in s 235 for the purposes of Part 15 as:

Arrangement includes a reorganisation of the share capital of a company by the consolidation of shares of different classes, or by the division of shares into shares of different classes, or by both those methods.

[11] Section 236(1) of the Companies Act provides:

236 Approval of arrangements, amalgamations, and compromises

- (1) Notwithstanding the provisions of this Act or the constitution of a company, the Court may, on the application of a company or any shareholder or creditor of a company, order that an arrangement or amalgamation or compromise shall be binding on the company and on such other persons or classes of persons as the Court may specify and any such order may be made on such terms and conditions as the Court thinks fit.

[12] The meaning of "arrangement" under Part 15 was considered by the Court of Appeal in *Suspended Ceilings (Wellington Ltd) v CIR*:¹

That word has been described in *Re International Harvester Co of Australia Pty Ltd* [1953] VLR 669 per Lowe ACJ as a word "of very wide import" and one not restricted in its meaning by its association with "compromise". It was given a wider meaning than "compromise" in the *Guardian Assurance Company* [1917] 1 CH 431 (CA). As AT Lawrence J at p 450, there is no ground for limiting the meaning in the section and empowering the court to approve an arrangement, and any risk is sufficiently guarded against by the fact that the sanction of the court must be obtained.

[13] Counsel for Tower submit that the term "arrangement" therefore should be given a wide construction so that the Arrangement falls comfortably within the meaning of s 235. Counsel refer to several recent cases where capital repayments have

¹ *Suspended Ceilings (Wellington Ltd) v CIR* [1995] 3 NZLR 143 (CA) at 148.

been made to shareholders through Part 15 schemes of arrangement. Several of these have been by cancellation of one of a number of shares including:

- (a) *Re Auckland International Airport* [2014] NZHC 405; and
- (b) *Re Tilt Renewables Ltd* [2020] NZHC 1398.

[14] I am satisfied that the proposed Arrangement properly falls within the definition in s 235 and there is jurisdiction to make the orders sought under Part 15 of the Companies Act.

Consideration of initial orders sought

[15] Section 236(2) of the Act sets out the Court's jurisdiction to make initial orders in respect of proposed schemes. The purpose of these orders is to ensure there is a process by which all interested or affected parties are consulted before the Court makes its decision on the proposed scheme and that those parties are provided with sufficient information to enable them to properly consider, and to decide whether to support or oppose, the arrangement. The orders available pursuant to s 236(2) concern:

- (a) the providing of information to interested parties;
- (b) scheduling and conduct of the meeting of shareholders which will consider the arrangement;
- (c) a report on the proposed arrangement for the Court and whether that report ought to be supplied to shareholders or any other person who appears to the Court to be interested;
- (d) relating to costs incurred in the preparation of the report referred to in (c); and
- (e) the persons who shall be entitled to appear and be heard on the application to approve the arrangement.

[16] Below I discuss the interlocutory orders sought by the Applicant in relation to each of the categories above.

Information to be provided to shareholders

[17] I am satisfied that the interlocutory orders sought in relation to the provision of information to shareholders are appropriate except:

- (a) a copy of this Minute is to be included in the materials sent to shareholders; and
- (b) the time period by which the materials sent to shareholders by ordinary post are deemed to be received is extended.

[18] NZ Post's website records that it aims to deliver 95 per cent of mail sent by ordinary post within three working days. It is unclear whether this has been adjusted for the recent Covid-19 delays. These, together with the time of year that the shareholder materials are being sent, make it appropriate in my view to adjust the time period for deemed receipt from the 48 hours proposed to five working days.

Meeting of shareholders

[19] The orders sought directing the holding of a meeting of shareholders to consider and, if thought fit, to approve the proposed Arrangement appear to be appropriate and so I make these orders below as well.

[20] I record that I accept that there is no need for the Court to determine separate classes of shareholders or creditors for the purposes of the proposed Arrangement. Tower has only one class of shares (ordinary shares) with the same rights and shareholders will be treated equally by the Arrangement in relation to those shares.

[21] The memorandum filed in support of the application for interlocutory orders refers to the Supreme Court decision in *Trends Publishing International Ltd v Advice Wise People Ltd*² where the majority articulated a broader test for determining classes of creditors in relation to creditor compromises under Part 14 of the Companies Act based not just on the legal rights and interests of creditors.

² *Trends Publishing International Ltd v Advice Wise People Ltd*, [2018] NZSC 62, [2018] 1 NZLR 903 (SC).

[22] The evidence filed in support of the application records that approximately 24 per cent of Tower's shareholders had a registered address in Australia. A class ruling is being sought from the Australian Tax Office on behalf of those shareholders to confirm that no part of the payment received will be treated as a dividend and that the payment will be capital proceeds for the purposes of calculating any capital gain or loss on the cancellation of shares.

[23] Tower still intends to proceed with the proposed arrangement regardless of whether a Class Ruling is issued.

[24] I agree with the submission it is not appropriate for the tax treatment of the Arrangement by different jurisdictions to potentially create separate classes of shareholders with any differing tax treatment not being a matter "in relation to the company" as required by *Trends*.³

[25] In regard to the creditors, I record that Mr Stiassny states in his affidavit that the Arrangement will not affect the creditors of Tower because appropriate solvency requirements will be met before and after it is implemented and that an affidavit will be filed to confirm this prior to the seeking of the final orders. In the meantime, the directors have given a solvency certificate as at 24 November 2021 when the decision to proceed with the Arrangement was approved.

Report to the Court on proposed Arrangement

[26] Following the meeting, if the necessary approvals are obtained including from the IRD, Tower will file with the Court an affidavit(s) verifying the actions taken and the resolutions passed by the shareholders at the meeting. This process will provide the Court with the opportunity to satisfy itself that the Arrangement has the necessary support of the shareholders when considering whether to approve it on the basis of the principles set out in *Re Auckland International Airport*.⁴

³ At [68].

⁴ *Re Auckland International Airport* [2014] NZHC 405 as summarised in *PGG Wrightson Ltd* [2019] NZHC 1780 at [12].

Orders specifying persons who shall be entitled to appear and be heard on the substantive application

[27] The orders proposed include a process for any shareholder who wishes to oppose the Originating Application for final orders approving the Arrangement to file a notice of intention to appear no later than five working days after the meeting and a notice of opposition and evidence in support within a further five working days of filing such notice.

No order is required under s 236A

[28] Section 236A of the Companies Act places obligations on code companies (as defined in s 2A of the Takeovers Act 1993) proposing to undertake a scheme of arrangement. Tower is a code company and so s 236A must be considered.

[29] The section provides that where the proposed arrangement “affects the voting rights of a code company” then certain steps must be taken. Tower submits that there will be no change to the relative voting rights of the shareholders if the Arrangement is approved and implemented, subject to insignificant impacts of rounding. The Takeovers Panel Executive has confirmed by letter that it does not disagree with Tower’s view in this regard with a copy of the letter confirming their position attached to the affidavit of Mr Stiassny filed in support of this application.

[30] On this basis, I accept that no order is required under s 236A.

Leave to apply

[31] An order granting leave to apply at short notice to vary the initial orders or apply for further orders as may be appropriate is included to respond to any unexpected developments.

Orders

[32] I order that:

- (a) the Originating Application for final orders is to be set down for a half day hearing by the Registry on a date on or around 23 February 2022 in consultation with counsel;

Meeting of shareholders

- (b) Tower shall hold an Annual General Meeting of its shareholders (“Meeting”):
 - (i) at a venue in Auckland at 10:00am NZT on Wednesday, 2 February 2022 (or on a date to be determined by Tower and in accordance with Tower’s constitution); and
 - (ii) livestream the Meeting via an online web platform which shareholders can access using a computer, laptop, tablet or smartphone;
- (c) at the Meeting put to its shareholders (among other business), a proposed scheme of arrangement (Arrangement), as annexed to the accompanying Originating Application for orders approving the Arrangement under Part 15 of the Companies Act 1993 (“Originating Application”), for their approval by special resolution before consideration by the Court;
- (d) except as otherwise provided in these orders, conduct the Meeting in accordance with the constitution of Tower, the provisions of the Companies Act, the NZX Listing Rules and the ASX Listing Rules;
- (e) the special resolution shall be approved for the purposes of preparing a report for the Court if it is passed by a majority of 75 per cent of the votes of those shareholders entitled to vote and voting on the resolution;
- (f) those Tower shareholders whose names appear in the register of shareholders at the close of business two days prior to the Meeting are

entitled to be represented and vote on the Arrangement at the Meeting, or at any adjournment(s) or postponement;

- (g) a shareholder who is entitled to vote at the Meeting but who is unable to attend may appoint a Proxy to attend the Meeting to act generally and vote on their behalf;
- (h) a shareholder is entitled to attend the meeting online or in person with shareholders to be provided with a virtual meeting link in the Notice of Annual Meeting;
- (i) voting will be conducted by poll in accordance with the NZX Listing Rules and Tower's constitution;
- (j) representatives of Computershare Investor Service Limited (or such other company as Tower deems fit) shall act as scrutineers at the Meeting;

Information to shareholders - Notice of Meeting and of Originating Application

- (k) Tower shall:
 - (i) give notice of the Meeting and of the Originating Application by sending to each shareholder, not less than 20 working days before the Meeting, the following documents:
 - (1) a Notice of Annual Meeting, including the resolution proposing the Arrangement that the shareholders will be asked to vote on at the Meeting, together with Explanatory Notes;
 - (2) a proxy form for use by shareholders at the Meeting;
 - (3) a guide on how to log into the Meeting remotely; and
 - (4) a copy of the Originating Application; and

(5) a copy of this Minute;

(together, the Shareholder Materials)

- (ii) the Shareholder Materials are to be in substantially the same form as those annexed to the affidavit of Michael Peter Stiassny affirmed in support of the Originating Application, together with such amendments as are necessary or desirable (including amendments required by NZX or by any other regulatory body), provided that such amendments are not inconsistent with the terms of these interlocutory orders;
- (iii) the Shareholder Materials will be sent to the following persons:
 - (1) those shareholders whose names appear in the register of shareholders at 5:00pm (NZT) on the fourth business day before the Shareholder Materials are sent; and
 - (2) the directors and auditors of Tower;
- (iv) the Shareholder Materials will be sent by ordinary post in hardcopy format to the physical addresses recorded for the shareholder(s) unless the shareholder(s) has elected to receive shareholder materials electronically;
- (v) if a shareholder has elected to receive materials electronically, electronic copies of the Shareholder Materials will be sent to the email address recorded for that shareholder(s);
- (vi) the Shareholder Materials will be made publicly available for inspection and download on Tower's website not less than 20 working days before the Meeting;

- (l) in accordance with its continuous disclosure obligations, Tower will disclose the Shareholder Materials as described at paragraph 32(k)(i) above, on NZX's and ASX's market announcement platform;
- (m) the Shareholder Materials shall be deemed to have been received by those to whom they were ordered to be sent five working days after being sent as described in paragraph 32(k)(iv);
- (n) Tower is granted leave to send the Shareholder Materials to shareholders outside New Zealand in the manner referred to in paragraph 32(k)(iv);
- (o) the following will not constitute a breach of the orders nor invalidate any resolution passed at the Meeting (but if any such failure or omission is brought to the attention of Tower, then it will use its best endeavours to rectify it by the method and in the time most reasonably practicable in the circumstances):
 - (1) the accidental failure or omission by Tower to give the Shareholder Materials to the persons specified in paragraph 32(k)(iii); or
 - (2) the non-receipt of the Shareholder Materials by those persons;

Powers of Amendment and Adjournment

- (p) Tower is permitted to make such amendments, revisions or supplements to the Arrangement or the Shareholder Materials as Tower may determine are in the best interests of Tower and its shareholders and the Arrangement as so amended will be the Arrangement to be submitted to the shareholders at the Meeting for approval;
- (q) where possible any amendments as referred to in (p) above will be made before Tower distributes the Shareholder Materials as detailed in paragraph 32(k) above and:

- (1) if the Arrangement or Shareholder Materials are amended before the Shareholder Materials are distributed, Tower will distribute amended Shareholder Materials as detailed in paragraph 32(k) above; but
- (2) if any material amendment to a document contained in the Shareholder Materials is made after the Shareholder Materials are distributed, Tower will notify shareholders of amendments by lodging notices on NZX's and ASX's market announcement platforms and the Tower website;
- (r) the Chairperson of the Meeting is permitted to adjourn or postpone the meeting, without first needing to convene the meeting or to obtain any vote of the Tower shareholders regarding the adjournment or postponement;
- (s) subject to the terms of these orders, the Meeting will be conducted in accordance with the provisions of the Companies Act, the NZX Main Board Listing Rules, the ASX Listing Rules and Tower's constitution;

Shareholder opposition

- (t) Any shareholder who opposes the Originating Application may, no later than five (5) working days after the Meeting, file a notice of intention to appear in this proceeding advising that they oppose the application;
- (u) within five (5) working days of filing such notice, any shareholder opposing the Originating Application must file a notice of opposition and affidavit evidence in support of that opposition ("Opposition Documents") and serve the Opposition Documents on Tower at Tower's address for service;

Reporting the outcome of the Meeting

- (v) Tower shall notify the outcome of the Meeting by lodging the results on NZX's and ASX's market announcement platforms as soon as practicable after voting at the Meeting is complete and the results are advised to the Chair of the Meeting;

Report to the Court

- (w) Tower will, prior to the Court's consideration of the Originating Application, file with this Court an affidavit(s) verifying:
 - (i) compliance with these initial orders granted by the Court;
 - (ii) annexing copies if amendments have been made as referred to in paragraph 32(p) above;
 - (iii) the actions taken and the resolutions passed by the shareholders at the Meeting;
 - (iv) confirming necessary approvals from IRD or any other party;

and serve the same documents on any person who has filed a notice of opposition or a notice of intention to appear;

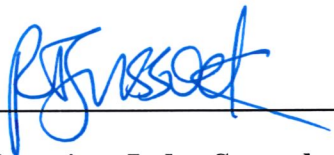
Other

- (x) Tower is granted leave to apply at short notice to vary these interlocutory orders, and to apply for such further interlocutory orders as may be necessary or appropriate;
- (y) the Arrangement remains subject to approval by the Commissioner of Inland Revenue by 9 February 2022;
- (z) if the shareholders do not vote to approve the Arrangement, or if approval from Inland Revenue is not granted, it is recorded that Tower will likely discontinue the Originating Application;

- (aa) dispensing with formal service of the interlocutory application (and the orders made pursuant to it) on any person.

Costs

[33] No order for costs was sought on the interlocutory application. Costs are therefore reserved to be determined with the Originating Application for final orders.



Associate Judge Sussock

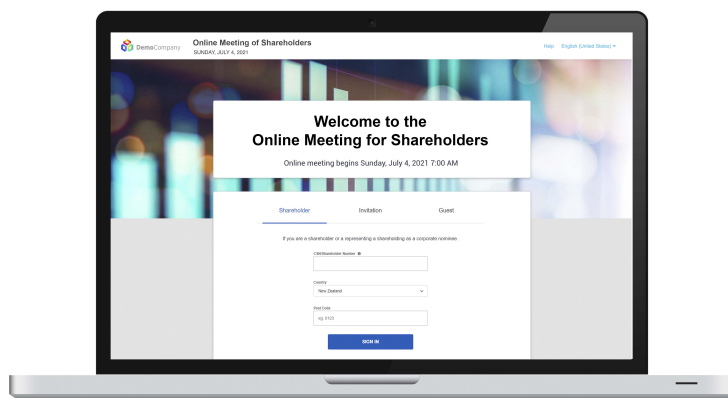
HOW TO PARTICIPATE IN VIRTUAL/HYBRID MEETINGS

Attending the meeting online

Our online meeting provides you the opportunity to participate online using your smartphone, tablet or computer.

If you choose to attend online you will be able to view a live webcast of the meeting, ask questions and submit your votes in real time.

You will need the latest version of Chrome, Safari, Edge or Firefox. Please ensure your browser is compatible.



Visit <https://meetnow.global/nz>



Access

Access the online meeting at <https://meetnow.global/nz>, and select the required meeting. Click 'JOIN MEETING NOW'.

If you are a shareholder:

Select 'Shareholder' on the login screen and enter your CSN/Holder Number and Post Code. If you are outside New Zealand, simply select your country from the drop down box instead of the post code. Accept the Terms and Conditions and click Continue.

If you are a guest:

Select Guest on the login screen. As a guest, you will be prompted to complete all the relevant fields including title, first name, last name and email address.

Please note, guests will not be able to ask questions or vote at the meeting.

If you are a proxy holder:

You will receive an email invitation the day before the meeting to access the online meeting. Click on the link in the invitation to access the meeting.



Navigation



When successfully authenticated, the home screen will be displayed. You can watch the webcast, vote, ask questions, and view meeting materials in the documents folder. The image highlighted blue indicates the page you have active.

The webcast will appear and begin automatically once the meeting has started.



Voting

Resolutions will be put forward once voting is declared open by the Chair. Once the voting has opened, the resolution and voting options will appear.

To vote, simply select your voting direction from the options shown on screen. You can vote for all resolutions at once or by each resolution.

Your vote has been cast when the green tick appears. To change your vote, select 'Change Your Vote'.



Contact

If you have any issues accessing the website please call +64 9 488 8700.



Q&A

Any eligible shareholder/proxy attending the meeting remotely is eligible to ask a question.

Select the Q&A tab and type your question into the box at the bottom of the screen and press 'Send'.