



NZX Regulation Decision

Precinct Properties New Zealand Limited (PCT)

Application for waivers from NZX Listing Rules 2.4.1, 2.7.1
and 5.2

18 May 2020



Background

1. NZX has updated the NZX Listing Rules, effective from 1 January 2020 (the **Rules**). This decision re-documents selected prior waiver decisions granted by NZX Regulation (**NZXR**) for Precinct Properties New Zealand Limited (**PCT**) on 21 October 2010.
2. The information on which these decisions are based is set out in Appendix One to this decision. These waivers will not apply if that information is not, or ceases to be, full and accurate in all material respects.
3. The Rules to which these decisions relate are set out in Appendix Two.
4. Capitalised terms that are not defined in these decisions have the meanings given to them in the Rules.

Waiver from Listing Rule 2.4.1

Decision

5. Subject to the conditions set out in paragraph 6 below, and on the basis that the information provided by PCT is complete and accurate in all material respects, NZXR grants PCT a waiver from Rule 2.4.1, to allow the PCT constitution to give 15%+ Shareholders the right to appoint a director to the board of PCT.
6. The waiver in paragraph 5 above is provided on the conditions that:
 - a. the constitution of PCT contains a provision requiring that the PCT board consist of a minimum of seven directors if a 15%+ Shareholder has exercised its appointment right;
 - b. in the event that a 15%+ Shareholder appoints a director, Rule 2.4.1(b) will apply so that the 15%+ Shareholder must not also Vote upon the election of other Directors; and
 - c. this waiver, its effect on PCT, and the conditions on which it was granted, are published in each annual report and Offer Document of PCT.

Reasons

7. In coming to the decision to provide the waiver set out in paragraph 5 above, NZXR has considered that:
 - a. PCT's corporate governance structure, including the right of 15%+ Shareholders to appoint a director to the Board of PCT, were set out in the Corporatisation Offer Document and are also set out in PCT's constitution. APT Unit Holders voted in favour of the Corporatisation, including the new constitution and Board composition;
 - b. The proposed ability of a 15%+ Shareholder to appoint a Director is broadly in line with the provisions of Rule 2.4.1. Given that it is a condition of this appointment right that the Board of PCT has a minimum of seven Directors, at any time that a 15%+ Shareholder has exercised this right, no 15%+ Shareholder will gain a right to appoint a number of directors that is proportionally greater than the proportion of PCT shares held by the shareholder; and
 - c. Given the complexities of the PCT Board structure arising from the requirement that a majority of the Directors are independent of the Manager, giving 15%+ Shareholders the right to appoint a number of Directors directly proportionate to their PCT

shareholding could have adverse consequences for the composition of the Board. NZXR accepts PCT's submissions that setting the shareholder appointment right at 15% provides certainty as to the composition of the Board.

Waiver from Listing Rule 2.7.1

Decision

8. Subject to the conditions set out in paragraph 9 below, and on the basis that the information provided by PCT is complete and accurate in all material respects, NZXR grants PCT a waiver from Rule 2.7.1 to the extent necessary to allow the Manager to elect two Directors to the Board of PCT who shall not be required to retire in accordance with Rule 2.7.1.
9. The waiver in paragraph 8 above is provided on the conditions that:
 - a. this waiver is subject to the PCT constitution containing provisions that outline the corporate governance arrangements as described in Appendix One of this waiver decision, and these remain in full force and effect, and materially the same as set out in this waiver decision, unless PCT Shareholders vote to amend the PCT constitution or NZXR agrees to exercise its discretion to amend the terms of this waiver;
 - b. this waiver, its effect on PCT, and the conditions on which it was granted, are summarised in each annual report and offer document of PCT;
 - c. each Director appointed by the Manager is identified in each annual report of PCT as having been appointed by the Manager, including a statement that as that Director has been appointed by the Manager, the Director is not required to retire in accordance with Rule 2.7.1;
 - d. in the event that the Manager elects not to exercise its right to elect two Directors of the Board of PCT (and any directors appointed by the Manager are retired by the Manager), the conditions as to election of Directors independent of the Manager shall not apply; and
 - e. PCT has a non-standard designation.

Reasons

10. In coming to the decision to provide the waiver set out in paragraph 8 above, NZXR has considered that:
 - a. A summary of the terms of the proposed New Management Agreement, the terms of this waiver and the right of the Manager to appoint two directors were included in the Corporatisation Offer Document, and a full copy of the Management Agreement was and is available to PCT Shareholders on request. APT Unit Holders voted in favour of the New Management Agreement and the corporate governance provisions for PCT;
 - b. PCT have submitted, and NZXR has no reason not to accept, that the Corporate Governance Provisions in PCT's constitution as a result of the corporatisation better align the interests of the Board of PCT and shareholders, and is therefore of benefit to PCT shareholders.
 - c. The conditions that are entrenched in the constitution of PCT relating to the requirement to have a majority of the Board who is independent ensures that the



balance on the PCT board between directors appointed by the Manager and those appointed by shareholders will remain in favour of shareholders; and

- d. As a result of its unique board structure PCT will be designated as a non-standard Issuer under Rule 1.18.1. This non-standard designation, and the requirements that PCT to take steps to make sure that investors are aware of the “Non Standard” designation, will assist in ensuring that future investors in PCT are made aware of PCT’s unique board structure

Waiver from Listing Rule 5.2

Decision

11. Subject to the conditions set out in paragraph 12 below, and on the basis that the information provided by PCT is complete and accurate in all material respects, NZXR grants PCT a waiver from Rule 5.2, to the extent that additional PCT Shareholder approval is not required where the New Management Agreement is transferred to a holder of more than 50% of PCT’s Shares.
12. The waiver in paragraph 11 above is provided on the conditions that:
 - a. During the time that PCT continues to rely on this waiver, the waiver and its effect, as well as the conditions on which it is granted, are published in each annual report of PCT and each Offer Document issued by PCT; and
 - b. The terms of the New Management Agreement are not materially altered as part of a transfer of the New Management Agreement to the controlling shareholder or its nominee, unless the alterations are approved by PCT Shareholders in accordance with Rule 5.2 or made in accordance with a waiver granted by NZXR.

Reasons

13. In coming to the decision to provide the waiver set out in paragraph 11 above, NZXR has considered that:
 - a. The policy underlying Rule 5.2.1 is to ensure that shareholders have an opportunity to consider, and vote on, such transactions where there is, or may be a perception of, the potential for undue influence by a Related Party on an Issuer’s decision to enter into a transaction or agree to its terms. APT Unit Holders voted in favour of the transfer of the New Management Agreement and the approval of this arrangement as part of the Corporatisation. This meets the policy of Rule 5.2.1;
 - b. PCT has submitted that the requirement for minority PCT Shareholder approval for any transfer of the New Management Agreement is likely to materially reduce the chances of a takeover offer being made for PCT. PCT also noted that this is not in the best interests of PCT Shareholders. NZXR also notes that where an Issuer makes a commercial judgement, which is approved by Security Holders, NZX should give effect to such Security Holders’ election, where that election does not undermine the policy of the rule;
 - c. The condition set out in paragraph 12(a) will ensure that all new investors in PCT are provided with sufficient notice that the Manager’s interest in the New Management Agreement is transferable without prior shareholder approval; and



- d. The condition set out in paragraph 12(b) will ensure that the terms of the New Management Agreement will remain materially the same as those that were approved by PCT shareholders and that the major shareholder receiving the transfer cannot use the transfer as an opportunity to influence the terms of the New Management Agreement in its favour.



Appendix One

1. Precinct Properties New Zealand Limited (**PCT**) is a Listed Issuer with ordinary shares Quoted on the NZX Main Board, convertible notes Quoted on the NZX Main Board and bonds Quoted on the NZX Debt Market.
2. On 21 October 2010, Unit Holders of AMP NZ Office Trust (**APT Unit Holders**) voted to corporatise AMP NZ Office Trust (**APT**) from a unit trust to a company, AMP NZ Office Limited (**ANZO**). The shares of ANZO were transferred to existing investors and Quoted on the NZX Main Board on 1 November 2010. ANZO changed its name and ticker to Precinct Properties New Zealand Limited on 28 September 2012.
3. The corporatisation resulted in a new management services agreement with AMP Haumi Management Limited (the **Manager**). The New Management Agreement details the material services that are to be performed, and fees charged, by the Manager. The new management agreement was amended in 2011 and 2016 (the **New Management Agreement**).
4. The corporatisation also resulted in a new Board of Directors. PCT's constitution provides for a minimum of seven directors, where directors have been appointed by persons holding more than 15% of the shares in PCT. The Manager is entitled to appoint up to two directors of those seven directors to the PCT board, while the PCT board must maintain a majority of Independent Directors.
5. Further details of the corporatisation and the Corporate Governance features of PCT can be found in the Corporatisation Offer Document, PCT's constitution and PCT's annual reports.
6. On 1 January 2019, NZX updated its Listing Rules (the **Updated Rules**). This required Issuers to reassess their current waivers and constitutional arrangements in light of these Updated Rules.
7. PCT's Shareholders approved the adoption of a new Constitution on 20 November 2019. The waivers referred to in this decision were deemed to be still required by PCT under the Updated Rules to provide for PCT's corporate governance structure.

Waivers from Rules 2.4.1 and 2.7.1 – Further Background

8. PCT's constitution provides for the following Corporate Governance arrangements:
 - a. The Manager shall have the right to appoint up to two directors, who shall not be required to retire under Rule 2.7.1.
 - b. Any PCT Shareholder which holds more than 15% of the PCT Shares carrying votes (**15%+ Shareholder**) shall have the right to appoint one director, who also shall not be required to retire under Rule 2.7.1. Reflecting Rule 2.4.1(b), any PCT Shareholder exercising such an appointment right would not be entitled to vote on the election of other directors of PCT.
 - c. In order to ensure that a 15%+ shareholding does not allow a PCT Shareholder to appoint a proportion of directors greater than the proportion of the PCT Shares that it holds, PCT's

constitution provides for a requirement that there be a minimum of seven PCT directors on the PCT board (subject to reasonable endeavours of the Board to replace directors of the PCT board that are removed or resign from the board on short notice).

- d. Four (or more) additional directors shall be elected (or, if necessary, appointed) so that a majority of the board is “independent of the Manager” (and the persons who control the Manager). For example, if the manager appoints two directors, and a 15%+ Shareholder associated with the Manager elects to appoint one director, then four additional directors (who are independent of the Manager or the persons who control the Manager) would be elected by the remaining shareholders (or if required, appointed by directors).
- e. The directors who are independent of the Manager would retire by rotation in accordance with Rule 2.7.1.
- f. To ensure compliance with the requirements under the Rules for a minimum number of “Independent Directors” (as defined in the Rules), the PCT board would be entitled to appoint the required number of additional directors (if any) who do not have a Disqualifying Relationship and are accordingly “Independent Directors” for the purpose of complying with the Rules.

Waiver from Rule 5.2 – Further Background

4. APT Unit Holders approved the New Management Agreement, including a term that any person who acquires more than 50% of PCT’s shares be entitled to acquire the Manager’s interests in the New Management Agreement (at an agreed price or valuation) from the Manager, at the meeting regarding the corporatisation on 21 October 2010.
5. The acquisition of the New Management Agreement by a 50% shareholder will involve a Related Party of PCT (Glossary of the Rules, Related Party Definition, limb (b)). Accordingly, if the acquisition of the New Management Agreement by a 50% shareholder involves the entry by PCT into a transaction, this will constitute a Material Transaction with a Related Party for the purposes of Rule 5.2 (because, under the New Management Agreement, PCT obtains services in respect of which the annual gross cost to PCT in a financial year is likely to exceed 1% of the Average Market Capitalisation of PCT (Glossary of the Rules, Material Transaction Definition, Limb (e))).
6. PCT submits that, if the transfer of the New Management Agreement was unable to proceed without minority shareholder approval (or a waiver from the shareholder approval requirement) at the time, it is likely that potential offerors would be deterred from making takeover offers for PCT – to the detriment of all investors. PCT considers that, as PCT’s purpose in pursuing the Corporatisation was to increase alignment with the interests of investors, this would be an unfortunate outcome.
7. Although APT Unit Holders voted on the transferability of the New Management Agreement, the actual transfer of the New Management Agreement may only occur some time in the future, after the Corporatisation is complete. Thus, although APT Unit Holders provided their approval under the policy of Rule 5.2.1, this will not be effective to authorise the future transfer of the New Management Agreement to a majority shareholder in PCT. A waiver from Rule 5.2.1 is therefore necessary.



Appendix Two

2.4 Equity Holder appointment rights

2.4.1 The Governing Document may give an Equity Security holder the right to appoint one or more Directors (and to remove any Director so appointed), provided:

(a) the appointment does not result in the proportion of such Directors to the total number of Directors (excluding alternate Directors) exceeding the proportion of total Votes attaching to the Equity Securities in the Issuer held by the appointer, and

(b) if the appointer exercises its right to appoint one or more Directors with such Director remaining in office at the time of the election of other Directors, the appointer must not also Vote upon the election of other Directors.

2.7 Rotation of Directors

2.7.1 A Director of an Issuer must not hold office (without re-election) past the third annual meeting following the Director's appointment or 3 years, whichever is longer. However, a Director appointed by the Board must not hold office (without re-election) past the next annual meeting following the Director's appointment.

2.7.2 Rule 2.7.1 does not apply to Directors appointed by an Equity Security holder under Rule 2.4.

5.2 Transactions with Related Parties

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 a 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.

