

**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** for approval of an
arrangement
APPLICANT

**WITHOUT NOTICE INTERLOCUTORY APPLICATION FOR INITIAL ORDERS
REGARDING ARRANGEMENT UNDER PART 15 OF THE COMPANIES
ACT 1993**

Dated: 30 November 2021

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TO: The Registrar of the High Court at Auckland

AND TO: Any person the Court directs to be served

This document notifies you that –

1. The applicant, Tower Limited (**Tower**) applies for the following orders:

Meeting of Tower Shareholders

1.1 That Tower shall:

(a) hold an Annual General Meeting of its shareholders (the **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;

(b) at the Meeting put to its shareholders (among other business), a proposed scheme of arrangement (the **Arrangement**) for their approval by special resolution, as annexed to the accompanying Originating Application for orders approving the Arrangement under Part 15 of the Companies Act 1993 (**Act**) (the **Originating Application**); and

(c) except as otherwise provided in these orders, conduct the Meeting in accordance with the constitution of Tower, the provisions of the Act, the NZX Listing Rules and the ASX Listing Rules.

1.2 The special resolution shall be approved if it is passed by a majority of 75% of the votes of those shareholders entitled to vote and voting on the resolution.

1.3 Those Tower shareholders whose names appear in the register of shareholders at the close of business 2 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.

- 1.4 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.
- 1.5 A shareholder is entitled to attend the meeting online or in person. Shareholders will be provided with a virtual meeting link contained in the Notice of Annual General Meeting.
- 1.6 Voting will be conducted by poll in accordance with the NZX Listing Rules and Tower's constitution.
- 1.7 Representatives of Computershare Investor Service Limited (or some such other company Tower deems fit) shall act as scrutineers at the Meeting.

Notice of Meeting and of Originating Application

- 1.8 Tower shall:
 - (a) 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:
 - (i) 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;
 - (ii) a proxy form for use by shareholders at the Meeting;
 - (iii) a guide on how to log into the Meeting remotely; and
 - (iv) a copy of the Originating Application.

(together, the **Shareholder Materials**)
 - (b) The Shareholder Materials are to be in substantially the same form as those annexed to the affidavit of Michael Peter Stiassny sworn 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.
 - (c) The Shareholder Materials will be sent to the following persons:

- (i) 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
 - (ii) the directors and auditors of Tower.
 - (d) 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.
 - (e) 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).
 - (f) 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.
- 1.9 In accordance with its continuous disclosure obligations, Tower will disclose the Shareholder Materials as described at paragraph 1.8(a) above, on NZX's and ASX's market announcement platforms.
- 1.10 The Shareholder Materials shall be deemed to have been received by those to whom they were ordered to be sent 48 hours after being sent as described in paragraph 1.8(d).
- 1.11 Tower shall be granted leave to send the Shareholder Materials to shareholders outside New Zealand in the manner referred to in paragraph 1.8(d).
- 1.12 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):
- (i) the accidental failure or omission by Tower to give the Shareholder Materials to the persons specified in paragraph 1.8(c) or

- (ii) the non-receipt of the Shareholder Materials by those persons.

Powers of Amendment and Adjournment

- 1.13 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. The Arrangement as so amended will be the Arrangement to be submitted to the shareholders at the Meeting for approval. Where possible any such amendments will be made before Tower distributes the Shareholder Materials as detailed in paragraph 1.8 above and:
- (a) If the Arrangement or Shareholder Materials are amended before the Shareholder Materials are distributed, Tower will distribute amended Shareholder Materials as detailed in paragraph 1.8 above or as directed by the Court; but
 - (b) 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 notice on NZX's and ASX's market announcement platforms and the Tower website, or other means the Court considers fit to ensure timely notification.
- 1.14 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.
- 1.15 Subject to the terms of these orders, the Meeting will otherwise be conducted in accordance with the provisions of the Act, the NZX Main Board Listing Rules, the ASX Listing Rules and Tower's constitution.

Shareholder opposition

- 1.16 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.
- 1.17 Within 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

- 1.18 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.
- 1.19 Tower will, prior to the Court's consideration of the Originating Application, file with this Court affidavit(s) verifying compliance with any initial orders granted by the Court and the actions taken and the resolutions passed by the shareholders at the Meeting, and serve the same documents on any person who has filed a notice of opposition or a notice of intention to appear.

Other

- 1.20 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.
- 1.21 The Arrangement remains subject to approval by the Commissioner of Inland Revenue by 9 February 2022.
- 1.22 If the shareholders do not vote to approve the Arrangement, or if approval from Inland Revenue is not granted, Tower will likely discontinue the Originating Application.
- 1.23 Dispensing with formal service of this interlocutory application (and any order made pursuant to it) on any person.
2. The grounds on which each order is sought are as follows:
 - (a) the board of Tower has resolved to seek the approval of Tower's shareholders in respect of (and to apply to this Court for approval of) a scheme of arrangement under Part 15 of the Act;
 - (b) these interlocutory orders are necessary to give effect to section 236(2)(b) of the Act and as a first step for the approval of the Court under section 236(1) of the Act as sought in the Originating Application;

- (c) these initial interlocutory orders will ensure that Tower shareholders are fully informed as to the Arrangement being proposed, and will have an appropriate opportunity to consider and to vote on it, and to oppose the Originating Application;
- (d) the directions sought in this interlocutory application are necessary for the expeditious determination of the Originating Application;
- (e) orders in terms of section 236(2)(c) or (d) are not required in all the circumstances of this case and s236A does not apply;
- (f) all persons who might be affected by these initial interlocutory orders will, by the process described above, be more than sufficiently advised of the application (and all interested parties will be made aware of the Arrangement), and as such it is in the interests of justice for this interlocutory application to proceed on a without notice basis; and
- (g) as set out in the affidavit of Michael Peter Stiassny sworn 30 November 2021 and filed in support 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, 19.10 and 19.11 of the High Court Rules 2016; and
- (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.

4. This application is made without notice to any other party on the following grounds:

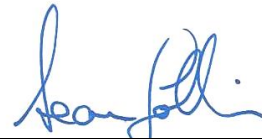
- (a) that requiring the applicant to proceed on notice to each shareholder would cause undue delay or prejudice to the applicant;

- (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