

# Independent Adviser's Report

**In Respect of the Acquisition of  
15,000,000 Shares by H.R.L.  
Morrison & Co Limited from  
Utilico Investments Limited**

**Infratil Limited**

*July 2011*

## Index

Section	Page
1. Introduction .....	1
2. Evaluation of the Merits of the Morrison & Co Transactions.....	6
3. Sources of Information, Reliance on Information, Disclaimer and Indemnity .....	16
4. Qualifications and Expertise, Independence, Declarations and Consents .....	18

## 1. Introduction

### 1.1 Background

Infratil Limited (**Infratil** or the **Company**) is listed on the main equities security market (**NZSX**) operated by NZX Limited with a market capitalisation of approximately \$1.1 billion as at 15 July 2011 and audited total equity attributable to shareholders of the Company of approximately \$1.0 billion as at 31 March 2011.

The Company is an owner and operator of businesses in the energy, airport and public transport sectors. Its energy operations are predominantly in New Zealand (including 51% of TrustPower and 50% of Z Energy) and Australia. Infratil owns 66% of Wellington Airport and airports in Glasgow and Kent. Its public transport services are in Auckland and Wellington.

Morrison & Co Infrastructure Management Limited, a wholly owned subsidiary of H.R.L. Morrison & Co Limited (**Morrison & Co**), is the manager of Infratil. Morrison & Co in turn is wholly owned by H.R.L. Morrison & Co Group Limited. In order to simplify matters, the combined security holdings of H.R.L. Morrison & Co Limited and H.R.L. Morrison & Co Group Limited are disclosed in this report as being held by Morrison & Co.

Utilico Investments Limited (**Utilico**), Morrison & Co, H.R.L. Morrison & Co Group Limited, Hugh Richmond Lloyd Morrison and John Bentley Morrison as trustees of the H.R.L. Morrison Family Trust (the **HRLM Trust**), JML Trustee Company Limited as trustee of the JML Trust and Duncan Paul Saville (together the **Associated Shareholders**) currently collectively hold approximately 25.7% of the voting rights in Infratil.

### 1.2 Proposed Acquisition of Shares

Utilico and Morrison & Co entered into an Agreement for the Sale and Purchase of Shares in Infratil Limited dated 12 July 2011 (the **Share Acquisition Agreement**) whereby Morrison & Co has agreed to buy 15,000,000 shares in Infratil from Utilico (the **Share Acquisition**).

The key terms of the Share Acquisition are:

- Morrison & Co will acquire 15,000,000 fully paid ordinary shares in Infratil from Utilico in 2 tranches:
  - Tranche One: 10,000,000 shares
  - Tranche Two: 5,000,000 shares
- the purchase price for the shares will be \$1.85 per share, totalling \$27,750,000:
  - Tranche One: \$18,500,000
  - Tranche Two: \$9,250,000
- the Share Acquisition is conditional on the approval by ordinary resolution of Infratil's shareholders of the Share Acquisition
- if approved, Tranche One will be acquired on 22 August 2011 and Tranche Two will be acquired on 30 March 2012.

### 1.3 2010 Exemption Notice and 2010 Shareholder Approval

On 13 July 2010, the Takeovers Panel granted the Takeovers Code (Infratil Limited) Exemption Notice 2010 (the **2010 Exemption Notice**) which permits the Associated Shareholders to increase their shareholdings in Infratil up to a maximum percentage upon the exercise of the IFTWC series of warrants (the **IFTWC Warrants**) they hold and also as a result of Infratil buying back up to 50,000,000 of its own shares (the **Buyback Programme**).

The 2010 Exemption Notice was conditional on shareholder approval.

At the Company's annual meeting on 11 August 2010, the Company's shareholders not associated with the Associated Shareholders (the **Non-associated Shareholders**) approved 2 ordinary resolutions in respect of:

- the exercise of IFTWC Warrants by the Associated Shareholders
- the continuation of the Buyback Programme

(the **2010 Shareholder Approval**).

Under the 2010 Exemption Notice and 2010 Shareholder Approval, the maximum percentage of the total voting rights that the Associated Shareholders may collectively hold or control is approximately 34.1% and the maximum percentage of the total voting rights that Morrison & Co may hold or control is approximately 5.0%.

2010 Shareholder Approval Maximum Levels	
	Maximum %
Utilico	23.03%
Morrison & Co	5.04%
HRLM Trust	4.71%
JML Trust	1.30%
Duncan Saville	0.00%
Associated Shareholders	34.07% <sup>1</sup>
<small><sup>1</sup> Difference due to rounding</small>	

Morrison & Co currently holds approximately 4.3% of the Company's voting rights. As the Share Acquisition will increase Morrison & Co's voting rights by approximately 2.5% which will take Morrison & Co above the maximum percentage approved under the 2010 Shareholder Approval, shareholder approval is required for:

- the Share Acquisition
- the allotment of shares on the exercise of IFTWC Warrants where it results in an increase in voting control by Morrison & Co
- the continuation of the Buyback Programme where it results in an increase in voting control by Morrison & Co.

## 1.4 Regulatory Requirements

Rule 6 of the Takeovers Code (the **Code**) prohibits:

- a person who holds or controls less than 20% of the voting rights in a code company from increasing its holding or control of voting rights (together with its associates) beyond 20% and
- a person holding or controlling 20% or more of the voting rights in a code company from increasing its holding or control of voting rights

unless the person and that person's associates comply with exceptions to this fundamental rule.

Although none of the Associated Shareholders individually hold or control 20% or more of the Infratil voting rights, they have accepted, for the purposes of seeking shareholder approval, that they be considered associates of each other. Collectively, the Associated Shareholders currently hold or control approximately 25.7% of the voting rights in Infratil. Accordingly, under Rule 6(1)(b) of the Code, each of the Associated Shareholders may not become the holder or controller of an increased percentage of the voting rights in the Company unless it does so in accordance with Rule 7 of the Code or in accordance with the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **Class Exemptions**).

Rule 7(c) of the Code enables a person and that person's associates to increase their control of voting rights beyond 20% by an acquisition of shares if the acquisition is approved by an ordinary resolution of the code company.

Rule 7(d) of the Code enables a person and that person's associates to increase their control of voting rights beyond 20% by an allotment of shares if the allotment is approved by an ordinary resolution of the code company.

Clause 4 of the Class Exemptions enables a shareholder to retain an increase in its control of voting rights due to a share buyback if the buyback is approved by an ordinary resolution of the code company.

As the Share Acquisition will result in Morrison & Co acquiring 15,000,000 shares (albeit from one of the Associated Parties) and thereby increasing its control of voting rights in the Company from approximately 4.3% to 6.8% (which is above the maximum percentage of 5.04% approved under the 2010 Shareholder Approval), Infratil is required to seek shareholder approval of the Share Acquisition in accordance with Rule 7(c) of the Code.

As the allotment of shares on the exercise of the IFTWC Warrants held by Morrison & Co will result in Morrison & Co's control of voting rights in the Company changing from approximately 6.8% (post the Share Acquisition) to between 6.6% and 7.8%, depending on how many of the other IFTWC Warrants are exercised and how many shares are bought back under the Buyback Programme on or before the Final Expiry Date, Infratil is required to seek shareholder approval of the allotment of shares to the Associated Shareholders (including Morrison & Co) upon the exercise of their IFTWC Warrants in accordance with Rule 7(d) of the Code.

As any buyback of shares under the Buyback Programme which Morrison & Co does not participate in on a pro rata basis will result in Morrison & Co's control of voting rights in the Company increasing, Infratil is required to seek shareholder approval of the continuation of the Buyback Programme where it will result in an increase in Morrison & Co's voting control in accordance with Clause 4 of the Class Exemptions.

Accordingly, the Non-associated Shareholders will be asked to vote at the Company's annual meeting of shareholders on 15 August 2011 on ordinary resolutions in respect of:

- the Share Acquisition (resolution 6)
- the allotment of shares to Morrison & Co upon the exercise of its IFTWC Warrants (resolution 7)
- the continuation of the Buyback Programme (which permits Infratil to buy back up to 50,000,000 shares) where it results in an increase in voting control by Morrison & Co (resolution 8).

The Associated Shareholders are not permitted to vote on resolutions 6, 7 and 8.

We refer to the Share Acquisition, the allotment of shares to the Associated Shareholders upon the exercise of their IFTWC Warrants and the impact on Morrison & Co of the continuation of the Buyback Programme collectively as the **Morrison & Co Transactions**.

Rule 18 of the Code requires the directors of a code company to obtain an Independent Adviser's Report on the merits of an acquisition under Rule 7(c) and an allotment under Rule 7(d).

Clause 4 of the Class Exemptions requires an Independent Adviser's Report to be prepared that complies with Rule 18.

Shareholders will also be asked to vote at the annual meeting on resolutions in respect of:

- the re-election of Humphry Rolleston as a director (resolution 1)
- the re-election of Duncan Saville as a director (resolution 2)
- continuance of the infrastructure bond programme (resolution 3)
- an increase in the maximum remuneration payable to the Company's directors (resolution 4)
- the directors fixing the remuneration of the Company's auditors (resolution 5).

## 1.5 Purpose of the Report

The independent directors of Infratil, being those directors not associated with the Associated Shareholders (the **Independent Directors**) have engaged Simmons Corporate Finance Limited (**Simmons Corporate Finance**) to prepare an Independent Adviser's Report on the merits of the Share Acquisition and the allotment of shares to the Associated Shareholders upon the exercise of their IFTWC Warrants in accordance with Rule 18 of the Code and on the merits of the impact on Morrison & Co of the continuation of the Buyback Programme in accordance with Clause 4 of the Class Exemptions.

Simmons Corporate Finance was approved by the Takeovers Panel on 15 July 2011 to prepare the Independent Adviser's Report.

Simmons Corporate Finance issues this Independent Adviser's Report to the Independent Directors to assist the Non-associated Shareholders in forming their own opinion on whether to vote for or against the 3 resolutions in respect of the Morrison & Co Transactions.

We note that each shareholder's circumstances and objectives are unique. Accordingly, it is not possible to report on the merits of the Morrison & Co Transactions in relation to each shareholder. This report on the merits of the Morrison & Co Transactions is therefore necessarily general in nature.

This Independent Adviser's Report is not to be used for any other purpose without our prior written consent.

## 2. Evaluation of the Merits of the Morrison & Co Transactions

### 2.1 Basis of Evaluation

Rule 18 of the Code requires an evaluation of the merits of the Morrison & Co Transactions having regard to the interests of the Non-associated Shareholders.

There is no legal definition of the term *merits* in New Zealand in either the Code or in any statute dealing with securities or commercial law.

In the absence of an explicit definition of *merits*, guidance can be taken from:

- the Takeovers Panel guidance note on the role of independent advisers dated August 2007
- definitions designed to address similar issues within New Zealand regulations which are relevant to the proposed transaction
- overseas precedents
- the ordinary meaning of the term *merits*.

We are of the view that an assessment of the merits of the Morrison & Co Transactions should focus on:

- the rationale for the Morrison & Co Transactions
- the likely impact on the control of Infratil if the Morrison & Co Transactions proceed
- the likely impact on Infratil's share price of the Morrison & Co Transactions
- the implications if the resolutions in respect of the Morrison & Co Transactions are not approved.

Our opinion should be considered as a whole. Selecting portions of the evaluation without considering all the factors and analyses together could create a misleading view of the process underlying the opinion.

### 2.2 Summary of Evaluation of Merits

The Morrison & Co Transactions will result in Morrison & Co's level of voting rights increasing from approximately 4.3% at present to a maximum of approximately 7.8%. We are of the view that the increase is not material.

The Morrison & Co Transactions will result in the Associate Shareholders' collective level of voting rights increasing from approximately 25.7% at present to a maximum of approximately 29.8%. This is below the maximum level of approximately 34.1% approved under the 2010 Shareholder Approval.

We are of the view that the rationale for the Morrison & Co Transactions is sound.

We do not consider that the Morrison & Co Transactions will have any material impact on the control of the Company.

We are of the view that the Morrison & Co Transactions will have negligible impact on Infratil's share price.



## 2.3 Rationale for the Share Acquisition

We are advised that Utilico wishes to sell down a portion of its shareholding in Infratil to provide liquidity to assist with its refinancing and new investment. In addition to the Share Acquisition, Utilico sold 15,000,000 shares in Infratil to a US institutional investor at \$1.80 per share on 12 July 2011.

We are advised that Morrison & Co wishes to acquire the shares as it considers them to be a sound investment.

In our view, the rationale for the Share Acquisition is reasonable. It is a negotiated transaction between two well-informed shareholders. It signals Morrison & Co's confidence in the future prospects of the Company and further aligns Morrison & Co's interests with those of the Non-associated Shareholders.

## 2.4 Impact on Control

### Capital Structure

Infratil's capital structure as at 15 July 2011 consisted of ordinary shares and IFTWC Warrants.

Infratil Capital Structure as at 15 July 2011	
	<b>No. on Issue</b>
Ordinary shares on issue	606,604,931
Ordinary shares held as treasury stock	<u>2,378,334</u>
Ordinary shares (excluding treasury stock)	<u>604,226,597</u>
IFTWC Warrants	<u>52,825,458</u>
<i>Source: Infratil</i>	

The IFTWC Warrants were issued on 11 June 2007. The exercise price of each IFTWC Warrant is \$4.12 and the warrants can be exercised on or before 29 June 2012 (which under the terms of issue of the IFTWC Warrants may be extended by the Company's board of directors) (the **Final Expiry Date**).

### Shareholders and Warrantholders

Prior to the Share Acquisition, the Associated Shareholders collectively hold approximately 25.7% of the ordinary shares on issue and approximately 26.7% of the IFTWC Warrants.

Infratil Securities Held by the Associated Shareholders – Pre Share Acquisition		
	Ordinary Shares	IFTWC Warrants
Morrison & Co	26,348,730	2,164,177
Utilico	98,038,296	9,225,513
HRLM Trust	24,523,038	2,104,832
JML Trust	6,765,503	589,843
Duncan Saville	8,772	877
Associated Shareholders	<u>155,684,339</u>	<u>14,085,242</u>
<i>% of total security class</i>	25.66%	26.66%
<i>Source: Infratil</i>		

### Impact of the Share Acquisition

Following the Share Acquisition, the Associated Shareholders will still collectively hold the same number of ordinary shares on issue and IFTWC Warrants. The only difference will be that Morrison & Co will hold 15,000,000 more ordinary shares and Utilico will hold 15,000,000 less ordinary shares.

Infratil Securities Held by the Associated Shareholders – Post Share Acquisition		
	Ordinary Shares	IFTWC Warrants
Morrison & Co	41,348,730	2,164,177
Utilico	83,038,296	9,225,513
HRLM Trust	24,523,038	2,104,832
JML Trust	6,765,503	589,843
Duncan Saville	8,772	877
Associated Shareholders	<u>155,684,339</u>	<u>14,085,242</u>
% of total security class	25.66%	26.66%

Source: Infratil

Morrison & Co's level of voting rights will increase by approximately 2.5% from 4.3% to 6.8% and Utilico's will decrease from approximately 16.2% to 13.7%.

### Impact of the Exercise of the IFTWC Warrants

The IFTWC Warrants can be exercised at the warrant holders' discretion on or before the Final Expiry Date at an exercise price of \$4.12 per share. The extent to which the IFTWC Warrants will be exercised cannot be predicted at this point in time. However, the decision as to whether to exercise the IFTWC Warrants will most likely be the same for both the Associated Shareholders and the Non-associated Shareholders.

As set out in section 2.5, the Company's shares have traded on the NZSX between \$1.60 and \$2.02 in the past 12 months. The IFTWC Warrants have traded between \$0.002 and \$0.025. The IFTWC Warrants are currently well out of the money.

Assuming the IFTWC Warrants are significantly out of the money throughout the period up to the Final Expiry Date, then it is probable that no shareholders will exercise their warrants. Conversely, if the Infratil share price was to increase substantially such that the IFTWC Warrants were in the money at the Final Expiry Date, then it is likely that a significant portion of the IFTWC Warrants will be exercised.

We are of the view that it is reasonable to assume at this point in time that most (if not all) warrant holders will not exercise their IFTWC Warrants. Nevertheless, our analysis is undertaken on the assumption that the IFTWC Warrants will be exercised.

For the purposes of our analysis, we have calculated a range of levels of voting rights held by Morrison & Co assuming:

- all of the IFTWC Warrants are exercised
- all of the IFTWC Warrants held by Morrison & Co are exercised and none of the IFTWC Warrants held by any other shareholders are exercised.

This represents the range of voting rights that Morrison & Co can hold if only resolutions 6 and 7 are approved.

Assuming there are no further shares bought back, the allotment of 2,164,177 ordinary shares to Morrison & Co upon the exercise of its IFTWC Warrants will change its voting rights in the Company from approximately 6.8% immediately after the Share Acquisition to:

- approximately 6.6% if all the IFTWC Warrants are exercised
- approximately 7.2% if only Morrison & Co's IFTWC Warrants are exercised (ie no other shareholders exercise any of their IFTWC Warrants).

<b>Impact of Allotment of Shares on Voting Rights – Assuming no Buyback of Shares</b>				
	<b>Morrison &amp; Co</b>		<b>All Other Shareholders</b>	
	<b>No. of Securities</b>	<b>% of Voting Rights</b>	<b>No. of Securities</b>	<b>% of Voting Rights</b>
<b>Current</b>				
Ordinary shares	41,348,730	6.82%	565,256,201	93.18%
IFTWC Warrants	2,164,177		50,661,281	
<b>Exercise of all IFTWC Warrants</b>				
Ordinary shares	43,512,907	6.60%	615,917,482	93.40%
<b>Exercise of Morrison &amp; Co's IFTWC Warrants only</b>				
Ordinary shares	43,512,907	7.15%	565,256,201	92.85%

Under these scenarios, the maximum percentage of voting rights that the Associated Shareholders would collectively control would be:

- approximately 25.7% if all the IFTWC Warrants are exercised
- approximately 27.4% if only the Associated Shareholders' IFTWC Warrants are exercised (ie the Non-associated Shareholders do not exercise any of their IFTWC Warrants)
- approximately 25.9% if only Morrison & Co's IFTWC Warrants are exercised (ie no other shareholders exercise any of their IFTWC Warrants).

All of these levels are below the maximum level of approximately 34.1% approved under the 2010 Shareholder Approval.

### **Impact of the Buyback Programme**

The Company has operated a share buyback programme since 1997.

The 2010 Shareholder Approval allowed the Company to undertake buybacks of up to 50,000,000 shares.

The Company's directors consider the Buyback Programme is an effective means to create shareholder value as:

- they only buy back shares when they consider the shares are significantly undervalued by the market
- any buybacks are viewed positively by shareholders and sharemarket analysts.

No shares have been bought back by Infracore since the 2010 Buyback Approval was granted.

We have also undertaken our analysis assuming the maximum 50,000,000 shares are bought back from Non-associated Shareholders under the Buyback Programme up to the Final Expiry Date.

This represents the range of voting rights that Morrison & Co can hold if resolutions 6, 7 and 8 are approved.

Assuming 50,000,000 shares are bought back from Non-associated Shareholders under the Buyback Programme up to the Final Expiry Date, the allotment of 2,164,177 ordinary shares to Morrison & Co upon the exercise of its IFTWC Warrants will change its voting rights in the Company from approximately 6.8% immediately after the Share Acquisition to:

- approximately 7.1% if all the IFTWC Warrants are exercised
- approximately 7.8% if only Morrison & Co's IFTWC Warrants are exercised (ie no other shareholders exercise any of their IFTWC Warrants).

<b>Impact of Allotment of Shares on Voting Rights – Assuming Buyback of 50,000,000 Shares</b>				
	<b>Morrison &amp; Co</b>		<b>All Other Shareholders</b>	
	<b>No. of Securities</b>	<b>% of Voting Rights</b>	<b>No. of Securities</b>	<b>% of Voting Rights</b>
<b>Current</b>				
Ordinary shares	41,348,730	6.82%	565,256,201	93.18%
IFTWC Warrants	2,164,177		50,661,281	
<b>Buyback of shares</b>				
Ordinary shares	41,348,730	7.43%	515,256,201	92.57%
IFTWC Warrants	2,164,177		50,661,281	
<b>Exercise of all IFTWC Warrants</b>				
Ordinary shares	43,512,907	7.14%	565,917,482	92.86%
<b>Exercise of Morrison &amp; Co's IFTWC Warrants only</b>				
Ordinary shares	43,512,907	7.79 %	515,256,201	92.21%

Under these scenarios, the maximum percentage of voting rights that the Associated Shareholders would collectively control would be:

- approximately 27.9% if all the IFTWC Warrants are exercised and 50,000,000 shares are bought back from the Non-associated Shareholders
- approximately 29.8% if only the Associated Shareholders' IFTWC Warrants are exercised (ie the Non-associated Shareholders do not exercise any of their IFTWC Warrants) and 50,000,000 shares are bought back from the Non-associated Shareholders
- approximately 28.3% if only Morrison & Co's IFTWC Warrants are exercised (ie no other shareholders exercise any of their IFTWC Warrants) and 50,000,000 shares are bought back from the Non-associated Shareholders.

All of these levels are below the maximum level of approximately 34.1% approved under the 2010 Shareholder Approval.

We are of the view that it is highly unlikely that the maximum theoretical level of approximately 7.8% for Morrison & Co and 29.8% for the Associated Shareholders will be reached as this requires that the Associated Shareholders exercise all of their IFTWC Warrants while the Non-associated Shareholders do not exercise any of their IFTWC Warrants and that the Company buys back the maximum 50,000,000 shares under the Buyback Programme. As previously stated, we consider it reasonable to assume that at this point in time, it is unlikely that any warrant holders will exercise their IFTWC Warrants given the Company's share price. However, the Final Expiry Date is 29 June 2012 and depending on how Infratil's share price may change over the course of time, some or all warrant holders may decide to exercise their IFTWC Warrants by the Final Expiry Date. Furthermore, we note that the Company's directors may, at their discretion, resolve to extend the Final Expiry Date.

### **Shareholder Voting**

The possible increase in Morrison & Co's level of voting rights from approximately 4.3% to up to 7.8% through the Morrison & Co Transactions will have negligible impact on either Morrison & Co's or the Associated Shareholders' ability to influence the outcome of ordinary resolutions and special resolutions.

A 7.8% shareholding cannot singlehandedly influence the outcome of shareholders' resolutions.

The Associated Shareholders collectively already have the ability to block special resolutions (which require the approval of 75% of the votes cast by shareholders) with their 25.7% holding.

Under the Companies Act 1993, a special resolution is required to:

- adopt, alter or revoke a company's constitution
- approve a major transaction
- approve an amalgamation of a company
- place a company in liquidation.

The Morrison & Co Transactions will not alter the Associated Shareholders' ability to block special resolutions.

At present no single shareholder (including the collective interests of the Associated Shareholders) can control the outcome of an ordinary resolution (greater than 50% of votes cast) or a special resolution. This position will not change if the Morrison & Co Transactions are approved.

Given the above, we are of the view that Morrison & Co Transactions will not materially increase Morrison & Co's or the Associated Shareholders' ability to exert shareholder control over Infratil.

## Board of Directors

The directors of Infratil are:

- David Newman – chair, Independent Director
- Marko Bogoevski – associated with the Associated Shareholders
- Lloyd Morrison - associated with the Associated Shareholders
- Humphry Rolleston – Independent Director
- Duncan Saville - associated with the Associated Shareholders
- Mark Tume – Independent Director.

We are advised by the Independent Directors that the Morrison & Co Transactions will not have any impact on the composition of the Company’s board of directors or Morrison & Co’s level of influence at board level.

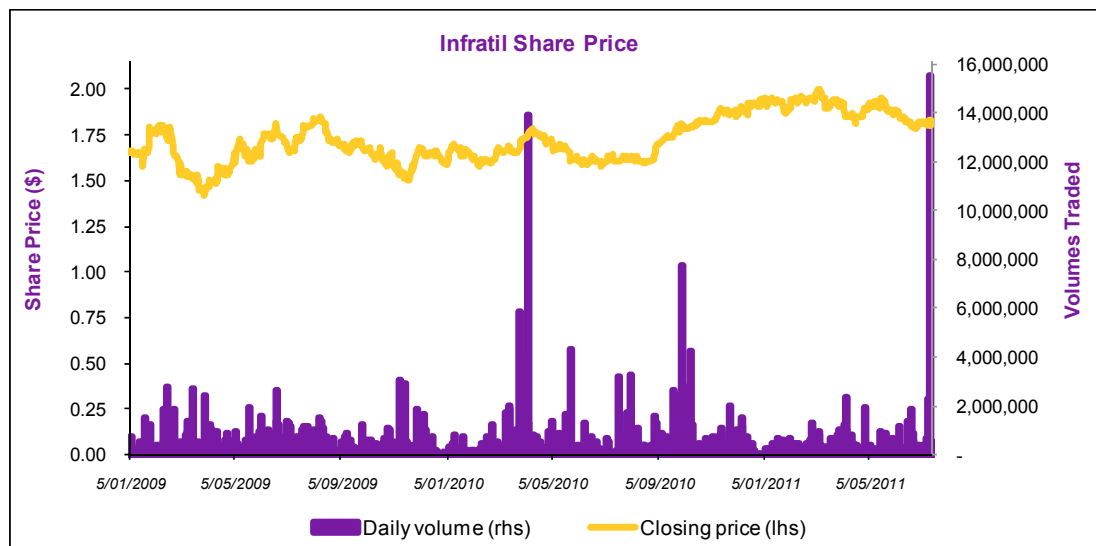
## Operations

We are advised by the Independent Directors that the Morrison & Co Transactions will not have any discernible impact on the operations of the Company.

## 2.5 Impact on Share Price and Liquidity

### Share Price

Set out below is a summary of Infratil’s daily closing share price and daily volumes of shares traded from 5 January 2009 to 15 July 2011.



During the period, Infratil’s shares have traded between \$1.42 and \$2.02 at a volume weighted average share price (VWAP) of \$1.72.

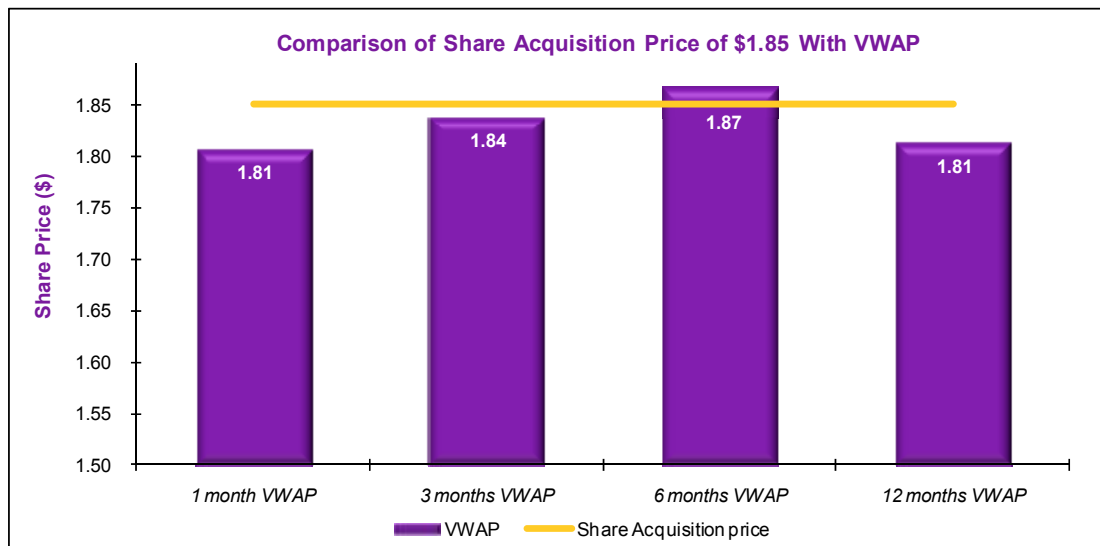
An analysis of VWAP, traded volumes and liquidity (measured as traded volumes as a percentage of shares outstanding) is set out below.

Infratil Share Trading					
Period	Low <sup>1</sup> (\$)	High <sup>1</sup> (\$)	VWAP <sup>1</sup> (\$)	Volume Traded <sup>1</sup> (000)	Liquidity
1 month	1.78	1.85	1.81	28,910	4.8%
3 months	1.78	1.97	1.84	43,634	7.2%
6 months	1.78	2.02	1.87	70,950	11.7%
12 months	1.60	2.02	1.81	152,733	25.3%

<sup>1</sup> to 15 July 2011

### Share Acquisition

The Share Acquisition is priced at \$1.85 per share, which is above the one month, 3 month and one year VWAP and below the 6 month VWAP.



### IFTWC Warrants

The IFTWC Warrants were issued on 11 June 2007 and have traded on the NZSX since then. The terms of the warrants have been disclosed in Infratil's annual reports each year since they were issued. The IFTWC Warrants trade on the NZSX. Accordingly, the market is fully informed of the terms of the IFTWC Warrants and therefore it can be reasonably assumed that the market has fully priced these securities into Infratil's share price.

We are of the view that the allotment of shares to Morrison & Co upon the exercise of its IFTWC Warrants will have negligible impact on the Company's share price.

### Buyback Programme

On the basis that any buybacks are at market value, we are of the view that the continuation of the Buyback Programme will have negligible impact on the Company's share price.



## **Liquidity**

The size of the pool of shares held by the Non-associated Shareholders will not change as a result of the Share Acquisition or the allotment of shares to Morrison & Co upon the exercise of its IFTWC Warrants.

In our view, neither the Share Acquisition nor the allotment of shares to Morrison & Co upon the exercise of its IFTWC Warrants will have any effect on the liquidity of Infratil's shares.

The continuation of the Buyback Programme may potentially have some positive impact on the liquidity of the Non-associated Shareholders' shares. However, we consider the impact will likely be limited as no shares have been bought back under the Buyback Programme since the 2010 Shareholder Approval.

### **2.6 Impact on Likelihood of Takeover**

In our view, the increase in Morrison & Co's voting rights from approximately 4.3% to up to 7.8% will not have a material impact on the attraction of Infratil as a takeover target.

The Associated Shareholders currently hold approximately 25.7% of the voting rights in Infratil. Any bidder looking to fully take over the Company would need to ensure that the Associated Shareholders would accept its offer, irrespective of the increase in Morrison & Co's shareholding level.

### **2.7 Implications of Resolution 6 not Being Approved**

In the event that resolution 6 in respect of the Share Acquisition is not approved, then Morrison & Co will not be able to acquire the shares from Utilico. Utilico may look to sell the shares to one or more non-associated parties. In such circumstances, Utilico may need to place the shares at a discount to the prevailing share price, which in turn could depress the market price of the Company's shares.

### **2.8 Implications of Resolution 7 not Being Approved**

Assuming resolution 6 is approved, in the event that resolution 7 in respect of the allotment of shares to Morrison & Co upon the exercise of its IFTWC Warrants is not approved, then Morrison & Co will only be able to exercise such number of its IFTWC Warrants so as to maintain its level of voting rights of approximately 6.8%.

Viewed in isolation, this would not cause an issue as Morrison & Co holds approximately 4.1% of the IFTWC Warrants and hence if all IFTWC Warrants were exercised by both the Non-associated Shareholders and the Associated Shareholders – and there were no shares bought back – then Morrison & Co's level of voting rights would reduce to approximately 6.6%.

However, there is no certainty that 100% of the IFTWC Warrants will be exercised or that no shares will be bought back under the Buyback Programme. Therefore, if resolution 7 is not approved, then we consider it possible that Morrison & Co would look to sell a portion of its IFTWC Warrants. Such a sale would need to be completed prior to the Final Expiry Date. Depending on how many IFTWC Warrants are sold, their sale is likely to place downward pressure on the price of the IFTWC Warrants which in turn could lead to downward pressure on the Company's share price.



The number of IFTWC Warrants that Morrison & Co chooses to exercise, and correspondingly, the number of warrants it may seek to sell, will depend firstly upon whether the IFTWC Warrants are in the money and secondly upon the number of IFTWC Warrants exercised by the other shareholders. The second matter will be somewhat circular as it will be influenced by the number of IFTWC Warrants that the other shareholders purchase from Morrison & Co.

## **2.9 Implications of Resolution 8 not Being Approved**

Assuming resolutions 6 and 7 are approved, in the event that resolution 8 is not approved and buybacks occur, then Morrison & Co may be required to sell down its shareholdings so as not to increase its level of voting rights in the Company.

Such a scenario is potentially disadvantageous to Non-associated Shareholders as:

- it may lead the Company to reconsider the degree to which it undertakes buybacks and hence reduce the ability for Non-associated Shareholders to sell their shares
- the forced sale of shares by Morrison & Co may place downward pressure on the Company's share price.

## **2.10 Voting For or Against the Resolutions**

Voting for or against the resolutions in respect of the Morrison & Co Transactions is a matter for individual shareholders based on their own views as to value and future market conditions, risk profile and other factors. Shareholders will need to consider these consequences and consult their own professional adviser if appropriate.

### **3. Sources of Information, Reliance on Information, Disclaimer and Indemnity**

#### **3.1 Sources of Information**

The statements and opinions expressed in this report are based on the following main sources of information:

- the draft Infratil notice of 2011 annual meeting
- the Share Acquisition Agreement
- the Infratil annual report for the years ended 31 March, 2009 to 2011
- the 2010 Exemption Notice
- the investment statement in respect of the IFTWC Warrants dated 8 June 2007
- Infratil shareholder and warrant holder data from the Company and NZX Data
- Infratil security price data from NZX Data.

During the course of preparing this report, we have had discussions with and received information from the executive management of Infratil and Infratil's legal advisers.

The Company's directors have confirmed that we have been provided for the purpose of this Independent Adviser's Report with all information relevant to the Morrison & Co Transactions that is known to them and that all the information is true and accurate in all material aspects and is not misleading by reason of omission or otherwise.

Including this confirmation, we have obtained all the information that we believe is necessary for the purpose of preparing this Independent Adviser's Report.

In our opinion, the information set out in this Independent Adviser's Report is sufficient to enable the Independent Directors and the Non-associated Shareholders to understand all the relevant factors and to make an informed decision in respect of the Morrison & Co Transactions.

#### **3.2 Reliance on Information**

In preparing this report we have relied upon and assumed, without independent verification, the accuracy and completeness of all information that was available from public sources and all information that was furnished to us by Infratil and its advisers.

We have evaluated that information through analysis, enquiry and examination for the purposes of preparing this report but we have not verified the accuracy or completeness of any such information or conducted an appraisal of any assets. We have not carried out any form of due diligence or audit on the accounting or other records of Infratil. We do not warrant that our enquiries would reveal any matter which an audit, due diligence review or extensive examination might disclose.

### 3.3 Disclaimer

We have prepared this report with care and diligence and the statements in the report are given in good faith and in the belief, on reasonable grounds, that such statements are not false or misleading. We assume no responsibility arising in any way whatsoever for errors or omissions (including responsibility to any person for negligence) for the preparation of the report to the extent that such errors or omissions result from our reasonable reliance on information provided by others or assumptions disclosed in the report or assumptions reasonably taken as implicit.

We have had no involvement in the preparation of the notice of meeting issued by Infratil and have not verified or approved the contents of the notice of meeting. We do not accept any responsibility for the contents of the notice of meeting except for this report.

### 3.4 Indemnity

Infratil has agreed that, to the extent permitted by law, it will indemnify Simmons Corporate Finance and its directors and employees in respect of any liability suffered or incurred as a result of or in connection with the preparation of the report. This indemnity does not apply in respect of any negligence, wilful misconduct or breach of law. Infratil has also agreed to indemnify Simmons Corporate Finance and its directors and employees for time incurred and any costs in relation to any inquiry or proceeding initiated by any person. Where Simmons Corporate Finance or its directors and employees are found liable for or guilty of negligence, wilful misconduct or breach of law or term of reference, Simmons Corporate Finance shall reimburse such costs.

## 4. Qualifications and Expertise, Independence, Declarations and Consents

### 4.1 Qualifications and Expertise

Simmons Corporate Finance is a New Zealand owned specialist corporate finance advisory practice. It advises on mergers and acquisitions, prepares independent expert's reports and provides valuation advice.

The person in the company responsible for issuing this report is Peter Simmons, B.Com, DipBus (Finance), CFIP.

Simmons Corporate Finance and Mr Simmons have significant experience in the independent investigation of transactions and issuing opinions on the merits and fairness of the terms and financial conditions of the transactions.

### 4.2 Independence

Simmons Corporate Finance does not have at the date of this report, and has not had, any shareholding in or other relationship with Infratil or any conflict of interest that could affect our ability to provide an unbiased opinion in relation to Morrison & Co Transactions.

Simmons Corporate Finance has not had any part in the formulation of the Morrison & Co Transactions or any aspects thereof. Our sole involvement has been the preparation of this report.

Simmons Corporate Finance will receive a fixed fee for the preparation of this report. This fee is not contingent on the conclusions of this report or the outcome of the voting in respect of the Morrison & Co Transactions. We will receive no other benefit from the preparation of this report.

### 4.3 Declarations

An advance draft of this report was provided to the Independent Directors for their comments as to factual accuracy of the contents of the report. Changes made to the report as a result of the circulation of the draft have not changed the methodology or our conclusions.

Our terms of reference for this engagement did not contain any term which materially restricted the scope of the report.

### 4.4 Consents

We consent to the issuing of this report in the form and context in which it is to be included in the notice of meeting to be sent to Infratil's shareholders. Neither the whole nor any part of this report, nor any reference thereto may be included in any other document without our prior written consent as to the form and context in which it appears.



Peter Simmons  
Director

**Simmons Corporate Finance Limited**

19 July 2011