

22 December 2006

The Registrar  
Commerce Commission  
PO Box 2351  
**WELLINGTON**

Pursuant to section 81(1) of the Electricity Industry Reform Act 1998, application is hereby made to the Commerce Commission for exemption from the application of the Electricity Industry Reform Act 1998, as described in the application.

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## **PERSON MAKING THE APPLICATION**

### **1. The Applicant**

1.1 This application is made by Wellington International Airport Limited ("WIAL"):

Wellington International Airport Ltd  
Corporate Office  
Level 0  
Main Terminal Building  
Wellington  
New Zealand

Attention: Simon Draper, Chief Executive

Telephone: (04) 385 5101

Facsimile: (04) 385 5139

Email: [simon.draper@wellingtonairport.co.nz](mailto:simon.draper@wellingtonairport.co.nz)

1.2 The application is supported by Infratil and Mr Lloyd Morrison, for whom exemptions are also sought.

### **The Applicant's Contact**

1.3 Correspondence and enquiries should in the first instance be addressed to the applicant's solicitors:

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Buddle Findlay  
Law Offices  
State Insurance Tower  
BNZ Centre  
1 Willis Street  
PO Box 2694  
DX SP20201  
Wellington

Attention: Jim Stevenson/Nick Crang

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### CONFIDENTIALITY

#### 2. Requests for confidentiality

2.1 WIAL does not request a confidentiality order for the fact of the application.

2.2 Confidentiality for specific information is requested as follows:

2.2.1 WIAL seeks confidentiality for specific information in this application included in square brackets and highlighted. A copy of this application with the confidential information deleted is provided to assist the Commission.

2.2.2 In accordance with section 58 of the EIR Act, WIAL requests that the Commission make a confidentiality order under section 100 of the Commerce Act 1986 in respect of this information, and that, on the expiry of any confidentiality order that the Commission makes, the information continues to be withheld under section 9 of the Official Information Act 1982.

2.2.3 WIAL also requests that it be notified of any request made under the Official Information Act 1982 for the information, and be given the opportunity to be consulted as to whether the information remains commercially sensitive at the time that the request is made.

2.3 These requests for confidentiality are made for two reasons:

2.3.1 because the information is commercially sensitive and disclosure would be likely to unreasonably prejudice the commercial position of WIAL; and

2.3.2 some of the information relates to [

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## **BUSINESS ACTIVITIES OF THE APPLICANT**

### **3. Wellington International Airport Limited**

- 3.1 WIAL owns and operates Wellington International Airport. WIAL is 66% owned by Infratil Limited, through New Zealand Airports Limited, and 34% owned by Wellington City Council.
- 3.2 WIAL's principal business is to operate Wellington International Airport. As part of this business, it leases space in its Main Terminal Building ("MTB") to various aviation related businesses and organisations (e.g. Air New Zealand, Qantas, the Aviation Security Service and the New Zealand Customs Service). It also leases space in the MTB to other businesses, such as retail outlets, food outlets and rental car companies.
- 3.3 WIAL owns all the electrical wiring in the MTB from the points of connection with the local distribution network operated by Vector Limited to WIAL's own electrical installations and to the premises of its tenants. It conveys electricity over these lines to its tenants and itself at a voltage of 400V.
- 3.4 WIAL has two points of connection with Vector in respect of the MTB. One point of connection is situated towards the northern end of the MTB, and services three transformers operated by Vector for distribution to the northern end of the MTB (MTB North) and the Northern Pier of the MTB. The second point of connection is situated at the southern end of the MTB, and services two transformers operated by Vector for distribution to MTB South. The demarcation point for each point of connection is located on the 400V side of the Vector transformers. There is an Installation Control Point with a single meter located at each WIAL point of connection.
- 3.5 WIAL's lines within the MTB are separated into North and South networks, following directly from the northern and southern points of supply. WIAL's lines have a total installed capacity of 4500kVA, but currently carry approximately 1600kVA (including electricity supplied to WIAL).
- 3.6 WIAL owns and operates two emergency generators of 500kVA capacity each to ensure continuity of electricity supply in the event of an outage in supply from Vector's network. One generator is located on the North network, and the other generator is located on the South network. Each network includes "essential circuits", which supply WIAL's airport operations and other tenants providing essential services and which are connected to WIAL's emergency generators, and non-essential circuits.

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- 3.7 Each tenant has a check meter, located at the boundary to their premises. This meter is read monthly by WIAL for billing purposes.
- 3.8 At the present time, WIAL purchases all the electricity for use in the MTB from Genesis Energy Limited and both uses this electricity for itself and on-sells some of this electricity to its tenants. It pays Genesis Energy for both the electricity supplied by Genesis and the electricity line function services provided by Vector.
- 3.9 WIAL currently charges its tenants a [ ] per month service fee for each check meter and a flat rate per tenant for each kWh of electricity supplied on a pass-through basis. [ ] In effect, this is a bundled energy and line charge. This bundled charge has amounted to approximately [ ] cents per kWh over the past year. [ ]
- 3.10 [ ]
- 3.11 [ ]
- 3.12 In the period from 1 November 2005 to 31 October 2006, WIAL received approximately [ ] in electricity charges to its tenants made on the basis described in paragraph 3.9 above. This compares to total revenue earned by WIAL from all sources, in the year to 31 March 2006, of \$66,155,000 (WIAL's Annual Report for the year ending 31 March 2006).
- 3.13 WIAL has recently identified that it conveyed over its electricity lines, and sold, approximately 2.7GWh per annum of electricity to its tenants in the period from 1 November 2005 to 31 October 2006. In this period, WIAL conveyed approximately 5.8GWh of electricity over its lines for its own use making a total of 8.5GWh per annum (in this period).

## BUSINESS ACTIVITIES OF OTHER RELEVANT PARTIES

### 4. TrustPower Limited

- 4.1 TrustPower Limited operates in the electricity generation and retail sectors in New Zealand. It is currently the fourth largest electricity supply business in New Zealand. TrustPower owns 34 hydro power stations and the Tararua Wind Farm. All TrustPower's generation is based on renewable resources. TrustPower retails approximately 4,700GWh of electricity per annum to around 220,000 customers. TrustPower's primary retail bases are outside the main metropolitan

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areas of Auckland, Wellington and Christchurch, although they have some customers in the Wellington region.

- 4.2 TrustPower is listed on the NZX. There are currently three large shareholders in TrustPower. The largest shareholder is Infratil Limited, which currently owns approximately 35.15% of the shares in TrustPower. The Tauranga Energy Consumer Trust owns approximately 28.53% of the shares, and Alliant Energy New Zealand Limited owns approximately 23.75% of the shares.
- 4.3 Infratil Limited has entered into an agreement to buy Alliant Energy New Zealand Limited's shares in TrustPower. When the transaction settles on 29 December 2006, Infratil Limited will own approximately 58.9% of TrustPower's shares. Infratil will then sell 14 million shares to the Tauranga Energy Consumer Trust, raising the Trust's stake in TrustPower to 33%. Infratil also proposes to sell another 10.95 million shares on the open market, bringing its shareholding down to a target of 50.5%.

### 5. Infratil Limited

- 5.1 Infratil Limited is a specialist investor in infrastructure and utility assets. The company is listed on the NZX and owns airports in New Zealand and Europe as well as energy and other investments in New Zealand and Australia. Infratil is the major shareholder in both WIAL and TrustPower, as described above.
- 5.2 As at the date of its last annual report (for the year ending 31 March 2006), Infratil's substantial security holders were Utilico Investment Trust Plc (19.46%), the HRL Morrison Family Trust (7.74%) and Alliant Energy New Zealand Limited (5.02%). As part of the TrustPower transaction outlined above, Infratil will buy back and then on-sell Alliant Energy New Zealand Limited's 5.02% shareholding in Infratil.

### 6. Lloyd Morrison

- 6.1 Lloyd Morrison is an Infratil-appointed director of both WIAL and TrustPower.

## INVOLVEMENTS PURSUANT TO THE EIR ACT

### 7. Requirements of the EIR Act

- 7.1 Section 17 of the EIR Act prohibits a person from being involved in an electricity lines business and in an electricity supply business.
- 7.2 Under the EIR Act, "*involved*" means that a person:
- 7.2.1 carries on that business, either alone or together with its associates and either on its own or another's behalf; or
  - 7.2.2 exceeds the 10% threshold in section 8 in respect of that business; or
  - 7.2.3 has material influence over the business (section 7).

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7.3 “Electricity lines business” is defined in section 4 the EIR Act as follows:

- (1) *For the purposes of this Act, electricity lines business—*
  - (a) *Means a business that conveys electricity by line in New Zealand; and*
  - (b) *Includes the ownership or operation, directly or indirectly, of lines in New Zealand or any other core assets of an electricity lines business.*

7.4 “Electricity supply business” is defined in section 5 of the EIR Act as follows:

- (1) *For the purposes of this Act, electricity supply business—*
  - (a) *Means a business that—*
    - (i) *Sells electricity in New Zealand:*
    - (ii) *Sells financial hedges for risks relating to the price of electricity in New Zealand:*
    - (iii) *Generates electricity in New Zealand:*
    - (iv) *Trades in rights to sell or generate electricity in New Zealand; and*
  - (b) *Includes the ownership or operation, directly or indirectly, of a generator in New Zealand or any other core generation assets; and*
  - (c) *Includes the ownership or operation, directly or indirectly, of any core assets of an electricity retail business, which include—*
    - (i) *The customer data base relating to and used for the purposes of an electricity retail or electricity trading business; and*
    - (ii) *The benefit of a contract to sell electricity; and*
    - (iii) *The benefit of an undertaking from any other electricity supply business not to compete with the business.*

7.5 Sections 4(2) and 5(2) of the EIR Act set out a number of situations in which a person or business will not be classified as an electricity lines business or an electricity supply business. Most relevantly, persons conveying or selling less than 2.5GWh of electricity per annum will not be classified as electricity lines businesses or electricity supply businesses for the purposes of the Act.

**8. Electricity Lines Business**

*Position of WIAL*

- 8.1 As noted above, WIAL has just identified that it conveyed over its electricity lines and sold 2.7GWh per annum of electricity over the period 1 November 2005 to 31 October 2006 to its tenants.
- 8.2 WIAL therefore operates an “*electricity lines business*” as defined in section 4 of the EIR Act as it:
- 8.2.1 conveys electricity by lines to its tenants as provided in section 4(1)(a) of the EIR Act; and
- 8.2.2 conveys more than 2.5GWh per annum, which is the threshold at which electricity supply businesses become subject to the EIR Act, as set out in section 4(2)(a) of the EIR Act.

*Position of TrustPower*

- 8.3 TrustPower does not hold any interests that could cause it to be classed as an “*electricity lines business*”.

**9. Electricity Supply Business**

*Position of WIAL*

- 9.1 WIAL operates an “*electricity supply business*” as defined under section 5 of the EIR Act. This is because:
- 9.1.1 it sells electricity to its tenants; and
- 9.1.2 sells more than 2.5GWh per annum, which is the threshold at which electricity supply businesses become subject to the EIR Act, as set out in section 5(2)(a) of the EIR Act.
- 9.2 The two emergency generators operated by WIAL generate less than 2.5GWh per annum. In accordance with sections 5(2)(a), 5(2)(d) and 5(2)(g) of the EIR Act, neither ownership nor operation of these generators, nor sale of the electricity generated, qualifies WIAL as an electricity supply business.

*Position of TrustPower*

- 9.3 TrustPower is an “*electricity supply business*” in terms of section 5 of the EIR Act.

**10. Conclusion on EIR Act**

*Position of WIAL*

- 10.1 As discussed above, WIAL is involved in both an electricity lines business and an electricity supply business. Section 17 of the EIR Act therefore applies to WIAL.

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### *Position of Infratil and Lloyd Morrison*

- 10.2 Infratil and Lloyd Morrison are both involved in an electricity lines business and an electricity supply business.
- 10.3 In Infratil's case, this is because:
- 10.3.1 It holds more than 10% of the control rights (i.e. voting rights) in TrustPower Limited. This takes it over the 10% threshold specified in section 8 of the EIR Act. In accordance with section 7 of the EIR Act, this means that it is involved in the electricity supply business operated by TrustPower Limited;
- 10.3.2 It owns more than 10% of the control rights in WIAL. For the same reasons, this means it is involved in the electricity lines business operated by WIAL.
- 10.4 In Lloyd Morrison's case, this is because:
- 10.4.1 He is a director of TrustPower. This means that he is a "*manager*" in TrustPower and, in accordance with section 11 of the EIR Act, is deemed to have material influence over the electricity supply business operated by TrustPower. This means that he is "*involved*" in that business under section 7 of the EIR Act.
- 10.4.2 He is a director in WIAL, and, for the same reasons as for TrustPower, is deemed to be involved in the electricity lines business carried on by WIAL.
- 10.5 Section 17 of the EIR Act therefore applies to both Infratil and Lloyd Morrison.

## DETAILS OF EXEMPTIONS SOUGHT

### 11. Exemptions Sought

- 11.1 The following exemptions are sought:
- 11.1.1 temporary exemptions from section 17 of the EIR Act for WIAL, Infratil and Lloyd Morrison, to be granted as soon as possible to cover the period up until the Commission makes a decision on the exemptions sought in this application or shortly thereafter;
- 11.1.2 a temporary exemption for WIAL from the period that the temporary exemption referred to in paragraph 11.1.1 above expires until the period of four months from the date that the temporary exemptions sought under this subparagraph are granted [ ] and
- 11.1.3 permanent exemptions from section 17 of the EIR Act for Infratil and Lloyd Morrison.
- 11.2 The circumstances of its application, and the exemptions sought, differ from previous exemption applications considered by the Commission. However, there

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are some parallels with the exemptions sought, and granted by the Commission, in relation to:

11.2.1 Auckland International Airport Limited (Decision No. 348);

11.2.2 Various decisions in relation to directors of Auckland International Airport Limited (Decisions No. 384, 517 and 547); and

11.2.3 Vector Limited (Decision No. 541).

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## GROUNDS FOR THE APPLICATION

### 12. WIAL's arguments for the application

12.1 In summary, WIAL's arguments in favour of the application are:

12.1.1 [

]

12.1.2 It is an imperative for the proper operation of Wellington International Airport, and to enable emergency generation to be made available for essential services, that WIAL retain ownership and control of its electricity lines. The risks and costs of WIAL losing control of these lines are also out of all proportion to any detriment arising from WIAL's ongoing ownership and control of those lines; and

12.1.3 Taking into account the conditions proposed by WIAL below, and the three primary questions the Commission considers in determining applications for exemptions under section 81, the material risk to the purposes of the EIR Act in granting the exemptions is minimal.

12.2 These matters are discussed further below.

### 13. Relevant Markets

13.1 Consistent with Decision No. 348, the national electricity retail market is relevant to this application.

14. [ ]

14.1 As noted above, WIAL has only recently become aware that it is involved in both an electricity lines business and an electricity supply business. This is because of recent growth in the load supplied by WIAL, taking WIAL over the 2.5GWh per annum threshold in sections 4(2)(a) and 5(2)(a) of the EIR Act.

14.2 [

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14.3 [

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14.4 [

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14.5 [

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14.6 [

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14.7 [

14.7.1 [

]

14.7.2 [

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14.8 WIAL would be prepared for these to be specified as conditions to the exemptions it is seeking.

14.9 [

]

14.10 [ ]

14.11 [ ]

**15. Undesirable and impractical for WIAL to divest all or part of its lines business**

15.1 WIAL has considered whether, instead of seeking the exemptions, it could arrange for some of its tenants to be directly connected to Vector's network. If these tenants were of sufficient size, this would take WIAL below the 2.5GWh per annum threshold in section 4(2)(a) of the EIR Act, meaning that it was no longer an electricity lines business.

15.2 However, WIAL considers that the costs of it losing control of the electricity lines within the MTB are disproportionate to the detriment arising, in terms of the purposes of the EIR Act, from WIAL's ongoing ownership of those lines.

15.3 WIAL notes that:

15.3.1 It would be very difficult and complex for supply to be taken directly from Vector for some tenants. Separate lines would need to be constructed from Vector's transformers to particular tenants within the MTB.

15.3.2 Allowing a separate entity to own electricity lines within the MTB would make management of the building infrastructure complex and difficult in the future. As the owner of a building, effective management relies upon being able to manage and control all the infrastructure within the building. This is particularly important for the airport, where the needs of the airport and its users can change over time in order to meet the primary aviation needs of the airport's users.

15.3.3 All of the other major airports in New Zealand own the lines within their terminal buildings.

15.3.4 If a tenant's site was directly connected to Vector's network, that site would not be able to use WIAL's emergency generation plant, access to which it is provided through WIAL's essential circuit lines. For some tenants (e.g. the airlines) access to the emergency generators is extremely important.

**16. The Commission's three primary questions**

16.1 The Commission has specified three primary questions that it will examine in considering applications for exemptions under section 81 of the EIR Act.

***Incentives or opportunities to inhibit competition in the electricity industry***

***Impact of the temporary exemptions***

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16.2 WIAL considers that the temporary exemptions it seeks will not have a significant impact on this question. It considers that the effects arising from any incentives or opportunities to inhibit competition over the period of the temporary exemptions are minimal.

*Impact of the permanent exemptions*

16.3 In respect of the permanent exemptions, WIAL notes that there is no current supply relationship between the businesses of WIAL and TrustPower, other than [

]

16.4 [

]

16.5 [

]

16.6 [

]

16.7 In addition, to these points, WIAL does not consider that the size of its lines business is so significant as to give TrustPower any incentive or opportunity to inhibit competition in electricity generation or retail [

]

16.8 Further, WIAL proposes as a condition of the exemptions that it be required to provide for access to its network and tenants for all electricity retailers, other than TrustPower [

]

16.9 Accordingly, WIAL does not consider that there would be significant incentives or opportunities for either WIAL or TrustPower to inhibit competition in the electricity industry if the exemptions were granted.

***Incentives or opportunities to cross-subsidise generation activities***

*Impact of the temporary exemptions*

16.10 WIAL considers that the temporary exemptions it seeks will not have a significant impact on this question. It considers that the effects arising from any incentives or

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opportunities to cross-subsidise the generation activities of Trustpower (although the extent to which these exist are limited as discussed below) over the period of the temporary exemptions are minimal.

### *Impact of the permanent exemptions*

- 16.11 In respect of the permanent exemptions, WIAL notes that the closest generation owned by TrustPower to Wellington International Airport is the Tararua Wind Farm and some hydro generation in Marlborough. These generation assets are significantly geographically separated from WIAL's electricity network so that the potential for cross-subsidisation of generation activities is limited.
- 16.12 As the Commission noted in Decision No. 541 in relation to the generation assets of NGC and Vector's lines business, the potential for cross-subsidisation is of particular concern where a generator has the potential to connect generation to a local distribution network.
- 16.13 In addition, WIAL considers that its network is sufficiently small that it does not create significant incentive or opportunity for cross-subsidisation of TrustPower's generation activities.
- 16.14 Further, the conditions proposed below, particularly the limitations on the charges that WIAL could impose on its tenants for line services and for selling electricity to [ ] retail customers, limit the potential for cross-subsidisation. This arises particularly because the charges will be set to be competitive with the market charges or prices for those services.
- 16.15 WIAL notes that the electricity lines business of WIAL and electricity supply businesses of TrustPower will be operated in separate businesses. This greatly limits the opportunities for cross-subsidy. Furthermore, although Infratil is the majority owner of WIAL, the Wellington City Council takes a close interest in the operation of the business, and appoints a director to WIAL's board. It would be in the Council's interest to strongly oppose any attempt to cross-subsidise. Similarly, in respect of TrustPower, while Infratil will become the major shareholder, there are other significant shareholders particularly the Tauranga Energy Consumer Trust, who would closely monitor Infratil's actions in relation to TrustPower. Infratil has only two nominee directors on the TrustPower Board out of the six current Board members, which are anticipated to reduce to five. There is an independent Chairman.
- 16.16 Accordingly, WIAL considers that the opportunities and incentives to cross-subsidise TrustPower's generation activities from Infratil's and Lloyd Morrison's involvement in electricity lines business are minimal and do not present a material risk to the purposes of the EIR Act.

***A relationship not at arms' length***

*Impact of the temporary exemptions*

- 16.17 In respect of the temporary exemptions sought by WIAL, although WIAL will continue to operate on both an electricity lines business and electricity supply business over the period of the temporary exemptions, the effect of this will be minimal over this period.
- 16.18 The temporary exemptions will also permit Lloyd Morrison to continue as a director of, and Infratil to be involved in, both WIAL and TrustPower. Again, WIAL considers that the effect of these involvements over the period of the temporary exemptions is minimal.

*Impact of the permanent exemptions*

- 16.19 WIAL notes that the Commission observed in Decision No. 541 that in most circumstances where an exemption was required from the ownership separation provisions of the EIR Act, a relationship will be created that will ultimately not be at arms length. In each case, the Commission assesses the practical effect of the non-arms length relationship in order to decide whether that relationship is likely to lead to a result that would be contrary to the purposes of the EIR Act.
- 16.20 In respect of the permanent exemptions, WIAL notes that the electricity lines business and the electricity supply business will be operated in separate companies. Although this is not "*arms length*" as defined in the EIR Act, particularly because Lloyd Morrison will be a director of both companies, taking into account the points made above in relation to the first two questions, there is little practical effect in terms of the conduct which the EIR Act was designed to prevent.
- 16.21 Further, Mr Morrison's presence as a director of both WIAL and TrustPower has a limited ability to create a relationship between the two companies that is not at arms' length.
- 16.22 This is because both WIAL and TrustPower have provisions in their constitutions that prevent interested directors from voting on a matter related to an interested transaction except in limited circumstances. In relation to Mr Morrison, these provisions would apply to a transaction involving both WIAL and TrustPower.
- 16.23 Clauses 44.1 and 44.2 of WIAL's constitution state:

*44.1 A director of the company who is interested in a transaction entered into, or to be entered into, by the Company may not (subject to clauses 44.1.1 and 44.2) vote on a matter relating to the transaction, but may –*

*44.1.1 vote on any matter to which either of clauses 57 or 58 apply;*

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44.1.2 *attend a meeting of directors at which a matter relating to the transaction arises, and be included among the directors present at the meeting for the purposes of a quorum;*

44.1.3 *sign a document relating to the transaction of behalf of the Company; and*

44.1.4 *do anything else as a director in relation to the transaction,*

*as if he or she were not interested in the transaction.*

44.2 *The shareholders may by ordinary resolution suspend or relax the prohibition on interested directors voting to any extent in respect of any particular transaction*

16.24 Clauses 57 and 58 relate to indemnity and insurance for directors and employees. In relation to the ability under 44.2 for shareholders to relax the interested director provisions, WIAL proposes that the Commission place a condition on the exemptions that Infratil not vote its shareholding in WIAL so as to pass an ordinary resolution having the effect of suspending or relaxing the prohibition in clause 44.1 in respect of electricity.

16.25 Clauses 12.15.3 and 12.15.4 of TrustPower's constitution state:

12.15.3 **No voting by interested Director** – *A Director shall not vote in respect of any matter in which that Director is interested, nor shall the Director be counted in the quorum in any meeting to consider the matter, except that a Director may vote in respect of, and be counted in the quorum for the purposes of, a matter in which he or she is interested if that matter is one in respect of which, pursuant to an express provision of the Act, Directors are required to sign a certificate or one which relates to the grant of an indemnity pursuant to section 162 of the [Companies] Act.*

12.15.4 **Exceptions** – *Nothing in Clause 12.15.2 applies in relation to the matters referred to in section 143.*

16.26 Section 143 of the Companies Act refers to directors' remuneration and indemnities for employees and directors. Note that these provisions also largely incorporate into TrustPower's constitution the NZX Listing Rules requirements in relation to interested directors. Furthermore, clause 2.1(c) (which becomes effective from the completion of Infratil's purchase of Alliant Energy's TrustPower shares) of TrustPower's constitution provides that if there is any inconsistency between the NZX Listing Rules and a provision of the constitution, the Listing Rules will prevail.

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TrustPower, while listed, is therefore effectively unable to remove the interested director provisions from its constitution.

16.27 In Decision No. 547, the Commission accepted that similar provisions in the NZX Listing Rules prevented Mr Boyd from voting on matters in relation to which he had declared a conflict of interest, but considered there could be the opportunity for competition to be inhibited by means of the formal voting process. Nevertheless, the Commission seems to accept that these kind of voting restrictions are relevant.

### 17. Proposed conditions

17.1 WIAL proposes the following conditions for the temporary exemptions sought in paragraphs 11.1.1 and 11.1.2 above:

17.1.1 the exemption sought in paragraph 11.1.1 continues to the date on which the temporary exemption sought in paragraph 11.1.2 commences;

17.1.2 the temporary exemption sought in paragraph 11.1.2 continues for a period of 4 months from the date it is granted [

] and

17.1.3 that TrustPower not supply electricity to WIAL or any of its tenants [

] and

17.1.4 [

]

17.2 WIAL suggests the following conditions for the permanent exemptions sought in paragraph 11.1.3:

17.2.1 [

]

17.2.2 that WIAL's charges to its tenants must be as follows:

17.2.2.1 [

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17.2.2.2 [

]

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17.2.3 [

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17.2.4 that TrustPower not supply electricity to WIAL or any of its tenants [

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17.2.5 [

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17.2.5.1 [

]

17.2.5.2 [

]

17.2.6 [

]

17.2.7 that Infratil not vote its shares in WIAL so as to pass an ordinary resolution under clause 44.2 of WIAL's Constitution that would have the effect of suspending or relaxing the prohibition on interested directors voting set out in clause 44.1 of WIAL's Constitution in respect of electricity matters.

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## CONCLUSION

### 18. Fees

18.1 We **enclose** a cheque for \$11,250.00 for the prescribed adjudication fee. Please advise us of the actual cost of processing the application and the amount of any possible refund as soon as practicable.

### 19. Declaration

19.1 A declaration in the prescribed form by Wellington International Airport Limited, as applicant, is **attached** to this application.

### 20. Further Information

20.1 We would be pleased to discuss any issue in this application on which the Commission might require further clarification. As noted above, any such queries should in the first instance be directed to the applicant's solicitors.

**DECLARATION**

This application is made by Wellington International Airport Limited. Wellington International Airport Limited confirms that:

- all information requested by the Commerce Commission has been supplied;
- all information known to the applicant which is relevant to the consideration and determination of this application has been supplied to the Commerce Commission; and
- all information supplied by the applicant to the Commerce Commission is correct as at the date of this application.

Wellington International Airport Limited undertakes to advise the Commission immediately of any material change in the circumstances relating to this application.

DATED this 22<sup>nd</sup> day of December 2006

Signed by: Wellington International Airport Limited

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Simon Draper  
Chief Executive

I am an officer of the company and am duly authorised to make this application.