

Attachment 6

SUPPLEMENTARY DETAILS OF AIAL CONSULTATION SEPTEMBER 1999 - AUGUST 2000

The AIAL Consultation

1. The AIAL Consultation commenced in September 1999. The schedule in paragraph 2 (as set out in the affidavit of **Air NZ representative** Campbell Stanley Butcher and agreed by AIAL for the purposes of the current Air NZ litigation against AIAL) details and, in AIAL's view, establishes the extensive nature of the AIAL Consultation.

APPENDIX A – REVISED CHRONOLOGY OF KEY EVENTS IN CONSULTATION PROCESS

26 March 1999	Air NZ wrote to all airport companies setting out the principles Air NZ, and its subsidiary companies, wished to see observed in formal communications relating to AAAA consultations.
17 September 1999	AIAL notified airlines of commencement of the consultation process and provided a proposed timetable for consultation.
28 September 1999	Process meeting at AIAL attended by Chris Curley (AIAL), John Goulter (AIAL), Kristen Bowman (AIAL), Paul Mens (AIAL), Murray Barclay (AIAL), Campbell Butcher (AirNZ), John Van Slooten (AirNZ), Vince Dennehy (AirNZ), Tony Russell (AirNZ), Stewart Milne (BARNZ), Mike Harris (Ansett), G Rea (Ansett), B Kerr (United) and H Harris (QANTAS). It was agreed in principle that an appropriate confidentiality agreement would be developed separately. Airlines signaled need for working proposal to be provided. AIAL tabled general airport information, consultation timetable, process outline and agenda.
5 October 1999	Deed finalised and executed by Air NZ. AIAL released confidential information.
20 October 1999	Consultation meeting at AIAL attended by Chris Curley (AIAL), John Goulter (AIAL), Kristen Bowman (AIAL), David Adamson (AIAL), Murray Barclay (AIAL), Frank Julia (Rushtons), Robert Lawton (Barratt Boyes Jeffries Ltd), Kerry Stuart (BECA), Campbell Butcher (AirNZ), John Van Slooten (AirNZ), Vince Dennehy (AirNZ), Tony Russell (AirNZ), Stewart Milne (BARNZ) and Mike Harris (Ansett)
29 October 1999	AIAL provided a working proposal for aircraft landing charges and the airport development charge.
3 November 1999	Meeting between representatives of AIAL, Air NZ, BARNZ and Ansett regarding the provision of information, attended by Stewart Milne (BARNZ), Vince Dennehy (AirNZ), Catherine Hales (AirNZ Consultant), Graeme Campbell (Ansett), Chris Curley (AIAL) and Paul Mens (AIAL)
19 November 1999	Working Group Meeting with AIAL attended by V.Dennehy, C Butcher, G Campbell (Ansett), M Harris (Ansett), S Milne (BARNZ) and P Mens (AIAL).
22 November 1999	Consultation process meeting attended by Chris Curley (AIAL), Paul Mens (AIAL), John Goulter (AIAL), Kristen Bowman (AIAL), Vince Dennehy (AirNZ), Campbell Butcher (AirNZ), Tony Russell (AirNZ), Catherine Hales (Air NZ Consultant), Graeme Campbell (Ansett) and Stewart Milne (BARNZ).

26 November 1999	Working group meeting held attended by Chris Curley (AIAL), Paul Mens (AIAL), Murray Barclay (AIAL), Vince Dennehy (AirNZ), Campbell Butcher (AirNZ), Catherine Hales (Air NZ Consultant), Graeme Campbell (Ansett), Mike Harris (Ansett) and Stewart Milne (BARNZ).
2 December 1999	Working Group Meeting at AIAL attended by Paul Mens (AIAL), Murray Barclay (AIAL), Vince Dennehy (AirNZ), Campbell Butcher (AirNZ), Catherine Hales (Air NZ Consultant), Graeme Campbell (Ansett) and Stewart Milne (BARNZ).
16 December 1999	Working Group Meeting held at AIAL in the morning attended by C Curley (AIAL), P Mens (AIAL), C Hales (Air NZ Consultant), R Taylor (Air NZ Consultant), G Campbell (Ansett NZ), C Butcher (Air NZ), V Dennehy (Air NZ) and S Milne (BARNZ) Consultation Meeting held at AIAL 12.00 to 12.30 regarding process and timetable issues attended by C. Curley (AIAL), P. Mens (AIAL), K. Bowman (AIAL), M. Barclay (AIAL), V. Dennehy (AirNZ), C. Butcher (AirNZ), J.V Slooten (AirNZ), T. Russell (AirNZ), B. Duthie (AirNZ), G. Campbell (Ansett NZ), M. Harris (Ansett NZ), B. Kerr (UAL), S. Milne (BARNZ), C. Hales (AirNZ Consultant) and Lim Liang Poy (IATA)
22 December 1999	AIAL's second proposal for aircraft landing charges and airport development charge delivered to substantial customers.
14 February 2000	Draft Air NZ Interim Response provided to AIAL (draft to allow AIAL opportunity to reconsider before final version presented).
18 February 2000	A hardcopy of the Air NZ Interim Consultation Response, dated 18 February 2000, was personally delivered to AIAL by V Dennehy. Other airlines also delivered responses at this meeting. Meeting attended by J Goulter (AIAL), C Curley (AIAL), K Bowman (AIAL), P Mens (AIAL), M Barclay (AIAL), V Dennehy (Air NZ), G Rea (Ansett NZ), H Harris (QANTAS), S Milne (BARNZ) and Lim (IATA).
25 February 2000	Consultation Meeting held at BARNZ offices attended by C Curley (AIAL), V Dennehy (AirNZ), G Rea (Ansett), R Taylor (AirNZ Consultant), B Duthie (AirNZ) and S Milne (BARNZ) to discuss airline submissions and future process.
21 March 2000	AIAL Consultation Meeting to discuss key issues and proposed AIAL Board meeting attended by Chris Curley (AIAL), Kristen Bowman (AIAL), Vince Dennehy (AirNZ), Campbell Butcher (AirNZ), Brett Duthie (Air NZ), Mike Harris (Ansett), Michael McNally (QANTAS), Herbert Harris (QANTAS) and Stewart Milne (BARNZ).
28 March 2000	BARNZ wrote to AIAL confirming the key issues be addressed by the Board.
28 March 2000	Mr John Goulter (Managing Director AIAL) advised the issues outlined by BARNZ will be discussed with and by the Board.
07 April 2000	AIAL provided third revised pricing proposal.
14 April 2000.	AIAL responded to the individual airlines (excepting AirNZ).

20 April 2000	AIAL responded to AirNZ's submission of 14 February 2000.
01 May 2000.	Consultation Meeting between AIAL and substantial customers held at Auckland Airport attended by John Goulter (AIAL), Chris Curley (AIAL), Paul Mens (AIAL), David Connor (Hesketh Henry), Graheme Horsley (Ernst Young), Jai Basra (Ernst Young), Chris Seagar (Seagar and Partners), Angeline Sarcasmo (QANTAS), Chris Pemberton (QANTAS), Herbert Harris (QANTAS), Vince Dennehy (AirNZ), Campbell Butcher (AirNZ), Helen Cahill (Air NZ), Tony Russell (Air NZ), Catherine Hales (Air NZ Consultant), Roger Taylor (economist), Graeme Campbell (Ansett), Dr Brent Layton (Economist), Sam Lovick (Economist), Stewart Milne (BARNZ) and Lim Liang Poh (IATA).
17 May 2000.	AIAL provided response to key issues identified at 1 May consultation meeting and a fourth revised pricing proposal.
02 June 2000.	BARNZ and AirNZ provided their Further interim Responses to AIAL. QANTAS, Ansett and IATA also provided responses on or around this date.
09 June 2000	Air NZ wrote to AIAL setting out the issues Air NZ considered outstanding and the questions raised in its 2 June Response.
15 June 2000	LEK report provided on AIAL Efficiency (provided to airlines 22 June 2000)
11 July 2000	Airline Representatives met with the AIAL Board of Directors and made a presentation outlining at a high level the airlines concerns. The following attended: Wayne Boyd (Chairman), John Goulter (Board member), Anthony Frankham (Board member), Michael Smith (Board member), Joan Withers (Board member), Chris Curley (AIAL), Kristen Bowman (AIAL), Paul Mens (AIAL), Nyree Kerr (AIAL minutes), Vince Dennehy (Air NZ), Stewart Milne (BARNZ), Alan Olsen (United), Murray Wild (Singapore Airlines), David Payne (QANTAS).
14 July 2000	AIAL responded to the outstanding issues itemised in Air NZ's letter of 09 June.
31 July 2000.	Third Interim Response from Air NZ to AIAL attaching Professor Bowman's Independent report of AIAL's pricing proposal.
22 August 2000	Announcement of AIAL board's decision to increase landing charges by 8.5% from 1 Sep 2000 with further increases of 5% in Sep 2001 and 2002 a cumulative increase of 19.6%. The ADC was increased from \$20 to \$22 on 1 Oct 2000.
19 September 2000	AIAL and airlines met to discuss methodology behind AIAL's decision to set charges at 8.5% increase for year 1. AIAL explained the reduction from 18.14% to 8.5% was due to the removal of untitled seabed (titled seabed remaining) reallocation of land side roads and storm water systems from the airfield to the ADC and a general consideration by the Board of a number of other factors without applying any particular methodology. AIAL to provide a spreadsheet.
2 October 2000	AIAL provided financial data outlining the 12.78% increase

18 October 2000	Air NZ advised AIAL of its intention to issue High Court proceedings to determine lawfulness of increased charges.
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2. The period from September 1999 to close of business, Christmas 1999, is characterised by extensive information supply, working group meetings and full consultation meetings. Both a working proposal (October 1999 - No 1) and a full pricing proposal (December 1999 - No 2) were prepared by AIAL and provided to AIAL's substantial customers.
3. The final written (interim) submissions were reviewed by AIAL in early February. This commenced the more formal stage with exchange of written replies and submissions. It also commenced the stage where AIAL's Board became more intimately involved in consideration of the substantial customers views and concerns. Although continuously briefed, the Board of Directors of AIAL ("Board") met for a Special Board Meeting on 31 March 2001 to consider the expert advice that had been received by AIAL to that date, together with the first interim submissions that had been received from AIAL's substantial customers. From that Board Meeting, AIAL provided a key issues response and amended pricing proposal (No 3) to the substantial customers on 7 April 2000. Individual responses were provided by AIAL to BARNZ, Ansett and Qantas on 14 April 2000, with an individual response to Air NZ being provided on 20 April 2000.
4. At the 1 May 2000 experts' meeting the various outstanding issues in the consultation were confirmed and discussed between AIAL, the substantial customers and the respective experts engaged for the consultation.
5. On 17 May 2000, AIAL provided a response to further issues raised by the substantial customers and provided a further amended pricing proposal (No 4) for the landing charges and the ADC.
6. In turn, the substantial customers provided further responses in June 2000. Air NZ provided a lengthy letter on 9 June 2000 setting out what it considered to be the issues outstanding at that time. That letter stated:

AIAL must address [the issues outlined] in order for Air New Zealand to be sufficiently informed to be able to make a full meaningful response on AIAL's latest pricing proposal. Without the above information having been provided, Air New Zealand will not view consultation as having been completed.
7. AIAL responded to the 9 June 2000 letter on 18 July 2000 and a final series of submissions from the substantial customers was received in the week ending 4 August 2000.
8. The Board then held another full day and special Board Meeting on 8 August 2000. A number of the experts were called in person to discuss and clarify various issues for the Board's benefit.
9. A further three special Board Meetings (by telephone conference) were held - 14, 16 and 21 August 2000 to evaluate possible progress of the commercial arrangement. When the same could not be finalised the Board determined charges and announced the same on 22 August 2000.

Content of Board's consultative obligation

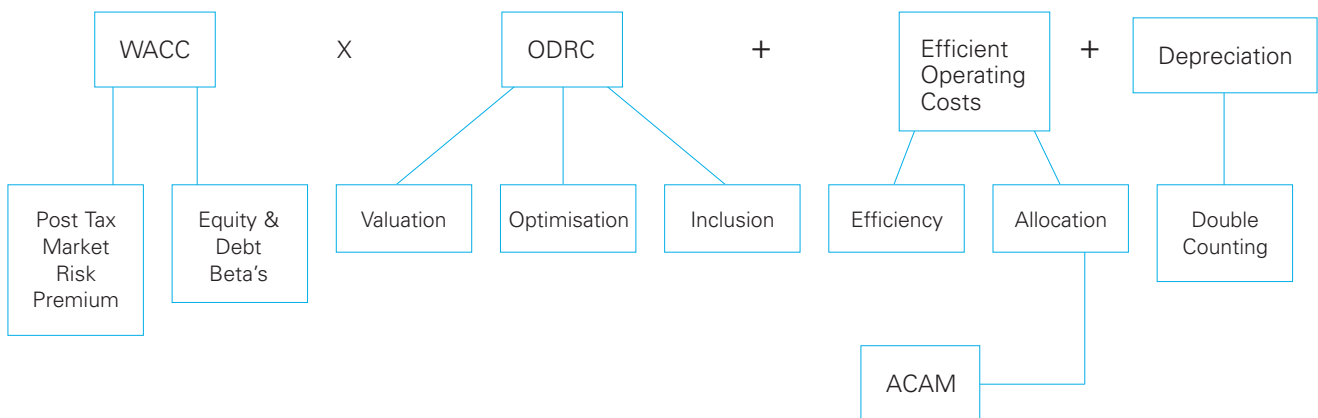
10. **AIAL approached the consultation in good faith and with an open mind.** As evidenced above, it provided the consultees with a reasonable opportunity to state their views. These were then duly considered by AIAL and without pre-determination. That is not to say that AIAL was necessarily able, nor considers it is required, to reconcile the views of the consultees or coerce or achieve agreement on the various viewpoints in the consultation. In AIAL's opinion, it is perfectly entitled to conduct the consultation by reference to a preferred option, provided that it keeps an open mind and is prepared to depart from that option in favour of another if persuaded by the cogency of the responses received.
11. AIAL was entitled to make a determination on the issue of landing charges and the ADC. AIAL was not required to give reasons for its decision. What AIAL was able to, and did do, was to demonstrate that it drew conclusions or assessments that were fair and reasonable and based on correct facts. The fact that the decision did not support the case advanced by the substantial customers does not, by itself, invalidate the decision. The content of AIAL's consultative obligation was consistently stressed to the Board by both the AIAL Management team and by counsel throughout the process.

Pricing formula

12. When determining the price for its services, a firm with potential market power can potentially extract from its customers a price that bears no relation to assets employed or costs of providing those services.
13. In distinction, the mechanism adopted by AIAL to set the landing charges and the ADC revenue target (and on which it consulted) is set out below. That formula has been determined following expert advice received from a number of disciplines :

Target Revenue = (WACC x ODRC) + Efficient Operating Costs + Depreciation

The key issues that arise from the use of that target revenue formula are set out in diagrammatic form below :



- Second Runway
- Seabed
- Seawall
- Wiroa Island
- Eastern Approaches
- Feeder roads, stormwater infrastructure, etc
- ITB
- Revaluations Going Forward

14. There are then two further major issues. The first is the need to off-set real expected growth in land values against this target revenue. The second is how the target revenue is to be recovered from users. Historically, AIAL has set prices (aimed at achieving target revenue) based on MCTOW and, in the case of the ADC, by passengers. Therefore, to aim at avoiding over recovery in any year it is necessary to consider forecast growth in the MCTOW and passenger numbers. The AIAL Consultation has also considered the adequacy of MCTOW (and the weight divisions in AIAL's current pricing schedules) as a means of allocating charges.

15. AIAL engaged the following experts to advise AIAL on the following issues throughout the AIAL Consultation and ongoing into this Inquiry:

- Dual till vs Single till:
 - Macquarie Airports Group
 - NERA
 - Brown, Copeland & Co. Limited
- WACC:
 - Dr Alastair Marsden
- Asset Valuation:
 - Ernst & Young
 - NERA
 - Seagar & Partners
 - Beca Valuations Limited
- Pricing Methodology:
 - LEK Consulting Group
- Revaluation Gains:
 - Ernst & Young
- Legal & Information Issues:
 - Russell McVeagh
 - Hesketh Henry
 - DAR Williams QC
- ACAM:
 - Ernst & Young
 - Brown, Copeland & Co. Limited
- Airport Efficiency:
 - LEK Consulting Group
 - Leigh Fisher
- Growth Forecasts:
 - Leigh Fisher
- Use of Comparisons of Landing Charges:
 - Leigh Fisher
 - Infometrics

Possible commercial agreement

16. At one of the later consultation meetings when the Board was present to hear the concerns directly from AIAL's substantial customers (11 July 2000), the substantial customers introduced, for the first time, the possibility of signing a commercial agreement to settle the issue of landing charges and the ADC.

17. The "without prejudice" discussions did not result in a commercial agreement being effected prior to the announcement of charges on 22 August 2000. However, since that time an agreement has been reached with three airlines, on the following basis:

- Landing charges to be paid at the following levels :
 - +7.5% (Year 1 - effective 1 September 2000);
 - +5.0% (Year 2 - effective 1 September 2001); and
 - +5.0% (Year 3 - effective 1 September 2002);

- Subject to unbudgeted capital expenditure, landing charges for Years 4 & 5 will remain unchanged (i.e. +0.0%);
 - ADC - increased \$2.00 to \$22.00 paid by each departing international passenger;
 - No Court action will be commenced or continued in respect of such landing charges or the ADC, but payment of the landing charges will be without prejudice to the current Inquiry; and
 - If the price control on landing charges is effected as a result of the current Inquiry and charges are reduced, AIAL will refund each airline any amount paid for landing charges since 1 September 2000 in excess of those calculated at the controlled levels. The maximum refund will be the amount by which AIAL's charges have been increased since 1 September 2000.
18. The offer was made by AIAL with the commercial purpose on AIAL's part, of avoiding unnecessary litigation. While AIAL is confident that the charges have been set in a proper manner and at reasonable levels (hence its willingness to offer the refund per the commercial arrangements set out above), not only is litigation time-consuming and costly but it is also damaging to the relationship between AIAL and its airline customers.
19. Additionally, many of the issues that will arise in such a litigation will shortly be debated in the Inquiry.
20. The commercial offers made by AIAL to its substantial customers have therefore always been made without prejudice to the rights of all parties to debate their respective cases at the Commission.

Litigation

21. Unfortunately, only Air NZ (and its related domestic companies) has seen fit to challenge AIAL's decision on increased charges in the Courts. They have commenced proceedings claiming that the airport failed properly to consult before increasing the charges.
22. AIAL considers that, with the guidance of its legal advisors, it robustly and completely followed the consultative process as detailed above. Accordingly, AIAL will be defending these allegations and will look to the Courts to confirm it has acted lawfully. In view of the fact the case is before the Courts, it is not appropriate to comment in any further detail.